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Oral History Interview of

JUSTICE THOMAS CLARK

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This is an interview conducted by Dr. James Duram, Wichita State University with Justice Tom Clark of the United States Supreme Court taken in his office in the Supreme Court Building on March 28, 1972.

DR. DURAM: Mr. Justice Clark, I have the questions that I sent to you; and I will just ask you to talk, relating to those questions if you would.

JUSTICE CLARK: Very well. Well, I'm not an ex-Justice. You see, Justices continue to be Justices; like old soldiers, they never die; they just fade away. In order to get the Justices to retire, the Congress passed this act which continues them in office; but they cannot sit on the Supreme Court. The appropriate way to call them is not "ex" or "former", but to say "retired."

DR. DURAM: Retired. I thank you, and I won't make that error again.

JUSTICE CLARK: Well, that's all right. I just tell it because I know you want to be accurate.

DR. DURAM: I do. In coming back to the Brown [Brown v. Board of Education] case Mr. Justice, I realize that this is a test of memory. I don't want you to review this as some of us younger men have had to for an oral doctoral exam or anything like that. We're just really interested in your impressions and comments and insights. If any of the questions that I ask you stray into the realm of personalities or confidences, just ignore them. The first thing I would like to talk to you about is: What is your opinion now, in looking back, of the legal strategy and

arguments used by the NAACP and the adversaries from the various states and the District of Columbia during the Brown arguments?

CLARK: Well, I think the Brown case evolved out of a series of cases that had been coming to the court in graduate school education, such as Sweatt v. Painter which was immediately before Brown, Sipuel, [Sipuel v. Oklahoma] McLaurin, [McLaurin v. Oklahoma State Regents] and the Atlanta cases. I rather think that one that would study Sweatt v. Painter would be able to preduct Brown from some of the language that's in it. I would say that the strategy of Justice [Thurgood] Marshall, who was then the counsel in that case for the NAACP, was to merely try to extend to the elementary schools the doctrine that had been already pronounced with reference to graduate schools. I think it was very good strategy because it is natural that a doctrine is enlarged as time goes on. We get a case involving a new principle, and we decide it a certain way, and before long we're getting a rash of cases in that area--take for example in public facilities. Quite often an original rule that comes down would be enlarged later and include other areas that were not involved in the first case. I'd say that even the respondents in the case would not put too much stress on cases like Plessy v. Ferguson because we had practically washed those cases out, particularly in transportation--that was a transportation case. Justice [Harold H.] Burton had written a case prior to Sweatt,

even, that wiped that out. Of course he put it on a statute, an interstate commerce statute; but it is strange that prior to that opinion they had the practice of placing signs in cars and in trains that would denote the place where Black and White people would sit, respectively. So I would think that the defense strategy was possibly tempered some because of these cases in the area of higher education and that they argued more along the line that in the undergraduate level and elementary level it was not so much necessary to have an integrated school because the pupils were not as sophisticated as they were when they reached the graduate level.

DURAM: Were there signs--at least from hearing the arguments of the people defending segregation--of coordination of their positions or weren't you aware that there was--.

CLARK: I don't think there was much coordination, no.

DURAM: You really don't.

CLARK: John [W.] Davis argued the case for, I believe, for South Carolina. I think Jimmy [James F.] Byrnes got him to argue so--.

DURAM: Through personal friendship?

CLARK: Yes, yes.

DURAM: Now I notice, having gone back and read [Albert P.] Blaustein and [Clarence Clyde] Ferguson's [Jr.] book on the

segregation cases, that you were criticized, before you came to the court (or before you were confirmed) by some people, as being "anti-Negro." Yet in checking your record, you were the one who thumped to get Negroes admitted to practice through the Texas Bar Association, if I remember.

CLARK: It was the Federal Bar.

DURAM: Federal Bar, I'm sorry. I've read a lot of things about cases in the Library of Congress. Did you think that the NAACP made good use of the Howard Law School and its graduates in their strategy? I'm convinced myself the strategy was long range and very deliberate, that they applied in the desegregation cases.

