

The President Visits the Justice at Home (1933 & 1962)

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The preceding paragraphs are identical, but that is not an error—they refer to distinct events.

The first visit occurred on March 8, 1933. President Franklin D. Roosevelt, on his fifth day in office, traveled from the White House with his wife Eleanor, their son James and Harvard Law School Professor Felix Frankfurter to visit Justice Oliver Wendell Holmes, Jr., at his Washington

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home (1720 I Street, N.W., which, alas, later was torn down).¹ The day was Holmes's 92nd birthday. The President's distant cousin, President Theodore Roosevelt, had appointed Justice Holmes to the Supreme Court in 1902, and he had served until his retirement a year earlier. Also present for the visit was Holmes's secretary Donald Hiss. The Justice and the President discussed, among other topics, the bank holiday that the President had declared (which was preventing Holmes from getting money from his bank to pay his servants). As parting advice, Holmes, a former Civil War soldier, praised the President for halting the nation's retreat from the disaster of the Depression, for blowing his trumpet, for giving an order to charge—"This is the admirable thing to do and the only thing you could have done."²

The second visit occurred on Thursday, July 26, 1962—fifty years ago today. President John F. Kennedy, in his second year in office, traveled from the White House to visit Justice Felix Frankfurter, age 79, at his Georgetown home (3018 Dumbarton Street, N.W.).³ President Franklin D. Roosevelt had appointed Justice Frankfurter to the Supreme Court in early 1939, nearly six years after their March 1933 visit to Justice Holmes. Indeed, Justice Frankfurter occupied the Supreme Court seat that had been Holmes's and then, from 1932 until 1938, Justice Benjamin N. Cardozo's. In July 1962, Justice Frankfurter was still serving on the Court, although it was in summer recess and he was impaired after suffering a stroke three months earlier. At Frankfurter's request, his close friend Dean Acheson, a Washington attorney and a former U.S. Secretary of State, was present when the President arrived.

¹ See generally Associated Press report, *Roosevelts Visit Holmes Who Is 92*, WASH. POST, Mar. 9, 1933, at 10; *President and Wife Call on Mr. Holmes*, N.Y. TIMES, Mar. 9, 1933, at 17.

For a Supreme Court Collection photograph of the front (street view) of Holmes's four-story brick house, see the section of photographs at the center of LIVA BAKER, *THE JUSTICE FROM BEACON HILL: THE LIFE & TIMES OF OLIVER WENDELL HOLMES* (1991).

² Donald Hiss, in *THE MAKING OF THE NEW DEAL: THE INSIDERS SPEAK* 38 (Katie Louchheim, ed., 1983); accord generally JAMES ROOSEVELT & SIDNEY SHALETT, *AFFECTIONATELY, F.D.R.: A SON'S STORY OF A LONELY MAN* 92 (1959); FELIX FRANKFURTER REMINISCES: RECORDED IN TALKS WITH DR. HARLAN B. PHILLIPS 247 (1960); see generally G. EDWARD WHITE, *JUSTICE OLIVER WENDELL HOLMES: LAW AND THE INNER SELF* 469-70 & 587 n. 107 (1993) (discussing the visit and the limited evidence, including Hiss's memoir of clerking for Holmes, see *supra*, and a March 13, 1933, Frankfurter memorandum, of what the President and the Justice discussed); see also JEAN EDWARD SMITH, *FDR* 311 (2007) (labeling as "apocryphal" any account that has Holmes saying after this FDR visit that he or anyone had a second-class intellect but a first-class temperament).

³ See United Press International report, *Kennedy Pays Courtesy Call On Frankfurter at Home*, WASH. POST, July 27, 1962, at 22.

In April 2011, the former Frankfurter home was part of the Georgetown House Tour. See www.thegeorgetowndish.com/thedish/home-politicians-georgetown-house-tour-april-30.

Justice Frankfurter, President Kennedy and Mr. Acheson discussed many topics, including:

- the need for the President to communicate well to the people how his policies connect to the fundamental purposes of U.S. democracy and institutions;
- the complicated nature, in comparison to previous times and presidents, of the problems that JFK was working to address;
- medical care as a problem that earlier presidents, including FDR and Harry S. Truman, had not tackled successfully;
- relations between presidents and business, including Wall Street; and
- how having a conception of the nature of the respective office makes for greatness in presidents and justices.

* * *

Following the visit, Acheson wrote this account:

The President called on F.F. on the President's own initiative. F.F. had asked D.A. to join him for this call. The President came at five o'clock and was received in the downstairs drawing room.

The President expressed pleasure at the extent of F.F.'s recovery [from his stroke], saying that he was in far better shape than [the President's father,] Ambassador [Joseph P.] Kennedy, who was not as mobile as F.F. and was unfortunately wholly unable to speak. The President said that [National Security Adviser] MacGeorge [sic—McGeorge ("Mac")] Bundy had spoken with the President about his [i.e., Bundy's earlier] call on F.F. and had passed along to the President some thoughts on the general trend of affairs which F.F. had expressed [then]. The President would

be delighted to hear them more fully and directly from F.F. himself.

