

THE CIVIL RIGHTS AND VOTING RIGHTS ACTS

Interview #2

Thursday, April 15, 2004

FERRIS: After Robert Caro began writing his series of biographies of Johnson, I read the first two volumes with fascination. I asked Senator Mansfield, "Did you read them?" He said, "Yep." I said, "What did you think of them?" He said, "I think he captured Lyndon Johnson very well." That to me, having read the book and hearing him say that, was about as harsh a thing as I recall he had ever said about anyone, because he was never openly judgmental. Caro did capture him. He caught the strengths but he also caught the pettiness and the weaknesses of the man as well. That's what a good biography should do.

Probably one of the better biographies that I read that met that test was William Manchester's *America Caesar*. I didn't know much about [Douglas] MacArthur before I read Manchester's biography of him, but after completing the book I didn't know what Manchester's final conclusion was on him as a man, because he showed the greatness of MacArthur and he showed the pettiness and the vanities of MacArthur. He showed it all, and that is a part of what everyone is. No one is full of greatness or full of weakness, it's some of everything. But Caro's characterization of Lyndon Johnson showed to me, at least, for the first time, his weaknesses, and Mansfield agreed with it.

RITCHIE: Did Mansfield ever talk much about Johnson?

FERRIS: Not really. We spoke about a lot of things that appeared in Don Oberdorfer's book [*Senator Mansfield*], like his meeting with Johnson after the Tet Offensive. He sat down there for two or three hours, right before the announcement by Johnson that he was not going to run. He had called Mansfield down because he wanted to deploy some more troops. If I remember correctly, he got a call that the president wanted to see him. I think Jim Rowe was the intermediary who called him. Mansfield always used to say, "Oh, no, the president's too busy." He really didn't like to go down there, he didn't want to be the subject of "the treatment." He probably didn't submit too well to the treatment.

He said, "No, I don't want to go." Finally they went to a couple of other intermediaries and he said, "All right, I'll go. Tell them to set up a meeting." They said,

"Five o'clock." So he went down that day. He said he was in the little private presidential office and Johnson was talking about how they wanted to put some more troops in, and Mansfield said, "I really don't think this will sit well." He said Johnson would pick up the phone and call [Clark] Clifford, and then he'd call [Joseph] Califano or someone else, and they'd be bantering back and forth, and the boss would be sitting there. He said, "I was sitting there in a chair for what seemed like an eternity. He was such a gentleman. He told me, "You don't excuse yourself when you're in the company of the President." He really revered the office of the presidency. "Until the president stands up, you don't stand up." So he was sort of captured there until there was no more to say. Finally the President got up and Mansfield excused himself. But I remember him describing the atmosphere of it. He didn't just say he had made his contribution and excused himself, he wouldn't do that. The president in effect had to initiate the end of the meeting.

In Oberdorfer's book you get the sense that Mansfield had great reverence for the presidency. I think it was difficult for him with Lyndon being so earthy in so many ways. It took a lot of the veneer off of that great reverence that he had for the presidency. We would talk about these instances, but it never rose to the level of gossip at all.

Back in the '60s we would frequently have morning meetings in the leader's office. Most of the time, there was no set agenda. We would talk about some of the legislative issues. I can relate an anecdote on the Voting Rights Act of 1965. It started off with the really outrageous incident in Selma when Sheriff [James] Clark turned the dogs and the fire hoses on the demonstrators. That dominated the evening news and the newspapers. Everyone knew a Voting Rights bill would be considered that year. It was a main emphasis of the President's State of the Union address. It was in various stages of gestation at the Justice Department and the White House, but nothing had been conveyed to the leader or anyone in the Congress. I went up to Mansfield's office the day after the Selma event for a morning meeting but it was obvious that Selma would be the topic discussed. Of course, Selma was on everyone's mind. He said to me, "Charlie, I want you to draft a Voting Rights bill for me by three o'clock this afternoon." I suspected he was not serious, but he continued, "And I want it on one page." He hated the endless verbosity of lawyers. He said, "I want it air tight. I don't want any exemptions. I want the absolute right to vote for everyone in this country. Now that should be able to be done in one page. I don't want ambiguities that lead to exemptions." I sort of snickered that he wanted it by three o'clock. He didn't snicker.

Everyone knew that the Administration had a draft bill in final form and it irritated Mansfield that the White House was withholding its submission to the Congress. He knew that the administration had a bill, but Johnson liked to pull rabbits out of the hat. He liked to pull back the veil and reveal his new creation, the Voting Rights bill. I think that used to bother Mansfield. That was not his personality. Things like that should be done because they have to be done, not because it was a good PR opportunity. Getting the job done was a great deal more important than staging an event. That's a good anecdote on the Johnson-Mansfield relationship. It was an example of Mansfield's disappointment or irritation with some of the personal peccadillos of the Johnson White House, and how he reacted to them.

It was in the paper that morning that Nick Katzenbach, the Attorney General, had been up visiting Everett Dirksen and talking about the Voting Rights Act. I said, "By the way, did Katzenbach ever come by and see you. I notice that he visited Dirksen." He wasn't put off by that at all, but he said to me, "I don't want you to talk to the administration on this at all. I just want a bill. I'm going to introduce it." I thought immediately about the responsibility of this task. I could screw this thing up! I wasn't enmeshed in this issue deeply. And he prohibited me from talking to the administration. But I had worked very closely with Burke Marshall on the '64 Civil Rights bill, when Burke was the Assistant Attorney General in charge of the Civil Rights Division, one of the best lawyers I have ever come in contact with. He taught me so much. Burke had just left the Justice Department. He was going to become the general counsel of IBM, but he was sitting over at his old law firm, Covington & Burling, before he moved up to New York. Since he wasn't part of the administration, I could call Burke. I was sure that he would help me out of the predicament.