CLARK: Well they had used Mr. Marshall for some time, you know, throughout the country. He had become their top lawyer on the advocacy side; and he had developed Mrs. [Constance Baker] Motley, who's now on the Federal bench in New York, and some of the others that appeared. So, of course, they had a planned strategy that, I suppose, would grow out of the higher educational cases in the hope that they might be able to get the court to extend the doctrine to the elementary schools.

DURAM: Did you have the idea, Mr. Justice, at the time the cases came before you that the lawyers representing the states defending the segregation statutes were, in effect, fighting a delaying action; or wasn't it that apparent when the cases first

came into court?

CLARK: Oh, I wouldn't say that. I think they rather thought that they were on thin ice as far as Plessy v. Ferguson was concerned and so they were trying to get up additional ammunition that would indicate that the school system was not as bad as made out and that segregation, after all, was not the bugaboo that people had made it. However, I think that their main trouble was that they didn't have the [Louis D.] Brandeis type briefs and arguments that some of Marshall's people had provided. I would say that while they didn't think that they were developing a losing case, they didn't have the confidence that they would have had, perhaps twenty years before.

DURAM: I see.

CLARK: I think you must take into consideration the change that had come about in the United States with reference to segregation. In many areas, why, there had been a decided change, and particularly in higher education. As you know, we'd had that case argued before 1954; and we had carried it over. Indeed, we sent it back the first time, one of the cases, in order to determine--I think it was the South Carolina case--whether or not a bond issue down there that the state had voted had effected a more equal school from the standpoint of quality of education. What I was doing was trying to wait until we could get a better representation (geographically) of the cases. There had been, and still is, as a matter of fact, worse than

it is in the South now, segregation in the North.

DURAM: Sure is.

CLARK: And we were trying to get, well, cases like Brown itself, Kansas--

DURAM: Kansas, Topeka.

CLARK: --and Delaware. Then some of the Justices thought it might be interesting to have one under the Fifth Amendment, which would be the District of Columbia. Then we could handle the whole sphere of the matter.

DURAM: That was intentional then on the part of the Court to--

CLARK: It wasn't a question of who planned the decision. Just, quite often we'd do that. If an area is murky or the cases are not representative, why, we might hold them or even send them back and hope that perhaps a clearer case would come which wouldn't go off on such narrow grounds.

DURAM: This is a very naive question perhaps, but is this generally a successful approach? Do you usually get clearer cases, sir, as--.

CLARK: It's amazing that it happens. You take miscegenation. We had a case here involving a man of Chinese extraction. He had been prosecuted over in Virginia for marrying a white woman. Well, there was a lot of murkiness in the record. He had skipped

and gone back home and all sorts of things, and so we decided we ought to have a little bit better case in which to act upon. We sent it back for some clarification. The Virginia courts found out he had gone back to China, and they dismissed it. Then we got, later, about three years later, another Virginia case that was filed here in the District. No, the people were married in the District; and they went over to Virginia. That's the way it was. That was the one that eventually struck down the miscegenation rules.

DURAM: A later case, then, struck that down.

CLARK: You'll find that to be true not only in the area of segregation; it's particularly true in housing, public facilities, and things like that. One of the first cases would be the case under the Interstate Commerce Act on interstate trains, and then we commenced to getting into other public facilities such as waiting rooms in the train. If you're not going to be segregated on the train, what about segregated in the station? And then somebody thought up, well, if you can't segregate in the station, what about the restrooms?

[Interruption]

CLARK: Well, as I was saying, these things evolved; and in the area of transportation, when they were able to see they could sit anyway they wanted to in the car, they wondered about

the restrooms, and then they got into the cafes and public eating places and then the hotels and then the swimming pools and then the golf courses and so at one time here when I wrote Lupper [Lupper v. Arkansas] why we had over a thousand cases in that area. We had to do something with them so we just washed them all out by saying that everyone of the prosecutions had to be vacated, dismissed.

DURAM: So all of them were gone; you wiped them all out with one--

CLARK: One case, Lupper.

DURAM: In shifting gears to another question, Mr. Justice, I'll throw this out: How would you explain the reasons for the Supreme Court's acceptance of the idea that segregated education was a violation of equal protection under the 14th Amendment in light of the old Plessy precedent? I mean, now you have spoken to this point about the higher education cases as the vehicle through which this happened, but was there a search on the part of the court for case precedents or...?

