

INTERVIEW I

DATE: December 21, 1970

INTERVIEWEE: HOMER THORNBERRY

INTERVIEWER: JOE B. FRANTZ

PLACE: Judge Thornberry's office at the United States Courthouse,  
Austin, Texas

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F: Judge Thornberry, to begin this, how did you first get to know Lyndon Johnson? You are an Austin native, are you not?

T: Yes, I am. I am not sure the first time I met the President. When I was about fourteen years old, I was a page in the Texas House of Representatives.

F: Oh, it goes back that far?

T: No, I don't think so.

F: No, but I mean your public career does.

T: Well, I guess that's part of it.

The President's father was a member of the House. I remember Mr. Sam Johnson, and it may be that I did see Mr. Johnson's family, including the President, when he was there. I do not recall.

F: Tell us a little bit about, as best you can reconstruct, your fourteen-year-old impressions of Mr. Sam Ealy [Johnson].

T: He seemed to be a rather down-to-earth man, very friendly. I can remember there was always someone around him, at his desk, talking to him. I think he was a very popular member. I do not remember ever having heard him speak. That doesn't mean he didn't; I just don't remember that. My impression of him from that time until now has been that he was a very friendly man, a very down-to-earth man, a man who attracted people and knew how to deal with people.

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F: Did he have at least some foreshadowing of that same ability as the President to get groups together and make them agree on things, or did you have any opportunity to know that?

T: I didn't have any opportunity to know him that well. Just from what I have learned since, he did have that ability.

F: Would he stop and talk to pages like you?

T: Yes, oh yes. I think, all the pages alike.

F: Okay. So then you got through being a page; you outgrew that.

T: Yes.

F: What happened after that?

T: Well, I think I first really met him when he was administrator of the NYA [National Youth Administration], when he came here to be the administrator.

F: Were you in law school then, or was that before then?

T: Yes, I think I was in law school then, I can't remember for sure. I don't remember that. My first vivid impression of him was when he was a candidate for Congress, special election. I ran into him. I went to his headquarters and talked to him there, and then I saw him several times during that campaign. There I first saw his ability to really campaign.

F: Did you do any work for him?

T: No, I was in the Texas House then. I was a member of the Texas House then, and it was in session. I supported him, but I didn't actually campaign for him. We were not close friends at that time, just knew each other and [the friendship] began to develop.

Then, of course, while he was a member of Congress I was in different public capacities. As I say, I was a member of the Texas House, and then later I was elected district attorney. I would see him quite often, and we came to know each other better, became better friends.

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F: Did you ever have any occasion to help with any of the campaigns, like the senatorial campaign?

T: No.

F: You were always tied up in your own propositions.

T: That's right, I was campaigning for myself at that time. No, I did not. We were not that close. Of course, when he announced for the Senate and was not running for re-election, I announced to succeed him. I was in my own campaign that summer while he was campaigning for senator.

F: You, by this time, had been district attorney of Travis County.

T: Yes, and then I had gone off to the service and come back.

F: You were in the Navy the same as he was. Did you ever cross paths?

T: No. Just incidentally, he was doing some work, of course, after he got out of the Navy. He was then chairman of the Special Preparedness Committee of the House Committee on Armed Services, and in that capacity I ran into him once or twice, but it was just sort of a personal visit.

F: As city councilman, mayor pro tem did you have any occasion to work with him?

T: Oh, yes, we had lots of contacts with him. As a matter of fact, whenever he would be back here, the city council would have lunch with him and we would talk about problems of mutual interest, mostly the city's business and its problems.

F: Did you have any problems that were kind of sticky that involved Washington where he could help you, that you recall?

T: Oh, yes. I don't know that I can recall actually any while I was on the city council, but he helped a great deal with a great many of the problems, Bergstrom Air Force Base and some of the city's problems. It seems to me as I go back, we had some problems with the regulations of

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the Department of Agriculture; at that time we had a public abattoir. I remember that, but I don't remember any others.

F: When it comes down to 1948, were you waiting to see what he was going to do before you announced, or had you decided that you might run for Congress? In other words, did you anticipate this, or did he make his announcement and then you saw there was a vacancy and moved on from there?