I called him and told him what Mansfield asked me to do and the restrictions I was under. I said, "For God's sake, Burke, I could embarrass myself but more so embarrass the leader with a bill that I could put together in this time frame. I haven't been working with anyone in the administration on this. I don't know how to put a bill together by three." I could get him committed to an approach that would be not only defective but a disaster. It's awfully hard to dig someone out of a hole after you've got him in there. Burke said, "Charlie, I have a copy of the administration's bill. There are only a few of them around, and Lyndon Johnson doesn't like things to get out of his particularly tight circle." He said, "I'm going to send you mine. I'll probably be tarred and feathered if it ever gets out that I've let it go." I said, "Gee, that's great, Burke, that will be helpful. How long is it?" He said, "Sixty-eight pages." I said, "I can't read 68 pages by three o'clock this afternoon!" But

Burke got it up to me immediately, and I got a copy of a bill that Phil Hart had put in. I extracted what I hurriedly determined were the essentials of each and by three o'clock I came up with a draft. I used legal-size paper, single-spaced, no margins, and I got it down to about six and a half pages. It was something that never should have seen the light of day, but I just wanted to make sure he had something in his hand and then I could plead for more time to "perfect" it.

Burke, of course, had called Katzenbach—not letting me know—and told him he was in deep trouble with Mansfield because he's on a tear up there on the Voting Rights Act. "You'd better go cut him off at the pass because all of your work is going to be for naught." Obviously, Katzenbach called Mansfield, and Mansfield told him to come up at three o'clock. Katzenbach brought Harold Greene with him. Harold Greene was the chief of the appellate section of the Civil Rights Division at Justice at the time—and what an extraordinary lawyer Harold was. Harold was the go to guy on civil rights. I remember going to Harold's going away party at the Justice Department, when Harold was departing to become a judge in D.C. Bob Kennedy was the master of ceremonies at that event. He started his remarks with, "As Attorney General I used to always turn to [Deputy Attorney General] Katzenbach and say, 'Nick, how about getting me a couple of pages on this?' 'Oh, right away, general.' Then I found out he used to go down and call Burke Marshall. Then Bob Kennedy said I found out that Burke used to call Harold Greene. Then I thought, 'What the hell are we going through these guys for? I'm going to call Harold Greene when I need my answers.'"

It was well deserved recognition of Harold, who was such a great lawyer. He was later elevated by President Johnson to the U.S. District Court for the District of Columbia. During his tenure he handled some historic cases including the antitrust suit against AT&T, oversaw the terms of the consent decree, and supervised and implemented that consent decree for ten years afterwards. I had been chairman of the FCC [Federal Communications Commission] and my continuing interest in telecommunications law resulted in my following that case very closely in the '80s when I left government. Harold not only was magnificent in his rulings implementing the consent decree and assuring its fidelity to antitrust law, but the scope of that decree and its continuing implementation was in effect laying the framework for a new competitive era in telecommunications. His decisions implementing the decree were not only consistent with antitrust law but were incredibly farsighted in establishing wise communications policy. But I'm getting away from the story.

RITCHIE: Whatever happened to your six-page draft?

FERRIS: Well, Harold Greene came up there with Katzenbach, and they presented the White House draft. Mansfield sat there smoking his pipe, saying very little. He could at times be maddeningly inscrutable. Everyone was squirming, and Mansfield said, "All right. I've got this bill that Charlie put together and you've got yours. Who's your guy?" Katzenbach said, "Harold Greene." Mansfield said, "Okay, Harold and Charlie will sit and get this done tonight, meld the two, and we'll come up with a bill and we'll be able to go to Dirksen." As you recall, the Senate was originating the bill in 1965. The House originated the Civil Rights Act in '64 and they wanted us to originate the bills in '65.

Harold and I sat down that evening, and Harold, who put this sixty-eight page bill together, had no difficulty at all in just jettisoning things. The first eighteen or nineteen pages were all findings of fact, that were going to be great for establishing the factual predicate for a brief in the Supreme Court. Harold knew that I would have to account for the bill's length. So zip, we just eliminated all those things. "That can all go into the legislative history." Harold said, "Absolutely, let's get rid of it." We got it down to a good trim bill--still thirty pages--and that started the process.

RITCHIE: Well, to go back to the year before. You had arrived at the Senate in the fall of 1963, just before the assassination, and suddenly Lyndon Johnson was in the White House and he made it clear from the start that civil rights was his number one priority. You had a big civil rights bill to get through the Senate. How much did Johnson have to do with the strategy that Mansfield followed in terms of the Civil Rights Act of 1964?

FERRIS: It wasn't direct involvement. The House had already passed the bill in '63, that bill was a very good bill. As a matter of fact, it was a bill that the Kennedy Administration thought that the House with its rules could get through. The progressive bipartisan coalition had a good majority in the House. But the White House and most observers anticipated significant compromising modifications in order to get it through the Senate. It was the consensus that Title II, which was the public accommodations section, would be watered down, and that Title VII, the equal employment provision of the bill, would be eliminated, and Title VI, which was the cutoff of federal funds, which had far reaching grant and contract consequences, would probably be eliminated.

Hubert Humphrey was the Senate Whip, and intellectual leader, and the spiritual elected leader on civil rights over the years. He had tremendous ties to the entire civil rights community. And they had a great sense of trust in Hubert. The White House wasn't divorced from any of this, and the communication with the White House was complete, but I don't recall a great deal of "programming." Larry O'Brien was still the chief liaison, and Mike Manatos was the Senate liaison from the White House. Both had very good relationships with Mansfield. I think the communications were shared on a continuing basis. I don't think there was any anxiety at the White House, except on the '64 bill there was anxiety once we got the bill before the Senate, and the debate was underway, and all the other work of the Senate was stopped, that at some point Mansfield might say, "Enough is enough." Okay, we've gone four months and we've done nothing else, are we going to accept the fact that the session can end without anything happening? That was an anxiety that I know Hubert Humphrey and some of his staff had. I don't think Mansfield would seriously have contemplated a unilateral decision to abandon something of this magnitude.

But it was probably good that there was a little anxiety about it, because it made everyone realize that time was of the essence the advocates could not be passive and say, "We'll wait them out," especially since Mansfield refused to hold around-the-clock sessions.

RITCHIE: Can you explain that? I know Johnson wanted round-the-clock sessions.