CLARK: Well, as you know, aside from the higher educational cases, there were no cases. There had been an application of the Plessy doctrine for many years, oh, fifty years. Plessy came down, I think, in the late '90s, and that was on a basis of separate but equal. We had decided that it was almost impossible

to have an equal school where it was all of one race or one color because invariably, human nature being what it is, why that school, not having the affluency of the other school, would be neglected. Number two, the teachers that were being trained in that area were not as well trained as were the teachers in the white schools. And then also, the system itself created a cast which was very bad and obtrusive and brought great disturbances to, I'm sure, many people, black people particularly.

DURAM: You are saying, in referring back to the arguments presented by Kenneth Clark and various scholars, that the court--you among the court, the court was unanimous in the Brown case--was convinced of the validity of this sociological evidence?

CLARK: Well I think aside from that, why, just practical experience, aside from sociology. Frankly, I was opposed to the use of [Gunnar] Myrdal in the footnote because being from the South I knew of the eyebrow raising. Here we are bringing sociology into law. Well as a matter of fact we have other disciplines in law every morning; and that's the whole business, that's the ball of wax; but in cases that engender such hatred as these, why it's well to put your arguments in a practical, common sense fashion. You see, we don't have any army to enforce our opinions; and we don't have any money to buy ads, to run favorable ads in newspapers. The only way we have is logic and force and common sense of the opinion.

DURAM: That's an interesting comment, no army or no ads to get it, just logic. Your own view then was that it could have been stated more precisely in legal terms or in technical terms as opposed to sociological terms?

CLARK: Oh, definitely. I think the Chief Justice stated it well in legal terms; but he had bolstered that with the citation of Myrdal which I think, as I remember, was given to him by [Justice Felix] Frankfurter--I'm not sure.

DURAM: In passing on to other questions Mr. Justice Clark, one that struck me in a number of years of studying Brown from different angles and particularly out of the Kansas perspective: Why did the Supreme Court call for reargument of the Brown case on essentially historical grounds, and then in effect based its 1954 decision on what I would loosely call sociological evidence? I remember Dr. [Alfred] Kelly, my mentor, went to conferences with Mr. [Thurgood] Marshall when he was NAACP attorney; and they talked about what did the 14th Amendment say, what was the intent, did they mean to outlaw public school segregation, and the like. Could you talk about those questions?

CLARK: Well, of course, we try when these problems are raised, and particularly when the problem is such that we feel obliged to compare present day situations with those that were historically occurring, if there were any, during Colonial days. Take for example in the Barnett [United States v. Barnett] case, which is a contempt case, why we tried to find, well what did

they do back in Colonial days, about the time the Constitution was adopted? What was the rule? Did they have a rule along this line at all? So we knew, of course, that the Congress that had proposed the 14th Amendment also segregated the schools in the District of Columbia. That's pretty potent evidence that they didn't intend for the 14th Amendment to cover the schools. So some of the brothers (you see, there are nine on the court) want to get light in some areas, some in other areas. In trying to get as much light as we can in all the areas why one Justice might suggest a question, another one something else; and so we incorporate them together. We decided to have a reargument, and we thought that that might assist the advocates in getting their argument together.

DURAM: You're suggesting then, Mr. Justice, that the questions posed were really not so much the product of one man for reargument, but they were collective. Am I following you on that, sir?

CLARK: Oh, no. No, no. We quite often do that, and in our conference why we would talk over just what would be the best areas to have the advocates address themselves. You might appoint a committee of two or three Justices and they'd go out over the weekend and get up maybe some questions and circulate them to the Court. Then you'd say, well I'd like to add this question. Eventually you'd come up with what the order incorporated.

DURAM: But the myth that Felix Frankfurter just sat down and penned these questions is a myth? That's judicial mythology?

CLARK: Oh, yes, definitely. Or any other Justice.

DURAM: No one Justice. In talking then, Mr. Justice Clark, I think you've alluded to the fact--if I'm understanding you correctly--that the Court, when they viewed the historical origins of the 14th Amendment found it just simply, to use a word you used before, murky?