F.F. said that these thoughts had grown out of many conversations which he had had during his illness with nurses, orderlies, doctors, attendants, etc., at the hospital—a group of people whom he did not ordinarily see and who he thought were perhaps typical of much larger sections of the population. As he had thought about these conversations during his days of illness, it seemed to him that there was a lack of communication between the President as the leader of the American democracy and many intelligent and well-meaning people. He was not saying this in criticism or to say what should or could be done. As he thought what he himself would try to do if the problem were his, he thought that the task was to connect in the minds of intelligent people what was currently being attempted to be done [by the President] with fundamental purposes of the American democracy and with the basic nature of our institutions. Thinking of this as an educational process, he would like to see people reminded of the basic purposes and values of our democracy, in such a way as Professor Samuel [Eliot] Morison[, the great naval historian,] could do. Words became meaningless after a while and it was necessary to make them live again by the evocative powers of a great teacher. The same was true for our institutions. Professor Mark [DeWolfe] Howe[, the Charles Warren Professor of American Legal History at Harvard Law School,] could perhaps bring out that these [presidential policies] were not merely peculiar or parochial, political mechanisms but were rooted in history, philosophy, and experience. It was only by having both these matters brought out that what was being done today could take on significance, meaning, and purpose.

The President said that this was most interesting to him, because he thought that this matter of communication was most perplexing in his problems. He said that he felt that what the Federal Government had to do today was far different, more complicated, and less understandable to the people than it was at a time even as recent as that of F.D.R. He [J.F.K.] said that F.D.R.'s legislation directly affected

various groups of citizens, or perhaps all citizens together, sometimes to their benefit; sometimes, they thought, to their detriment. But he [F.D.R.] was dealing with the farm problem in a way which was easy to understand, or with housing, or with public works, or with education, or with the right of labor to organize, or with the level of wages, and so on. Today, the President felt, his problems were more in the nature of complicated administrative measures, which people found it difficult to understand. His farm bill, for instance, is not simple and direct in its incidence and effect, as was that of F.D.R. The same was true of the complicated matters of trade, finance, depression, prosperity, etc. The only matter with which he [J.F.K.] had to deal which resembled earlier problems was medical care. This F.D.R. had not tackled. H.S.T. [President Harry S. Truman] had tackled it and failed, and the President had now met with a reverse.

The President asked D.A. [Acheson] what his views were about this. D.A. said that he thought that he agreed with the President that his problems were more complicated than those of his predecessors. But he thought that this was not a sudden change in kind but the result of a steady progression into complexity as our domestic and foreign affairs became more and more interdependent and more and more involved. The task of the leader, as the task of the educator, was to give a sense of direction and value by which a path could be found through these complexities.

The President said that, not only were these matters complex, but many people were willfully trying to add confusion to complexity.

F. F. said that much was said about the relations between the White House and business and about the necessity of building a bridge from Pennsylvania Avenue to Wall Street. However, F.F. thought that in the very nature of things a Democratic President who was doing his job was not going to have good relations with business. The President interjected that he had about come to this conclusion himself and asked why F.F. thought it was so. F.F. thought it was so because nearly all the purposes which a Democratic President

had in mind and the ends he was trying to achieve were outside the experience of businessmen and, therefore, were regarded by them with doubt, if not suspicion. These ends and values were the noncommercially productive ones which occupy all that vast part of human life with which businessmen were not concerned. A Democratic President had to take funds, goods, and people and direct them to these ends. He also had to attach values to endeavors which were not economic values. The President could, therefore, be a molder of American life; and a strong Democratic President was likely to mold it in ways which seemed alien, if not frightening, to businessmen. The President listened very attentively and sympathetically.

F.F. said that during his illness he had ruminated a good deal upon what made for greatness both in his own institution, the Supreme Court, and in the presidency. He had come to the conclusion that in both instances, if one picked out the outstanding Justices of the Supreme Court and the outstanding Presidents, one concluded that they were bound together by one factor. This was their conception of the nature of their offices. F. F. mentioned outstanding Presidents, specifically Jefferson, Jackson, Lincoln, and Theodore and Franklin Roosevelt. It was idle, he thought, to look to them for guidance in modern problems. But it was not idle to see how they had conceived of the nature of their office. The President agreed with this.

The call lasted nearly three-quarters of an hour, throughout which the President appeared to be keenly interested. Tea was served by Mathilda and Ellen, both of whom F.F. presented to the President, telling him that they had both helped at one time or another in his house. They spoke to the President briefly. He chatted most amiably with them. Finally an aide came to tell him that he had overstayed his time and people were waiting to meet with him. As he rose to go, F.F. said that the President's call had not only been a great honor but had been a great pleasure to him. The President said that he had wanted very much to come and would like to come again. He asked whether F.F. would

THE PRESIDENT VISITS THE JUSTICE AT HOME (1933 & 1962)

be at home during August, when he hoped to pay another visit. D.A. escorted the President to his car.⁴

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One month later, on August 28, 1962, Justice Frankfurter resigned from the Supreme Court due to poor health.⁵

⁴ Dean Acheson, *The President's Call on Justice Frankfurter Thursday, July 26, 1962*, n.d. (carbon copy of six-page typed document), in Felix Frankfurter Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 124, Folder: "Get Well Messages –Illness April 1962 A-K."

⁵ For the text of Justice Frankfurter's resignation letter to President Kennedy and his letter of reply, both of which refer to their July 1962 visit, see www.presidency.ucsb.edu/ws/index.php?pid=8840.