FERRIS: Johnson had done that back when he was Senate leader. The filibuster rules do protect the minority, but more importantly they put a greater burden on the majority that seek change by the passage of legislation. If the leader decides to go around the clock, those that oppose the issue being debate, the minority only has to have one person on the Senate floor giving a speech. When he finishes, he puts in a quorum call. The opponents of the legislation don't have to show up. They prefer that it take as long as possible to assemble 51 Senators to come to the Senate chamber to answer the call for a quorum. All those who are for the bill have to contact and assemble fifty-one Senators. So you have to get everyone out of their beds and come in to answer a quorum call. It doesn't seem to make too much sense to wear down your own side of the issue. In a filibuster you test the intensity and resilience of those on either side, but when you go around the clock you wear down the people that support the legislation. Mansfield said he didn't want to kill Senators in acts of futility, whether it was Carl Hayden or one of the other old timers. He just thought it was senseless to do it, and ineffective in passing the legislation. There is a natural rhythm to an

event of this magnitude and the all-night sessions would have worked against the passage of the strongest bill possible. It also demeaned the dignity of the Senate.

The real validity and wisdom of Rule 22, which then required a two-thirds vote to invoke cloture, was that a transitory majority cannot impose its will on the minority by a hasty simple majority vote. A minority, if they considered the issue to be of such importance and held a contrary view with such intensity as was the case on the 1964 Civil Rights legislation, could prevent a vote. The opponents were primarily from the South. The cloture rule afforded them the opportunity to make the majority listen to every argument they had as long as 34 Senators agreed that the debate should not be precipitously cut short. You don't make the case that the minority has had sufficient time to make the majority at least consider their point of view by round-the-clock sessions. Every Senator opposed to the bill was afforded every opportunity to speak on the Senate floor, as many times as they wished, on every aspect they could think of, to explain the drastic impact passage of this bill would have upon their local society. Every Senator opposed would establish that their opposition was without compromise. Ultimately you reach the point, which in effect says, "We have required the Senate to listen fully and to reflect on the impact of this legislation in my state." Then when the Senate acts it is not a surrender by those opposed but a judgment made by a super majority after enduring endless repetition of the opponents' views that the legislation still must become law.

The '64 Civil Rights bill was going to affect the South more than any other part of the country. Their culture was affected by its enactment. In the South even the housing patterns were different, because blacks and whites lived side-by-side. They didn't socialize together, but they were much more integrated from the standpoint of having daily contact with each other in their daily lives. In Boston, where I grew up, I don't recall any interaction at any level with African Americans. During primary school delivering papers, in high school stacking shelves and bagging groceries at the supermarket or at the drug store as a "soda jerk," I never recall contact of any kind. I think the South was very different.

So both sides made their case, and the Senate proceedings were reported daily on television around the country. Roger Mudd reported several times each day with a running clock of the cumulative numbers of hours that the debate had consumed. There were no significant modifications proposed to the House bill, no compromise language seemed possible with the fervent advocates or the diehard opponents. It was the first piece of major

legislation that was covered daily on television. The details and dynamic of the debate led the daily news for three months. The whole country followed these reports of the debate as if the proceedings were televised (and this was fifteen years before TV was permitted in Congress). It took away the possibility of a backroom compromise. Transparency had come to Capitol Hill because of the coverage by the media. It was futile to "work a deal" because any modification that would satisfy the constituencies on one side would be too drastic a compromise for the other. It was better for the Southern Senators to be beaten than to capitulate by compromise. Anything less than an up or down vote on the bill would be perceived as a sell out by both sides on the issue.

There were discussions with many Republican Senators in Dirksen's office over the months and minor modifications of language agreed upon, all of which were nuances that Justice found acceptable. It was important that these backroom sessions took place and took time. Senator Dirksen needed to show his caucus that they were having an impact. It was more the perception of impact than significant modification of the bill. As time passed, the work at the grassroots level continued with sustained intensity. The rhythms were coming together and they did when cloture was filed.

Before the 1964 Civil Rights bill's enactment, I was an opponent of the two-thirds cloture rule. My reaction was that it was wrong—undemocratic. After the '64 Civil Rights bill, I opposed any change in the cloture rule. I think the '64 Civil Rights bill was as strong substantively as it was and was respected as legitimately enacted law because it required a two-thirds vote in the Senate before you could pass it. When you had legislation that would have this much impact especially directed towards one part of the country, where the intensity against change was particularly strong, then the majority should be required to stop and listen to the minority who ask, "Do you really want to do it? Because this is what is going to be the impact in our states." That extra burden of the two-thirds vote prevents a transitory majority from being at best whimsical. I think such a delay is right. That strengthens the legislation, and strengthens the institution and establishes a legitimacy to the law especially in those areas of the country most affected.

Jumping forty years ahead, the cloture process has been greatly abused, because cloture is filed for very narrow and relatively minor issues. Back then the procedure was used very sparingly. It was not then considered a personal procedural option. I think its overuse as a procedure is directly related to the reduced reverence Senators have for the

Senate as an institution.

So the heavier burden of persuasion imposed by the rarely used procedure of requiring a two-thirds vote generated the national media attention, which put the spotlight on the Senate deliberations, which in effect brought about a transparency to the Senate and virtually eliminated the secret backroom compromise. The result was that the final legislation contained in a Title II that was not diminished, a Title VI that not changed, a Title VII that was not impacted. The bill was as strong as the bill that passed the House. There were minor modifications, but nothing of substantive significance. It succeeded legislatively because the time was sufficient for the case to be made in opposition fully and completely, and to the satisfaction of those that were opposed, so that when they went back home, their constituents knew that they made every argument against that bill that could be made, and made the majority stop and think before anything was done. That was a great lesson—a great lesson for me when I was young and impetuous, and didn't have much patience. My attitude then was "If it's right, you should just do it!" But it was a great lesson in how the Senate as an institution can work at its best.

RITCHIE: In this case, the bill had passed in the House but when it came to the Senate you didn't want it to go to the Judiciary Committee, because Senator Eastland would never report it out.