CLARK: Yes.

DURAM: Was it contradictory, or did the historical evidence lean the other way?

CLARK: Well I think it was more contradictory than it was leaning one way or the other, as is usually true in those cases. I remember in the Barnett case, why Justice [Arthur J.] Goldberg came out just the opposite on historical background as I did. I wrote the opinion, so--

DURAM: Who would compile, for the Court a study of the historical origins of the 14th Amendment? Let me clarify this. In Mr. Justice Burton's papers he has this huge study marked "School Segregation Cases." I'm sure it's printed for the Justices of the Supreme Court, and it's a study--eighty-eight pages I think--of the origins of the 14th Amendment. Would you have your law clerks prepare that for you or would you--?

CLARK: Well most of the time we would. I don't think we did it though on the Brown case. Why we sometimes chip in some law clerks. We only had two apiece. I remember one case, Central Valley, California (water case); Chief Justice loaned me a law clerk or two; and I took mine. Then on this matter of Barnett, getting this historical background on contempt, why Justice Goldberg, [Justice William J.] Brennen [Jr.] myself, and I think another Justice, we got four law clerks that ran that down for us. It's unfortunate that the lawyers can't do that. That's why we asked for these questions, you see, on the reargument; and of course, they came up with the answers then. It may be, though, that Justice Burton had his law clerks go into some phases of it that he wanted probed. Justice Burton was very meticulous, and I'm satisfied that if there's that in his file, more than likely he circulated it to all of us.

DURAM: He probably did. No, I wasn't asking you to recall--.

[Interruption]

DURAM: So the reargument then, with questions on historical intent, was just part of a general seeking of information about the backgrounds?

CLARK: That's right. Actually we would want to get the background in the area that the case involves. For example, if it is on the 5th Amendment, we'll say we'd like to get the background: Just what did the Courts do back there? What was the

law on it if there was any? How did this develop? Why did they put this in there? Then, what--if there is any--what are the parameters of it at that time?

DURAM: History then is a tool; but it's not to be, at least with your philosophy of the law, a controlling tool. Or, it's not to be the guide.

CLARK: No, no. I'd always thought that the Constitution was not written in a vacuum, we ought not to keep it there, and we ought not to put strait jackets around the Amendments. I rather think that there was a definite purpose on the part of the founders, and particularly [James] Madison and those that wrote the Bill of Rights, to couch them in ambiguous words.

DURAM: Deliberately ambiguous?

CLARK: Deliberately, yes--due process and things of that kind. They did that for what reason? So that later generations might be able to interpret them to the necessities of their times, not to be bound in this strait jacket that you would be in if they specified with such specificity that you couldn't escape it. They wanted to give you an escape hatch that you could go through, and I think that was deliberate. That's why we haven't had but twenty-six Amendments to our Constitution. You take state constitutions, well, New York's had over three hundred and fifty since 1939.

DURAM: So the feeling here--I'm just again recasting these

historical arguments--was that it was one of a number of different types of knowledges the Court sought more enlightment from, and it came to the conclusion then that it just wasn't that precise. The tendency was confused--to say the very least the tendency was not definite--and you just sought other kinds of information?

CLARK: Right.

DURAM: Did Chief Justice [Fred M.] Vinson's untimely death with a heart attack and then Mr. [Chief Justice Earl] Warren coming to the Court have anything to do with the order that the segregation cases were treated, or did it delay anything?

CLARK: No, they were already set before--.

DURAM: That was decided before so--

CLARK: That was before Chief Justice Vinson died. He died on September the 7th, I think it was.

DURAM: Yes, I just noticed in the diary.

CLARK: We met the first Monday in October, which would only be about a month. We set our cases about (we tried to) two months ahead.

DURAM: Then because of this two month lag, then that just simply--.

CLARK: Well we wanted to give the counsel time enough, we hoped, to get ready. Frankly about half of them are not ready, but--.