T: As I remember, there was a good deal of talk that he might run for the Senate. If I can remember, I didn't think he would run. I don't know why I had that impression that he would not. I do not remember; of course, I'm sure I thought about it. There may have been some discussion, but I didn't make up my mind really to run until after he announced it; it was two or three days, as I recall, while I thought about it.

F: Did you talk to him about it?

T: No, not until after I announced, I did not talk to him about it, no.

F: You weren't in that sense, then, his candidate. That is, you weren't a hand-picked successor?

T: No, I think it's fair to say I was not a hand-picked successor. On the other hand, I think it's fair to say that he thought I would run. And also I think it's fair to say that he had told people that I would be the next congressman, but he and I did not have any preconceived plans for me to run or anything else. He was making his plans to run, and I didn't make mine until after he announced and most of the other candidates who ran at that time announced.

F: I suppose both of you were too busy then in 1948 getting elected to pay much attention to each other.

T: Except I think it's fair to say he was helpful to me in many respects.

F: In what ways?

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T: He made suggestions as to people that I might see while I was traveling over the district. Judge Herman Jones was then my law partner, and he gave him several suggestions about the campaign, and they were very helpful. I am sure that, in any way he could, he was helpful. There was no way for me to be helpful to him in this district, you see, because he was very popular at the time I ran.

F: This was his district.

T: That's right, this was his district, and there was no way I could have helped him, really.

F: Now he's a junior senator in Washington and you're a junior congressman. Is he able to put you in contact with people you ought to know in Washington—

T: Oh, yes.

F: --or were you pretty much left alone?

T: Oh, no. No, I think that was the development and growth of our friendship. It's just unbelievable how many things he and Mrs. Johnson did to help us when we went to Washington.

F: In what ways, Judge?

T: Well, for instance, one of the greatest things he ever did for me; he opened the way for me to know Mr. Rayburn. Mr. Rayburn was not an easy man to know.

F: And I suppose everybody wanted to know him.

T: Yes, that's right. And then with the members of the Texas delegation, he [Johnson] helped me in so many ways to get to know each of them. It's very important if you serve in Congress to get along with your colleagues, particularly those from your state. He had developed a great capacity to do that and taught me a good deal how to do it. Then, he

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knew more people in Washington that could be helpful to you than probably anybody, and he saw to it that I got to know them.

He and Mrs. Johnson were helpful to us and our family. We were just young people then, at least we thought we were.

F: Younger than you are now.

T: Babes in the woods, and had children and my mother was with us. There were just many personal things they did for us; it's just almost impossible to enumerate them all. They had us in their home so often. We had a hard time when we first went to Washington. The salary wasn't as much as it is now. I owed a good deal of money [due] to the campaign, having just been out of the Navy a little more than two years.

F: You hadn't made any money as city councilman.

T: No, no, I had not. To answer your question, he went right to work. After a hard, grueling campaign and the great deal that he had to do, I doubt that any other individual did as much as he did to see to it that a successor got started right.

F: Did you attend some of those "Board of Education" sessions that Mr. Sam used to hold?

T: Yes. Now that's an interesting thing: people refer to it as the "Board of Education"; he never did refer to it as that. I think Mr. [John Nance] Garner called his [Garner's] meetings the "Board of Education." But yes, I have attended them throughout the years.

F: Was it a case of just after a normal workday that people dropped in, or were there set times when you came? Were you invited? What happened?

T: Well, when I first got there, of course, with me it was a case of being invited. As time went on, there were a few of us who he expected to drop by after, as you say, the normal workday. Sometimes it would be a normal

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workday, sometimes it would be after a hard day, or sometimes it would be for some special reason. You could feel it, you could feel when maybe it would be time to go by. But he was very careful in the people he invited by, very careful that no one who represented any special interest had entree. I don't mean by that that people who came to Washington on business and who were his close personal friends [weren't invited], but he was very close, careful.

F: He kept it small always.

T: Oh yes, always, always.

F: Did you tend to hold all the sessions in his office, or would you go out and gather around a table somewhere?

T: No, no, he had a little office downstairs in the Capitol where we would drop by. This was not in his office. This was a little room that was called "The Room." I think that's what most of us who had the privilege of going called it, "The Room."

F: Senator Johnson dropped in with some regularity, too?