FERRIS: Yes, we used the procedure in Rule 14, paragraph 4—I think that's right, that's going back forty years to pull that out of the hat—but it was a procedure whereby when a House enacted bill came over to the Senate, the Senate Journal Clerk would read it once, and then it would be read the second time the next day. Then at that point, if an objection were interposed, the bill would not be referred to the committee with jurisdiction over the subject matter. It would go directly to the Senate calendar. That's the procedure that was used to prevent the bill from going to Jim Eastland's committee. Of course, Jim Eastland was on the floor and was informed about what was going to be done. Mansfield never did anything unless he informed all sides what was going to be done. So Chairman Eastland would be able to object vigorously to this bypassing of his committee. But I suspect that in his heart he no more wanted this bill in his committee than we did, especially because he knew this was a bill you just couldn't smother and put in the closet. It saved him that problem, and also served notice that the Senate as a whole was taking jurisdiction over this piece of legislation. As a committee of the whole, in effect, they were going to determine

the outcome of this bill.

All the negotiations that we did on the bill, all the pre-cloture (minor) modifications, were all taking place in Dirksen's backroom. Those were good sessions. Dirksen had three lawyers, very interesting but very different personalities. There was Clyde Flynn, who I think was the staff person on the subcommittee on administrative law and procedure, or one of the other subcommittees that Dirksen was on, by virtue of his membership on the Judiciary Committee. Then there was Bernie Waters, who was another lawyer on one of the subcommittees. And then there was Cornelius Kennedy-Neal Kennedy-who was a former assistant U.S. attorney in Chicago. He was sort of the first among equals with Dirksen. He was a very good lawyer-you'd almost think he was a bond lawyer because he could nitpick things or nibble things to death. Clyde was an open book. He was from downstate Illinois and I think emotionally he didn't identify closely with the premises of the civil rights legislation. And then Bernie Waters, who was very sympathetic to the legislation. So we had a spectrum to deal with, and we worked very closely.

This was when Ken Teasdale and I worked with the three of them, and we got to know each other well. We'd work in Dirksen's backroom and then at five o'clock Dirksen would always come in, no matter what we were doing, and say, "Stop, it's time to have a drink." It was social time. He knew how to stop the process and he knew that all work makes Johnny a dull boy. He created a great climate for people to work together. Burke Marshall used to come up and work with us on occasion. Burke was the assistant Attorney General. His deputy, John Doar, was the lawyer who was recruited later by Pete Rodino to direct the staff of the impeachment hearings.

John Doar was more comfortable doing than arguing over words. He was a get-it-done man. He would be the man on the scene down South when there were riots. He had a great manner and could establish great communication with the other side. He could bring people together. He was magnificent. Burke was better as a substance man. I believe he was offered the job of dean of the Yale Law School when he went up to IBM. But he had to make some money before he went back to teach at Yale, which he did after he left IBM. The two of them were just a magnificent complement. John did not come up to too many meetings. I remember at one meeting, I think John probably said, "I'm not going to go to any more of these." He didn't say that openly, but he never did show up at any more meetings. So Burke would come with Harold Greene.

Then we had meetings alone, just the leadership staff lawyers. But if anything significant was proposed, I'd pick up the phone right away and call Burke and say, "Are we going down the right path?" It turns out that in one of those meetings, we were talking about a lunchroom confrontation. What would you do to somebody like Lester Maddox? Could you cite him under Title II? The Dirksen lawyers thought it shouldn't be just one instance, it really should be a pattern of activity. We thought, well, "a pattern or practice" had to be taking place. Clyde Flynn and Neal Kennedy advocated a pattern of activity to trigger a sanction under the act. It was obvious that they had in mind sequential actions by the same person before the act was violated rather than a pattern of activity that in effect generated community support for the discriminatory actions of individuals. I called Burke and said, "What about using the language 'pattern or practice'?" And he thought that sounded great, because they were talking about communities that supported this type of behavior. That change was incorporated into both Title II and Title VII. "Pattern or practice" had a vagueness to it. The legislative history that was read into the Record before the final passage adopted the broader interpretation of "pattern or practice." This is one instance of a change that happened in one of these solo sessions that made some difference in the language but not in the bill's impact. It meant different things to different people so it created a greater perception of change than actual change.

I always felt that my job was to make sure that we didn't screw things up. This was too important for a bunch of rookies to be making the ultimate decisions. As it turned out, it worked out fine, because we always had plenary sessions where the Senators and Justice Department principals would meet and be updated.

Our almost daily staff meetings were always productive, if only because the Senate and the public knew they were taking place. The fact that the leadership was 'working on' the bill conveyed an impression that the Senate was not stalemated. It wasn't Kabuki theater, but in a sense it was. The real activity on the bill was taking place working the grassroots in the country. A bill of this magnitude which would have such national impact should require a sizeable amount of time before the Senate. That's valid on things like this, and critical if the opponents are going to accept the legitimacy of the final outcome.

RITCHIE: Speaking of roles, Senator Mansfield called this off the calendar and in a sense was the chairman of the committee of the whole. But then he deferred to Senator Humphrey, his Whip, to manage the single most important bill of the year. What was behind

all that?

FERRIS: Well, Hubert Humphrey had been the champion of civil rights since the 1940s. At the Democratic Convention of 1948, it was Hubert Humphrey who proposed the civil rights plank. He championed civil rights and social legislation in the 1950s. And in the '60s he was in a position of power, and responsibility, and authority. He was the natural man for the job and was designated as the overall floor manager of the bill. Now, there were other Senators who were picked to concentrate on and defend the separate titles. Warren Magnuson, I think, had Title II, public accommodations. John Pastore had Title VI, which was the cut off of federal funds to the states. Joe Clark had Title VII, which was the employment section. They each made a presentation on their title. However, most of the time was consumed over the three months with long speeches given primarily by Southerners who opposed the bill.