[Laughter]

DURAM: Just as an aside to you, in Mr. Justice [Harold H.] Burton's diary, which is now in the public domain, he rated lawyers when they argued cases--good, excellent. He, literally, each attorney in a--

CLARK: Did you have to get a magnifying glass to read his writing? [Laughter]

DURAM: Yes, sir. You're familiar with that.

CLARK: Oh, yes. Yes. Quite often I sat next to him in the conference, not on the Court; and I noticed he wrote very meticulous and very long notes. Sometimes I would go around to see him when I was writing an opinion and ask him to loan me his notes. I'd almost have to get a magnifying glass to read them. However, they were very legible after you got them--they were real tiny.

DURAM: They're tiny and it did take some doing to get into them. And now, the ink's fading a little bit. I really should use a magnifying glass.

CLARK: That's too bad.

DURAM: That should be microfilmed.

CLARK: Yes, they really should, yes.

DURAM: I want to shift away from that topic--this is so interesting. I get carried away with side topics.

CLARK: That's all right.

DURAM: How was it that the Court, with that many diverse personalities, came to a unanimous decision on Brown?

CLARK: Well, you know, I could feel the change on the Court. I came in '49 (my first term was in October '49) and these cases that came here then, mostly in the area of higher education, you could sort of feel the Justices. Those were all unanimous cases, and I think that it's just a question of cases happened to be timed at that period. I suppose they, like all cases--we can't go out, you know, like Congress, and pass a law whenever we see something that may be wrong. We have to wait until the case comes here. It's just logical that if the Court is going to find that higher education inherently cannot be segregated in order to have equal quality, why not elementary. So those cases came here in droves, as you know. So it was, I think, the Justices were more or less ready for it. I know only two of us from the South on the Court at the time, Justice [Hugo L.] Black and myself. The only difference he and I had was that he wanted to make the cases on an individual basis, each student had to have standing. I wanted to do it as a class action. However, he came around to class action.

DURAM: Oh, he did come around to it.

CLARK: Finally.

DURAM: Mr. Justices Black and [William O.] Douglas, were they not opposed to sending some of the earlier cases back? I thought I got that idea out of the diaries, the Burton material.

CLARK: I'm sure they were.

DURAM: So it is a matter of mood? There might be some question about the approach, like you were saying, individual versus class action; but by the time you're on the Court in October, 1949 it is really a feeling against segregation; that's what you're saying?

CLARK: I think so, yes.

DURAM: It's very definite. Would you attribute these changes to the things besides the legal experience in the higher education cases? Was it the mood of the society--Mr. Truman with the desegregation order, the military desegregation order? Was it--do you see--it's got to be a mood, it would seem.

CLARK: Well I rather think that there was much great acceptance among the white community, and I think that that had some effect. Of course, as you know, President Truman had a commission to secure these rights. If you'll read that report, why it's a blueprint for what's happened subsequently, practically a

blueprint.

DURAM: President Truman's civil rights--?

CLARK: I think Truman did more than any other President in that area. He certainly had the courage of his convictions, and he carried it through. I rather think that that just happened to be a period of our history where there was a feeling that this had been a great mistake, if not a great wrong that it should be corrected; and that it was going to take time to do it. If you'll read the second Brown [Brown V. Board of Education (1955)] which came out (I think) the next year, on the implementation; you will see some of the qualms we had about how we were going to implement it.

DURAM: This question of qualms about implementation comes up in Mr. Justice Burton's papers. What were some of the major things that went into the decision to use the "all deliberate speed" phrase.

CLARK: Well, we stole that from Justice [Oliver Wendell] Holmes, one of his opinions. Felix found it; rather he knew it anyway.

I rather think he's the one that brought it to our attention. And--.

DURAM: Why that instead of something more precise, Mr. Justice Clark?