T: Oh, yes. Of course he was one of the key members. He was always invited.

F: He has always been known as a big talker. Did he tend to let everybody have his share of the talking time, or was Mr. Sam sort of the moderator in this? I know it was informal.

T: Yes, I would say that everybody had an opportunity to say [something], but of course, the Speaker, Mr. Rayburn, was the moderator. I would say that--you were talking about the then-Senator Johnson and Mr. Rayburn--they were sort of equals, and I imagine they had the privilege of their say, but there was no attempt to cut anybody off.

F: Were you involved at all in his decision to let himself be made majority leader?

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T: No, no, I was not. I knew it was developing, but no, I had nothing to do with it at all. I wasn't involved in that decision at all.

F: You must have faced a problem as the fifties went on because in 1952 and again in 1956, Texas supported Eisenhower, and you had this split between Texas loyalists and Texas regulars. How much did you get involved in this? On the one hand, you came from the district that houses the State Capitol where Governor Shivers is strong, and at the same time, you are getting ever closer to Lyndon Johnson, and he and Shivers, to some extent, and Rayburn are vying for the delegates.

T: Of course, I campaigned always for the Democratic ticket, actively in 1952, actively in 1956. Yes, I was involved in that. As you say, living here, I got caught in between. There was strong feeling here in this city; maybe out in the country was not as bad; there was some. But in this city, it was a strong feeling in 1952. But I campaigned actively for the Democratic ticket for Governor Stevenson and Sparkman, and Governor Stevenson and Senator Kefauver.

F: Were you a delegate to either of the conventions?

T: Yes, I was a delegate, I believe, to the Chicago convention, which renominated Stevenson.

F: So you witnessed that fight between Kennedy and Kefauver for the vice presidency?

T: Oh, yes. I was very much in that.

F: How much did Senator Johnson show his preference to the Texas delegation in that.

T: Let's see if I can remember it. You know at one time he was our favorite son nominee for president.

F: Was this just to hold the delegation, or did you think something might work out?

T: Of course, a lot of us hoped it might work out. I doubt that he thought so.



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F: The convention would have to stall.

T: We had hoped it might work out.

But anyhow, after Governor Stevenson was nominated and after he made known that he was going to throw it open to the convention, the Texas delegation supported Gore, I believe, on about two ballots, or some number of ballots, I have forgotten. At that time, I think Senator Johnson and Mr. Rayburn both made known their preferences. Then when the time came when it was narrowing down between Kennedy and Kefauver, as I recall, we met in caucus. After a number of people had made statements, I think both then-Senator Johnson and Mr. Rayburn made known their preference for Kennedy.

F: Did you get the feeling that Rayburn and Johnson were sort of cool toward Kefauver?

T: I don't know that that was the reason. I think Mr. Rayburn may have had some feeling about Mr. Kefauver from prior experience. I can't remember for sure, but it seems to me that at the prior convention, Senator Kefauver had interrupted the session or gone up to the speaker's platform and tried to stop a roll-call vote, or something. I think Mr. Rayburn didn't have too much confidence in Senator Kefauver. Both of them had served in the House, and of course then-Senator Johnson had served with them both in the House and was serving with them in the Senate, and then Mr. Rayburn, of course, had known them both [Kefauver and Kennedy]. But I think at that time the sentiment in the Texas delegation was more for Senator Kennedy than it was for Senator Kefauver. As I recall, even before I heard from Mr. Rayburn or the Senator [Johnson], the consensus of the delegation was that it would help us more in Texas to have Senator Kennedy than it would [to have] Senator Kefauver. Now, I can't tell you the reason for it; there's some background that I have forgotten now.

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F: In 1956 at the state convention, there was a real fight between the Shivers faction on one hand and the Rayburn-Johnson faction on the other, a very close fight. Were you a delegate to that convention?

T: No, I was not. I can't tell you now why. You see, that was the period of time when I was ill. I had had surgery in 1956, and it may be that at that time I was still convalescing, I can't remember. But I did not go to that convention in which the fight between the Johnson forces and the Shivers forces [took place], and there was some reason for it. I had been to Mayo [Clinic] and had lung surgery, and I think that was the reason I had not gone in 1956 to that convention. I had recovered sufficiently by the time they had the national convention in Chicago to go.