I remember one time when Senator Olin Johnston of South Carolina was giving a speech. I think he was the chairman of the Post Office Committee. He gave a lengthy speech on the floor, and Strom Thurmond, his colleague from South Carolina, followed him. Strom started talking, and Olin came down to the table where we sat, at the front of the Senate chamber. He came up and said, "You know, the difference between me and Strom is that Strom believes his bullshit." He said that in his big Southern drawl, but it had a great impact on me. It demonstrated that in private, many Senators that represented the Deep South understood that change was inevitable. They knew right from wrong, as well as any member of the Senate, but they also knew what their role was because of the emotional opposition in their states. I always felt that the South sent some of their most able men to the Senate, men of character and ability. I never met men of higher character, purpose, and integrity. Lister Hill of Alabama was the son of a country doctor. Lister Hill was the sponsor of the Hill-Burton Act, and all the construction of rural hospitals in this country is a significant part of Lister Hill's legacy. Would it have been better if Lister Hill had voted for the civil rights bill and been eliminated from the Senate? Or John Sparkman? Or Bill Fulbright? No, they should be judged by their contributions to the country during their entire careers. There were some limits to what they could do politically.

It was good to learn that lesson early in my career, to realize that there are limitations to how much Senators could lead their constituencies. You can't get too far out in front of your troops or you get cut off. But I'll always remember the lesson taught me by Olin

Johnston, he was such a loveable man. He died shortly thereafter. Who replaced him?

RITCHIE: Fritz Hollings won his seat [after defeating Donald Russell, who had been appointed to fill the vacancy].

FERRIS: That's right. But Olin Johnston candidly admitted that what someone says doesn't always reflect what's in his heart. That was a good lesson in life to learn.

RITCHIE: Just to go back to Senator Mansfield for a moment, it took a certain degree of character on his part to give up the spotlight and allow Humphrey to manage the bill. But did he reserve some maneuvering room as Majority Leader by not being the floor manager of the bill? Was there some advantage for him in being one step removed from being the chief spokesman for the bill?

FERRIS: One could say that he was insulating himself and providing at least the perception to both advocates and opponents that the proceedings would not be permitted to bring discredit to the institution of the Senate. I think that Mansfield was able to keep communication with all factions and this was a benefit especially on issues that could emotionally divide the chamber. But I never saw him seek credit for anything that was done. He always attempted to give someone else the credit for anything that was passed. I remember after the bill was passed in '64, all the Senators who not only actively managed the bill but many who were just emotionally attached to it, were asked to have their picture taken on the Capitol steps. Mansfield didn't even want to be part of that. He felt that these were the people who should get the credit for it.

I think he intuitively embraced the old Japanese notion that the nail that sticks up gets hammered down. In the Senate, if you get high visibility the other egos like to consume you and bring you down. By instinct, he didn't need his ego satisfied by adulation either by his peers or by the general public. It took me years to figure this out, but his relationship with his wife Maureen was based not only on love but absolute respect. He was so devoted to her, and respected her judgment so completely, that the only approbation he sought was her's. If Maureen felt he did the right thing, the world could be against him. Her vote was the only one that counted for him. He was truly unique—and remarkable.

Maureen was very progressive. Maureen was someone who had a Master's degree in the 1920s. Now there weren't too many women at the time who were that well educated. After receiving her degrees, she taught and she did social work. She was a person of ideas and thoughts and wasn't suppressed by the social imperatives of the time that women should stay in their place. Her education alone would make her stand out in Butte, Montana, a frontier mining town. I don't think there were too many women who had those educational qualifications in urban areas let alone in western mining towns.

Mike Mansfield had an eighth-grade education and was working in the mines when they first met. She obviously saw in him then what we all have come to see in him over the following seventy years, and he saw something in her. Maureen was remarkable in that social status was obviously not important to her. She saw qualities of character that were remarkable qualities, but she recognized them in someone who had no education. She was the one who encouraged him to go first to the School of Mines, for which you didn't even need a high school education, and then transfer to the University of Montana. He got his GED high school diploma the same day he got his baccalaureate degree from the University of Montana in Missoula. That was all her doing. She even cashed in her insurance policy to make ends meet.

He always said that she was the real politician. She was the one who encouraged him to get into politics, and the first time he lost an election, the next day she was out going around talking to people, planning for the next election. He didn't have that personality. He had a fantastic memory, though. I think he knew everyone by name in Montana. He was a Jim Farley when it came to name recollection.

The idea that he was able to defer to other Senators and to turn over to Hubert Humphrey, and to Warren Magnuson, John Pastore, and Joe Clark, and give them the visibility on this bill, which was going to be the most significant piece of legislation passed in the twentieth century, was so in character for him. His ego really was not a factor. He felt that these Senators were very experienced, and committed, and could do the job, and would substantively be responsible. If this were foreign policy, he would be in the middle of it. That's what his real love was. That's where his training was. That's what he taught. His real expertise was in foreign policy.

Leaders in the Congress probably should come from small states, where they don't have all of the parochial interests pecking away at them. They have great discretion on domestic issues because they don't have all the competing people problems in their states. I always thought of the complexities of representing New York for someone like Jake Javits. New York was a microcosm of the country. He really had to make judgments and balance all of the competing interests on every issue. He had the talent to do it. He was very smart. But Mansfield had the luxury not to have those pressures from home, and therefore he could make decisions on the basis of his view of what was fair. And whatever position he determined was best in most cases would have very little impact on the life of a Montanan. Montana is a pretty conservative state in many ways. The freedom from strong parochial interests is a great advantage to a leader. Issues can be dealt with fairly as national issues.

RITCHIE: You mentioned Senator Javits and some of the others, who did Humphrey get together in his planning sessions? What Senators did he turn to for support and advice?

FERRIS: Oh, it was a full range, not the same ones all the time. The beautiful thing was everything was bipartisan. Clifford Case from New Jersey was involved, Jake Javits was very committed and made tremendous contributions.

RITCHIE: And Thomas Kuchel, was he in those groups?

FERRIS: Tom Kuchel was the Republican Whip. Absolutely, Tom Kuchel was always involved. He was a very progressive Senator. Kuchel, and Case, and Javits, I'm sure I'm forgetting some people—I'm looking at the pictures on the wall here to see if they remind me of anyone. And on the Democratic side you had Phil Hart and others who were committed and very well identified with civil rights. They would all meet. They would meet an awful lot with Clarence Mitchell and Joe Rauh, who represented the Leadership Conference on Civil Rights. Every week there would be a meeting with them.