CLARK: Well it's almost impossible on a national basis to come

out with a formula of one, two, three. You just can't do it. This is a situation that had been existing, you know, over a hundred years although we had our 14th Amendment on the books almost a hundred years; and as a consequence, why some areas might have problems that other areas did not have. Certainly there were some areas in the North that, as far as schooling was concerned itself, were much better than those in other areas of the country. Most people always think of the South when they mention segregation, which I think is an error because I wrote an opinion, Lackawanna, up in New York when I was on the Second Circuit a couple of years ago. It was as bad as any segregation I ever experienced; and I've been in the middle of it. I rather think that what the Court was faced with was varying situations in various parts of the country. For example, in Mississippi where you had possibly a greater percent of blacks than any other state, why there might be a different problem--might take a little longer. Then there are states that just don't have the facilities, period. You can't build these school buildings over night. Now frankly, I was very much disappointed in the deliberate speed formula. I believe it'd been much better if we'd just told them, "Why don't you start this next fall, or maybe a year from there, in the, we'll say in the kindergarten." The prejudices of small children are not too great and they don't notice these things. If you start

in the kindergarten in twelve years you'd have the thing up through the high school.

DURAM: Many memos on that, with that plan in Justice Burton's correspondence. I had the idea that a number of you were seriously thinking about that type of--

CLARK: Well, Maryland adopted that plan. If we had done that, I think it would have been much more acceptable. But, the minute we put it in a general phrase, such as "deliberate speed," there were those who wanted to take advantage of that. For example, I remember the governor of Virginia came out a day or two after the opinion, said, "Well, Virginia always bows to the law." Well the South had always looked to Virginia-- I went to school in Virginia myself (VMI) and my sister went to a Virginia school, Mary Baldwin. When he said that why I was very much buoyed up over our chances. But, in about sixty days why he'd reversed his whole field; and he came out for interposition and all those things.

DURAM: For political survival, perhaps?

CLARK: Well perhaps, or he got pressures or something. So then Louisiana skipped over, you know; and then Mississippi and all of them tried the same old doctrines of a hundred years ago or over; and that's what caused our trouble. Then it takes a very long interval for a case to reach this Court from

a trial level. Once you've tried a case, even though it's in the federal court, it wouldn't get hereordinarily for a couple of years. That caused us a lot of delay. Then, of course, they deliberately delayed these type of cases; lawyers would try to rather. But I find now--I was very much pleased in Mississippi. I was over there the other day, and they've made great progress there. And I was down at South Carolina about two weeks ago, and I'm very much pleased with what they're doing down there. They're making wonderful progress.

DURAM: The thing that disturbed me is the Northerners, sir--Michiganders. With the pressure really on the North in bussing and areas like that, the shoe is starting to really rub. We've had good success in Wichita, Kansas. My little girl's in an integrated kindergarten that's about sixty percent white, forty percent black. It's still a big argument at the beginning of the year, but we have succeeded in this. I thank you for these comments on the all deliberate speed implementation order. If I'm summarizing what you're saying, you would disagree with those critics who argue that the Court could have been more precise because of the numerous varying problems; but you would have preferred something more specific about what you meant by definite action?

CLARK: Well, of course, your hindsight's much better than your foresight.

DURAM: Yes, that's very true.

CLARK: We made mistakes; we're human, too. We made a mistake. I think it'd been much better, as I indicated, to have done it in other ways. One I suggested, the kindergarten way, is just one. There could have been other ways, but we decided, and that's water over the dam. No use griping about it. We decided that that was the way to do it, and we did it. I think it delayed integration for possibly fifteen years, at least.

DURAM: You really think that the Court had that affect, of delaying for that long?

CLARK: Yes. Of course we didn't intend it that long.

DURAM: No, not intentionally. That brings me to a couple of the summary questions that I wanted to ask you, really one summary question: What does the Brown case illustrate about the potential of the Court as a vehicle for bringing about change in American society?

CLARK: Well I think myself that it shows that there's a great possibility there, a great potential. The people nowadays say (some of them) that there's no avenue you can go down within the establishment to try to obtain what they say are the injustices of justice. I think that this gave millions and millions of people renewed hope in that field, and I think the development in other fields sparked largely from Brown. You take Baker V. Carr for example (reapportionment case), which I think is going to have a greater impact than even

Brown V. the Board of Education because it involves the right to vote which is the most potent weapon that a person can have in a free society.

DURAM: In your legal training, was sociological jurisprudence emphasized heavily?