F: To go back, where were you when you got word of Mr. Johnson's heart attack?

T: I was here in Austin. My family was back here for the summer. It was right around July 4. I can't remember what day it was, but it was right close to July 4, I remember.

F: Time for a congressman to be here.

T: The holiday season, that's right. I had come back and had just gotten home, as I recall, to join my wife and family, and somebody called me and told me about it.

F: What did you do then?

T: Flew back to Washington.

F: How soon did you see the Senator?

T: I think the day I got back to Washington, that night or the next morning I went to the hospital and Dr. [James] Cain took me in just for a moment. He was still under the oxygen tent but seemed all right. I was pleasantly surprised.

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F: Then you went over there, as I recall, with some regularity. You were his big domino convalescent partner.

T: Yes, I went there, I think, practically every evening. I would go out there and we would play dominoes. He tells it as if I let him beat me, but he's a very sharp domino player. It wasn't easy; you don't let people beat you that are as good as he is. In spite of my best efforts, he was very skillful. He really wanted to win; he liked to win.

F: He was competitive even when he was flat on his back.

T: That's right, very competitive.

F: How many games did you usually play?

T: I don't remember, two or three, until maybe someone would come in or the doctor would come in. But they [the hospital staff] didn't seem to mind it at all.

F: He wasn't too gloomy about his prospects of recovering, getting back into full harness?

T: No, I don't think so. I didn't get the impression that he was gloomy about it or anything. I was impressed by the fact that he was really taking care of himself, was interested in all aspects of his recovery. I was impressed by the fact that he would talk to the doctor about it. He was in good humor, very good humor. I remember when Dr. [Willis] Hurst was on active duty, who was his doctor then. He would play jokes on him and on the nurse, and he was in good humor.

F: What kind of jokes?

T: Now I don't remember that. It seems to me one time there was a story in the paper [about] Dr. Hurst. They referred to him either as Admiral Hurst--he was Navy, I think he was a commander then--or as the commandant of the hospital, I can't remember which. He [Johnson] pulled this strip

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of paper on him and said that the commandant was in there complaining about the fact that he [Hurst] was posing as admiral or something, teasing him a little bit about it.

F: As you begin to come down toward 1961, when did you begin to get the feeling that you might have a presidential candidate on your hands?

T: Well, that was a rather interesting year. All of us who were close to the President [Lyndon Johnson] and a great many people were interested in him being president. But we weren't sure that he thought he should be a candidate. We weren't sure that he wanted to be a candidate. We were spending a good deal of time talking among ourselves hoping he would be a candidate, wanting him to be a candidate but never certain about it.

F: In the meanwhile, in this period between 1956 and 1960, your record as a congressman got, from my standpoint, better and better. Did he talk to you any about specific votes or did he pretty well leave you free to go your own way?

T: He would leave me very free. As a matter of fact, I do not remember his ever, ever just coming directly to me and saying that [I] should vote this way or that. Many times we talked about mutual votes. I mean, he would have them in the Senate as well as I would have them in the House. I would seek his advice quite often. I didn't always vote as he advised. I think he had a sense about my feelings. I imagine he had a sense about how I would ordinarily vote on issues, but so far as him trying to tell me how to vote, he never did do that, ever. I know a lot of people thought perhaps he did, but he did not. In fact, he was very, very careful not to find himself in the position of telling me how to vote.

F: After 1957, you also have a senator named Yarborough up there, so you've got two senators who, in a sense, are from your home town, certainly from

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your home district. Did this give you any special problems as a congressman?

T: I guess it gave some problems, it gave some problems. I hope I was able to keep the friendship of them both without in any way being disloyal to either one of them. Of course, Senator [Ralph] Yarborough knew that I was a close friend of then-Senator Johnson. I'm sure he knew me well enough to know that I wouldn't in any way be disloyal to that friendship. To answer your question, yes, it gave special problems but, for some reason or other, I was able to weather them.

F: It was just a problem of personalities to a great extent?

T: That's right, to a great extent.

F: Did Senator Yarborough ever come to these Rayburn caucuses?

T: I do not recall that he ever came to any of them.

F: He pretty well went his own way, then?