Clarence Mitchell [of the NAACP] was one of the most able lobbyists that I met on Capitol Hill. He was so mild-mannered but so crisp in his thinking, and had a keen awareness of what was going on, and a great capacity to listen. He was a listening lobbyist in the sense that he could more than hear when people talked. Too many lobbyists talk too much and don't listen enough. He was a listener. And he was a hard, hard worker. Years

later, back in 1974, '75, when there was no active civil rights legislation being considered, but there might have been some shenanigans going on in appropriations, or some amendment that was going to be offered to an extraneous bill, I'd see Clarence Mitchell come into the gallery, and I'd think, "Something is going on. Something is going to happen that I don't know about." I'd nod and Clarence would come down to the lobby and we would visit. "Tell me what's going on." And he knew that someone was planning to do something when a bill came up. At times it was something he agreed with and he wanted to monitor personally that it happened as promised.

Joe Rauh was temperamentally the opposite of Clarence. He was feisty and always ready to fight, as confrontational as anybody I ever met. But he was a brilliant lawyer and deeply committed to Civil Rights. I think Joe was Walter Reuther's lawyer at one time. If I remember correctly, I think Joe Rauh was Learned Hand's law clerk when he got out of school—Learned Hand, the man who should have been on the Supreme Court—and was considered the tenth Justice—so Joe and Clarence were a great duo representing the Leadership Conference on Civil Rights.

RITCHIE: I wondered about the participation of lobbyists. Were they there in a sense to keep the Senators from cutting a deal and watering the bill down?

FERRIS: No. Well, I mean the communication was open, but it was much more a sense from the beginning of counting sixty-seven votes. It was the first grassroots movement on legislation that I had ever seen. I'm told the grassroots efforts that changed the way legislative business was done occurred both in '64 and in the '65 Voting Rights Act.

The group of Senators and staff met once a week with Clarence Mitchell and someone from the AFL-CIO. They'd go down the list of our core votes, our leanings, those definitely against, and who were the possibilities. They talked about a Senator and how to reach him with a message. Sometimes it was his wife who was very supportive of the legislation. I remember in one case they knew that a particular Senator always got to work at the same time, so a Senator, whether it was Hubert or someone else, would call the Senator's home a half hour after he went to work. "Oh, he's not there, I'm sorry. I was just calling about..." and he'd give her the whole message, knowing full well that when the Senator got home he'd get a full earful that he couldn't just dismiss. There were marvelous incidents of that nature. Each effort would not produce a vote switch, but it didn't end the

effort on that Senator.

It was done across the board where there was a possibility. You found out who were the key people for these Senators in their states. Did we have grassroots in those states who could talk to the Senator? It took time, but it worked because we had the time. There was always movement. It never became a stagnant process in the sense that "well, that's the same place we were last week." Every week there were new assignments. Hubert would keep things moving. He had more energy than anyone else and he could energize the group. Looking back, this was an idea whose time had come. The Senate had to give it the opportunity to run its course, and that's what it did. Part of running its course was doing your grassroots homework so that everyone was presented with the reasons why this made sense, and the reasons why within your state you could do what we hoped you would.

We weren't making the case to the Southern Senators, but certainly were to the Western Senators, who had a small-state history on cloture votes. Cloture protects the small states. It was like the constitutional compromise of two Senators from each state, the cloture vote was a corollary of the same concept. They had this tremendous sense of standing firm on cloture, because they might need it to protect their own state's interests. That inhibition had to be overcome. There were some with whom we were unsuccessful. Alan Bible of Nevada never voted for cloture. Howard Cannon did. He did it on the Equal Housing bill of '68. I'm not sure if he did it on Voting Rights of '65, but I know in '68 the big factor with Cannon was that kids were going over to fight in Vietnam and if they came back they should be able to get the same housing as the other guys they fought with side-by-side. If they fought side-by-side over there they could live side-by-side back here. But Nevada never had a Senator that voted for cloture before.

We also had Ted Moss from Utah and Frank Church from Idaho, who were open advocates of civil rights, and we had Lee Metcalf and Mansfield from Montana. In Colorado you had [Gordon] Allott and [Peter] Dominick. Allott, I think, ultimately voted for the legislation. The Western states were hard nuts to crack because of that institutional small state predisposition to limiting debate by cloture. For them it wasn't civil rights, it was cloture or maybe some hid behind the small state attitude on cloture.

RITCHIE: You mentioned that most of those staff meetings were held in Dirksen's office.

FERRIS: The substantive meetings. The strategy sessions were held in Hubert's office.

RITCHIE: But when you held meetings in Dirksen's office, was that to reinforce Dirksen's commitment to the process?

FERRIS: You needed Dirksen to get the cloture votes. That was another Kabuki theater. You had to have Dirksen playing a lead role in this so that his Republicans would know that this was not just a Democratic bill that was drafted by the White House. Dirksen used to come out every day and talk to the cameras at 4 o'clock. That's when they were using film and would go back and develop it before they put it on television. Dirksen loved that role. He was a great thespian. He would talk and give all sorts of reports. When you listened to Dirksen talk you'd say, "God, this is magnificent." When you went back to read it, he hadn't said too much. It was beautiful and melodious rhetoric. He should have been a Shakespearean actor. But it was very important to the Republicans that their leader was part of this, that he listened to them and brought their concerns to the process. His national identification with the bill was considered essential not only to get the legislation passed but to have it perceived as a bipartisan effort and achievement prior to passage.

I think it was during the Voting Rights Act of '65, that the backroom of Dirksen's office was again the center stage, because the Senate was originating the bill in 1965. We had the same process of coming out every day at 4 o'clock and Dirksen would talk to the cameras and the press. Mansfield would stand in the background and smoke his pipe and say nothing, just nod his agreement to Dirksen's daily report. I got a call from Howie Shuman, from Paul Douglas' office. Howie said, "God, Charlie, why can't we meet in Mansfield's office at least half the time? It's always coming out of Dirksen's office." I thought that was fairly reasonable, so I went in to Mansfield and said, "The natives are getting a little restless here, can we meet in your office half the time and Dirksen's office half the time, so the cameras will capture the Democratic leader's office at least half the time?" Again, the perspective of Mansfield was so incredible. He said, "No, Charlie, we're going to meet in Dirksen's office every day. We've got overwhelming Democratic majorities in the Senate and the House. This is probably the most important piece of social legislation in history for this country." He said, "It's very, very good if the people of this country realize that this legislation is being put together not just by Democrats but by Republicans. If Everett Dirksen can go before the cameras every day and talk about what we're doing on this bill,

that's an important message for the country." He said, "Last year in the presidential election [the Goldwater-Johnson campaign] the Republicans left the mainstream. They left the mainstream of American political and social life in that campaign, and this is an opportunity for them to get back on track."