CLARK: No. No, mine was just a practical experience in court rooms and places like that. I learned after I, well frankly after I got on the bench, that the use of other disciplines is a necessary ingredient to a good judicial system. I've been trying, through the Federal Judicial Center which Congress organized three or four years ago, to bring about the use of other disciplines by organizing seminars in which people from other disciplines participate. Such as, for example, in the business field, in administration, public administration; a fellow like Graham, we bring him in to try to improve our techniques and our procedures, where antiquated. We're going to have to modernize them, and we're trying to do that. I rather think that we have made a mistake in that area, in the procedures of the courts, because we haven't taken a leaf from the experience of business. Take for example in data processing. Of course, data processing is not the answer to our prayers; but it would be helpful in other areas, consolidation, unification of the court system. I'm sure if the Board of General Motors, for example, wasn't able to control all the various sections of that corporation, such as Chevrolet and the others, why they'd be in pretty bad shape.

We can't, in most of the states, control the trial courts. They are independent beings, and they recognize it and exercise it. They're separate islands you might say. So we'd learn a lot from bringing in other disciplines, and we'd learn much from bringing philosophy, psychology, medicine, things of that kind into law. For that reason, why, I think it's a development that I welcome.

DURAM: Do you have any reservations that you would care to state then about the future of the courts, say the Supreme Court's role in American society in the event that its members become less aware of the need for flexibility in the society or the need to guide change. I'm not asking you to comment specificially about Mr. [Justice Lewis F.] Powell [Jr.] or Mr. [Justice William H.] Rehnquist or their judicial philosophies, but a number of people I've talked to who are more or less liberal and integrationists are arguing that they're afraid that the Court will be turned around on these issues now.

CLARK: Well history teaches us the opposite.

DURAM: That's true.

CLARK: I think if you'd study Warren on the Supreme Court (Charles Warren), why you'd find that that's not true. The Presidents are never more disappointed than when they think they can appoint somebody up here that will control a philosophy or has a certain philosophy and lo and behold there's no resemblance to it.

DURAM: Your independence of mind is cited in Blaustein and Ferguson's book too because, supposedly in your close relationship with Mr. Truman and the like, you were a "political" appointee. Who isn't when they come to the Court--I mean technically at least--but Blaustein and Ferguson in their--.

CLARK: Well some Presidents think that they can do that. I remember Mr. Eisenhower--I never talked to Mr. [Franklin D.] Roosevelt about it but I'm sure he was disappointed, too, in some of his--but Mr. Eisenhower told me frankly--I played golf with him two or three times--that he was disappointed in two of his appointments. I'm satisfied for a while at least, although Mr. Truman and I are warm friends, that he was somewhat disappointed when I handed down that opinion in the steel seizure case. And, I'm satisfied that other President's have been disappointed some. I don't think that one can control the philosophy of the Court through appointments. I believe you'll find that it's a very, very slow change that comes in the Court. Takes fifteen--.

DURAM: Do you think, Mr. Justice Clark, that the power of personalities is as important on the court (your interaction with your fellow Justices) as it was in Mr. Marshall's time, for example? Do you think that's still an important factor in shaping--?

CLARK: Oh, I think it has great weight, yes. We work pretty closely here; we see everybody every day; we're in the offices, in and out, practically every day; and we speak frankly. As a consequence, why,

there are no holds barred. I have seen votes, that orginally would decide a case one way, go the other way after the opinion was circulated. We always had a rule here that your vote was never final until the case came down the open Court; and even then you could change your mind on a petitionary hearing, which [Justice] John Harlan did on two opinions I wrote--the Murdering Wives cases we call them. I think it's a good thing. I think that that shows that the Court is not predisposed; they haven't prejudged the matters; they have an open mind. There's no Court in the world that has a more open mind than this one.

DURAM: What would you advise college students to read if they wanted to learn about the real nature, the functions, and the impact of the Supreme Court in American society? Have there been any books that have summarized this for you, or what articles that you or your colleagues have written have impressed you most?

CLARK: Well, I would say that possibly the best book would be Warren, Charles Warren; and that would, I believe, convince the reader that the history of the United States is really made in the Supreme Court. You would, I think, in reading through that book, get a feeling of the development of the judicial process at the highest level that you can expect to get from any book. Books are cold and print's distant--.