T: Yes. You know, it's an interesting thing, to go back to the Rayburn "Room." The mere fact that somebody would never go there didn't mean that he disliked [that person]. He didn't have anybody by there, though, that just would not fit in with what he thought that purpose was. It was a confidential, off-the-record meeting, and he didn't intend for anybody to come who would go and report what had been said. Because we discussed everything in that room that you could think of.

F: In 1959 in February you flew down here with President Eisenhower. Do you recall the occasion?

T: Yes, I recall [that].

F: What was the occasion?

T: He was going to Mexico, as I recall, and was going to spend the night here and land here. He invited Senator Johnson to fly with him, and I am sure at Senator Johnson's suggestion, I was invited.

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F: This was, in a sense, a courtesy trip for you, too.

T: That's right.

F: As far as you know, was there any particular business talked between the Senator and the President?

T: There may have been, I don't remember. It seemed to me like some mutual problems were discussed, some problems before Congress and maybe before the country. It was not too serious, but there was some discussion, and also the President's trip to Mexico [was discussed]. I think the President had a great deal of respect for Senator Johnson's opinions in those areas.

F: Now in 1960, we've got a convention, and a lot of people are urging Senator Johnson to make a move for the presidency and he's holding back. Are you in this group?

T: Well, I guess I was in the group. Of course, I wanted him to run, but I also had a respect for his feelings about the matter, about the problems he knew he would encounter. So I was not one of those who just would every day say, "You have got to do it." I would try to listen to the problems that he thought he was faced with and then try to reason with him and tell him what I thought the other side was. I think he knew I wanted him to run, but also I was not one of those just to continually insist on it.

F: What were the problems that seemed uppermost in his mind?

T: Of course, he realized that coming from this section [of the country] was a severe handicap. He knew that.

F: Did he feel that the Civil Rights Act of 1958 had been a real plus for him, or did he think that it hurt him?

T: I don't know how he felt about it. I think it was a plus for him, but of course, I don't know that he ever discussed it from that angle. If he

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did, I don't remember it, but to me I thought it was a great plus [that] a man who a lot of people thought had all of the prejudices of our section could do something like that.

F: We were talking about the problems.

T: Oh yes, one of them was the section, and of course his heart attack. He thought about that and what people would think about it. Then, also, just as majority leader of the Senate he had tremendous responsibility there, and he just didn't feel like he could get out and campaign as Senator Kennedy was then doing. He thought that was, and I think it was, a severe handicap, because he would not abandon his responsibilities.

F: Did you go to Los Angeles?

T: Yes.

F: What was your role out there?

T: It was, of course, try to see as many people as I could from everywhere to try to help line up delegates. That was the main job that I tried to do while I was there, and, of course, in the caucus of the delegation to try to see if there was anything that we could do as a delegation. We were already for Senator Johnson. It was our job to try to get other votes for him, and that was what I mainly worked at.

F: Did you feel that the candidates had gotten there, too many of them, too soon, or did you have some hope that maybe the convention might stall?

T: Yes, we had some hope that it would. As it turned out, I don't think Senator Johnson did. However, there was a time there when we thought that probably it would stall.

F: Then the roll call was called, and Senator Kennedy got the nomination.

T: That's right.

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F: Now, as I recall, Senator Johnson called you when he was offered the vice presidency and asked your advice.

T: The time of the call may be questionable. I think he anticipated he was going to be offered the vice presidency. Anyhow, we talked. Now who made the [call]--

F: This was in Los Angeles?

T: Yes, this is in Los Angeles, and we talked.

F: Personally or on the phone?

T: On the telephone. I was staying at another hotel. It was early in the morning. He said there was a possibility of it being offered, as I recall, and asked what I thought about it. I outlined all the reasons I thought he should not accept it.

F: What were they?

T: I guess I decided within a short time they weren't any good. As I recall, in the first place I just wondered if he ought to give up being majority leader to be vice president, number one. Number two, I knew that there would be a sharp reaction from many of his friends in Texas who did not like Senator Kennedy maybe for one reason or another and would feel that maybe he was letting them down. I knew that would be a reaction, and also I just didn't think that being vice president was as good a job as he had as majority leader and as senator from Texas. I outlined all of those reasons to him, as I recall, and told him I just surely didn't think he should accept them.