Talk about someone who is not interested in short-term glory, that sees beyond the horizon when it comes to the implication of actions! And he was so right. Someone who had an ego to be fed or a need for attention, wouldn't be thinking that way at all. He had tremendous pride, but was without vanity.

RITCHIE: Did Senator Dirksen and his staff have much impact ultimately on the bill that passed or did they basically go along with you on the bill?

FERRIS: On the Voting Rights Act of '65 their participation was essential for the bill to pass but the structure of the bill was predetermined. There is a marvelous anecdote about this, I will always remember it as the most moment of "I made a difference" type of thing that ever happened to me. After Harold Greene and I pasted the bill together for Mansfield and Katzenbach, Mansfield scheduled a meeting in Dirksen's office at five o'clock in the afternoon. From the Administration were Katzenbach and Steve Pollock, who was the deputy Attorney General for Civil Rights under Joan Doar after Burke Marshall had left. Steve Pollock was the complement to John Doar, as John had been to Burke Marshall. Then there was Tom Kuchel, Harold Greene, myself, and Dick Streeter, who was then my assistant, and Steve Horn, who was Tom Kuchel's assistant (Steve was later elected to the Congress from Long Beach), and of course Mike Mansfield. We were in the backroom. I don't know if Hubert was there. He might have been out of town, but if he wasn't there, it wasn't because he was excluded.

Dirksen always used to get everyone at ease telling a story but not getting right down to business. That day, Neal Kennedy had a sty in his eye, an infection in his eye and he was going to his eye doctor at four that afternoon. The meeting was at five. We went to the meeting and Dirksen started in. He said, "Where are we at on this bill? Neal, why don't you bring us up to date?" Neal wasn't there. I said, "I'm sorry, Neal had a doctor's appointment, Senator, but let me tell you where we're at." I knew that the first one to structure the discussion was like the first one that picks up the pen and writes the speech, the structure is there. I outlined the bill exactly as our draft had prescribed, why we were bypassing the

federal district courts who were the traditional finders of fact. The traditional procedure going to the local federal district courts to obtain a remedy to mandate Voting Rights would take seven years to exhaust the Appellate process. A case by case method was inadequate to meet the urgencies of the times.

The Congress in this bill would make an administrative judgment that if in any state or political subdivision of a state that had a literacy test as a precondition to register to vote, and less than 50 percent of the people in that state or any of its political subdivisions voted in the '64 election, then the Attorney General could petition to have the Civil Service Commission send down registrars to register voters in that jurisdiction. So I went down the structure of the bill. No court case need be filed. The Congress made the judgment that if a literacy test was a condition of registration, and less than fifty percent voted, there was a finding that impediments to voter registration existed. But as soon as I said, "send registrars," Everett Dirksen said, "Charlie, that word 'registrars' is a red flag to my people. Do you think we can call them 'examiners?'" Boy, oh boy! Katzenbach said, "I think that we can make any modification along those lines that you want." The discussion went off on that little side tangent. Other discussion took place on the other provisions of the bill by all the participants without any sense of objection from Senator Dirksen. The real guts of the bill was bypassing the local federal judicial systems in states that failed the test. Subsequent state repeal of its literacy test did not relieve the state. In fact, no state could even petition for relief for years and then only in federal court in Washington.

Mansfield knew how to listen. He absorbed the essential structure of the bill from the discussion. He listened to the whole structure that I had just laid out. As we got up to leave, Dirksen said, "All right, this is good, we'll proceed from here." Mansfield said, "Everett, before we leave, do I have it clear that you agree on the structure of the bill as we have discussed this afternoon." And he went down and recited all the essential elements of the bill, the existence of a literacy text, to the less than 50 percent of those that voted in '64 by the '60 census, bypassing the judiciary with this finding of fact, and putting in examiners. "Do you agree that this is the structure of the bill?" Dirksen said, "Yes." "Are we going to call them examiners?" He said, "Absolutely, that's the structure that we agreed to." That bill was set in stone. Everything that was done after that with Neal and Steve Pollock was nothing but moving chairs around on the deck. If you took this clause out, it was interrelated with another and you'd have to put the clause taken out elsewhere in the bill. So it was just shuffling the provisions of the bill to keep it consistent with the agreed upon structure.

Dirksen had agreed to the basic structure of the bill. Mansfield knew the significance of that and wanted to make sure that in all this camaraderie and backslapping, we had actually done something here. And he got it pinned down. It was a meeting that made a difference. I just always look back and think, God, as a young kid with all that talent in the room, I jumped in when Neal wasn't there, because I knew we could go off into the wild blue yonder or we could stay focused. I think we always would have passed the Voting Rights bill, and it would have been a good bill but I do think the fact that we bypassed the judiciary in the South, that the local courts could not stay any of the activities of the registrars was the essence of the bill and its most vulnerable provision. I am almost certain that this great leap over the judiciary in the South would have been the focus of an attack on the bill. I think Neal Kennedy would have been very uncomfortable with it and it would have dominated the greater part of the discussion in the weeks ahead, and in all likelihood would have resulted in modification and revision. We would have passed a bill, but I don't think it would have been nearly as crisp and elegant as the bill that ultimately passed. It had all the essential elements of the bill that Harold Greene and the Justice Department had drafted. It was well-thought out, it was crisp, and it did the job. We did a lot of shuffling, but everything, I think, was predetermined by that first agreement on its structure with the leadership.

RITCHIE: The literature tends to focus on the Civil Rights Act of '64 and not as much on the Voting Rights Act, but I've always thought that if it hadn't been for the Voting Rights of 1965, the '64 law would not have been as affective, because people would not have had the voting power.

FERRIS: The Voting Rights Act of '65 was by far the more important of the two. The '64 act was the dignity act. The '65 act was the empowerment act. That was what gave the power of citizenship to minorities.

RITCHIE: The Senate was stuck in a filibuster for months in 1964. Did the Johnson White House begin to get nervous that the bill wasn't going to come to a resolution. He was facing a presidential election that year.

FERRIS: Actually, I don't recall how it manifested itself. As I said at the beginning, there was all this anxiety that Mansfield might have to pull it down because nothing was happening. If we had around the clock sessions Mansfield would have become more frustrated and impatient and if he saw the Senate's dignity diminished and Senators' health

threatened, he would have created pressure for a compromise. Those around the clock sessions would have been counterproductive. Around the clock sessions penalize the wrong people. The opponents of legislation need only one Senator on the floor and then at any time any opponent can suggest the absence of a quorum. The proponents of the legislation must then round up fifty one Senators to come to the floor to establish a quorum. Proponents could have been kept up all night answering quorum calls until the Senate was forced to adjourn. But I don't think Mansfield would have taken any unilateral action without the concurrence of those managing the bill. It was too big an issue to just say no, it's over. But because Mansfield was so damn inscrutable the anxiety was there, and that was good because that kept people working very hard on the bill and doing the necessary grassroots work. I'm sure they were worried, but the communication was total. They were meeting day-by-day, and Hubert Humphrey, as part of the leadership, attended all the White House meetings. Hubert would give a report to them that everything was moving, so I don't recall any intervention by any of the White House staff. Of course, the White House was providing great assistance in generating public reaction from the grassroots. The President of course made his personal and private pleas to the Senators as well.

RITCHIE: By the time you got to the cloture vote, were you confident that you had the votes you needed, or was it uncertain?

FERRIS: No, we were pretty confident that we were going to get the votes. In fact, we got two or three more votes than we actually had counted. When we moved, we thought we had it. Clair Engle came in to vote and died ten days later. He was on a stretcher and could only raise his hand. The votes were there and we knew it—but until they answer the roll call you never really know. As Huey Long used to say when he reneged on a commitment, "Tell them I lied." Commitments were given but people can change their minds. But I think it was pretty certain.

RITCHIE: CBS put Roger Mudd out on the steps during the filibuster.

FERRIS: Roger Mudd was out on the steps every day. I think then all on-air personnel were paid by the amount of time on the air. I think Roger was with WTOP here, the CBS affiliate, but they carried him on the network. A running count was displayed on the screen with the cumulative number of hours and days of debate. Roger was a good friend and still is to this day. Roger lived in a great old house in McLean. I kidded him, "This is

the house the Civil Rights bill built." He became a national celebrity because of his coverage of the bill. But that coverage was essential because it kept the issue before the country and provided context to the general public. It kept the legislation on the public's mind. It undermined any notion that this was an exercise in futility. This was just something that would remain on course, this was something that would take time, but it was going to conclude, and not collapse. These were serious issues that would to be confronted and resolved. There was never a sense that it wasn't going to happen. There were thoughts early on that some Titles would be watered down or eliminated to get sufficient cloture votes, but the bill was definitely going to pass in some form. But everything aligned itself perfectly to assure that dilution did not happen.

RITCHIE: I was thinking that the chief strategy that the Southerners had was to try to prevent a vote from happening, to keep the debate going as long as possible, but there got to a point where it had gone on for so long that it had to come to some resolution. In a sense by making it the longest debate in the history of the U.S. Senate, they undermined their position and strengthened the resolve of the majority to invoke cloture.

FERRIS: I think that's true, but I think there was another perspective as well. It was the longest debate in Senate history. The Southerners put up the best fight of any minority against the bill before cloture was invoked. Politically, the length of the debate satisfied their constituencies. Nothing more could be done by them. I think that was an important perception. The majority never ceased their efforts to reach every Senator who had no political risk in voting for civil rights. Everyone was considered in play, whether it was Bourke Hickenlooper or Karl Mundt, Milton Young of North Dakota. These were Senators whose vote for civil rights did not have a downside. They were from small states. But efforts were being made to see if they could be reached and convinced. The people who said absolutely no were only those from the nine Southern states. The others, mostly from small states, were more affected by the institutional issue of cloture. The reason why the rule made sense then, when cloture was hardly ever attempted but was resorted to only when the issue was so significant and extraordinary that the small state Senators could be appealed to without significant undermining of their principles. These arguments reinforced one another to reach the same conclusion.

RITCHIE: A lot of people assumed that once you had cloture you had the vote, but wasn't there the possibility of a rearguard action after you had cloture, with debates on

amendments that had been offered. Was there any possibility that they could have done a post-cloture filibuster?

FERRIS: No, they each have an hour for debate after cloture is invoked. So they use up their hour, even if twenty Senators have twenty hours, then there is no further debate and any amendment could be completely disposed of by immediate vote. It's finite. It was really not perceived as a problem. In later years, Jim Allen and Jesse Helms used to try and load the deck with amendments in case cloture was invoked. But those issues were insignificant by comparison. With a smaller, less nationally important bill, a strategy like that can be effective, because there's only so much time that you can give to legislation in any one session. You have to make judgments. The judgment was that the Civil Rights bill's time had come and no other legislation would provide any justification to displace them.

RITCHIE: Well, speaking of time has come, the tape is about to expire and this might be a good time for us to break. I'd like to pick up the next time by talking about the Great Society, and the Vietnam War, and other events in the 1960s.

FERRIS: Absolutely, I'm enjoying it. Am I adding something that the others haven't said?

RITCHIE: Most definitely. History is incremental, we add layers of perceptions. One of the things that impressed me about Don Oberdorfer's biography of Senator Mansfield is that he managed to interview the Senator about thirty times. I couldn't believe that after all those years of saying "Yep" and "Nope," that Senator Mansfield was finally ready to talk about his career.

FERRIS: Yes, Don did a magnificent research job. It was so thorough, and he was so intellectually honest in writing it. Mansfield wasn't going to do it. Don came to me and said, "I want to do this, what can I do?" I said ask him, and he did. Mansfield said, "Well, let me check with Maureen." She thought it would take too much of Mike's time, but he did it anyway.

End of the Second Interview