F: How soon did you call him back?

T: I went back in the bathroom and was shaving, thinking to myself about it. As I look back, I don't believe it was more than ten minutes, it may have been fifteen.

F: He'd just caught you cold.



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T: That's right. Of course, I had already set myself, and a lot of us had, that he wouldn't accept it. I mean we had already decided that. I remember the night before somebody said something to Mr. Rayburn about whether [Johnson] would be vice president, and of course Mr. Rayburn exploded and said, "Of course not." All of us had sort of [decided in advance]. Sometimes you set yourself to think one way.

So I thought a minute about it and I called him back. I didn't want to bother him and said something to whoever answered the telephone, one of the secretaries, I don't remember who it was. I said, "Just tell him I have been thinking about it and I have decided I was wrong." Well, he came to the phone and we talked about it a little bit more. I told him I was wrong about it, that I realized that if he didn't take it and if the ticket did lose and he was not on it, then he would suffer as a senator. If Kennedy won without his help, there would be problems, perhaps. Then third, I could see that the job of majority leader was taxing him a good deal. And I thought it would be a great honor for him. I believe he asked me then, "What about Mr. Rayburn?" or "What about the Speaker?" however he referred to him. Of course, I knew that would be a problem. I said, "I think that's a matter you are going to have to ask Senator Kennedy to take up with him." I believe that was the end of that conversation. I never did know from then until about five o'clock that afternoon whether Senator Kennedy had offered him the vice presidency or whether he would accept it or not.

I didn't tell anybody about it. Eloise--Mrs. Thornberry--and Jean and Frank Ikard, and Mr. Rhea Howard of Wichita Falls [and I] all went out to Disneyland. All that day I had this in my mind, but I didn't tell them anything about it. When we got ready to leave--Frank Ikard and I were going back out to the convention--I turned to my wife and I said, "I

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believe you ought to go to the convention." She said, "Why?" I just said, "I just think you ought to go. You just make plans to come on." So. Frank Ikard and I went to town, I don't remember why, and I called the headquarters room and asked if anything had happened. They said, "Yes, they just announced that he would be the vice presidential candidate." So that's the first I really knew about it.

F: When the Texas delegation met again in the convention, was it pretty stormy after this announcement?

T: That was a matter that was just almost out of our hands then, you see, because that was a decision made by the presidential candidate nominee and it was up to the convention. I think our loyalties then were such that we wanted it to go over. Now there may have been one or two dissenters, but I don't remember that they made it known.

F: There was some talk of a floor fight by some of the people who opposed Senator Johnson.

T: That's right.

F: Did you do any work with other delegations?

T: No, that was pretty well taken care of by Mr. Kennedy's people. They had already done their work, and they knew who was going to oppose. It was the delegation from the District of Columbia, with whom none of us had much influence at that time.

F: You came on home, then, after that from Los Angeles?

T: I think Mrs. Thornberry and I came back here with President and Mrs. Johnson and then went on to Mexico with them. I believe that is what happened.

F: Did he seem pretty well satisfied with his decision?

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T: Well, I think he was thinking a great deal about it. He had made a very fateful decision, and it was on his mind for a good while. That was one reason why I'm sure he wanted to get away for a while and think about it. It was a big decision for him and for a good many of his friends, for his family. I think he reflected on it a good deal.

F: Did you ever get any insight into his relationship with Senator Kennedy during the campaign period?

T: Well, yes and no. After they were nominated and the campaign began, I served in the capacity of the coordinator between all of the Democratic nominees in public office, I mean the state officials, the governors, the attorneys general, and the Texas congressional delegation, and then also between people who were heading up the campaigns in the various areas. I was with the two of them as Senator Kennedy came into Texas and traveled through Texas.

F: You were unopposed, so you didn't have any great election problem of your own.

T: I didn't have any opponent. That's right, I didn't have any election problem then. So I saw them. I thought their relations were unusually good at that time. Of course, I saw them a good deal in Washington. We went back after the convention and completed the session. It was a rather interesting thing there: the vice presidential nominee was the leader and the presidential nominee was just a senator. But of course, the Majority Leader was anxious to coordinate the legislative program in such a way that it would be as beneficial as possible, and they were working together.

F: Did you have any problem coordinating the Texas officials?

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T: Yes, there were a great many problems. You can't get that many people together that you don't have problems, hurt feelings. But on the whole, it was a remarkable effort. I don't know that at any time there was as much . . .

F: You were satisfied that at the various levels, then, the state people did their work?

T: Oh, yes. As a matter of fact, I was surprised that the election was as close as it was in Texas. I just did not realize the deep-seated feelings that still existed on the religious issue in Texas.

F: Were you in on that meeting with the ministers that Senator Kennedy had?

T: I was not present in the meeting. I was in Houston, and I was in a hotel room and watched it on television. I don't believe any outside people went to the meeting besides Senator Kennedy.

F: Were you down at the Driskill the night of the election?

T: Yes.

F: What was the atmosphere like then? I know it went on forever waiting for a victory celebration that never came off.

T: That's right. Well, at first, of course, everybody was just happy and anticipating victory and everything. Of course, as you say, it just went on and on. Finally people just drifted away. However we still had the feeling that we were going to win. I think the next morning I was beginning to worry about it a little bit.

F: How did the vice presidential nominee take the delay? Was he pretty resigned to waiting or was he impatient?

T: No, I don't think he was impatient. It was very interesting. I think he was resigned to waiting and just very dignified and very careful about showing any impatience or any lack of confidence.

F: Had you gotten to know Senator Kennedy pretty well?

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T: Not too well. I had known him in the House. He was a very pleasant person and I liked him, but I did not know him well. I knew him a little better after he got to be senator because we had served in the House together.

F: As early as the beginning of 1962, rumors were floating that you were going to get a federal court appointment. It was another year before that happened. There wasn't any real necessity for Vice President Johnson to sell President Kennedy on you on this, was there? I mean, Senator Kennedy would have been on your side to begin with.

T: I don't know. I don't know. I must say that I am not sure about that. I think Senator Kennedy, who was then president, was very loath to see me leave. I was on the Committee on Rules, and I think it bothered him a good deal because they had had so much trouble in the House with the composition of the Committee on Rules.

F: You were one of the few who could pry things out of the Rules Committee.

T: Well, I don't know what the reason was, but I think he did express it. I don't want to seem immodest, but I don't think there was any reluctance on President Kennedy's part to have confidence in me or to want anything good to come to me. I think he was just thinking more, which was natural, of his program and his feeling that maybe by my leaving the House and the Rules Committee that might cause some problem.

I think the Vice President there was very anxious to convince him that it was important for me to be appointed, wanted me to be appointed. It's very interesting. President Johnson expressed to me years ago, I hadn't been in the House long before he told me that he thought sometime I ought to be a federal judge. I put it in the back of my mind. And I remember he told me after he became senator that if the

opportunity ever came, he would see to it that I was appointed judge. But the opportunity just never arose [for him] to make that appointment while he was senator. We created some federal judgeships, and I would have been ineligible, during the term to which I was elected, for that appointment. Another time we increased the salary, so I was ineligible in that term to be appointed. Those went by. When he became vice president, and then, of course, other problems arose. The appropriate vacancy just didn't arise.

F: Did he show his hand very much in relation to the Congress during the period he was vice president? Was he sort of an emissary to the Hill for the administration?

T: I don't think he was an emissary as much as he was an advisor. I don't think he went up on the Hill to try to get legislation passed. I think what he did best was to advise on how to proceed in dealing with legislation on the Hill.

F: Did he ever talk with you about the limitations imposed by being vice president?

T: Yes, I think it's fair to say that he did.

F: Did he seem to chafe, or did he feel that this was the way things were and that's the way it had to be.

T: I think the way to put it is: I think he wished that the limitations did not exist; but I think he recognized them, and he was very careful to be proper about it and not in any way to override the limitations.

F: Did he get the feeling that he was being pushed aside by the so-called Kennedy people?

T: I had the feeling that his talents were not being utilized to the fullest. I thought that the Kennedy people just did not utilize his talents.

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F: Did he ever talk to you about the possibility of his being dropped in 1964?

T: He may have, he may have. I can't recall specifically that he did. I never did think that he would be dropped. I never would agree to it. He may have talked to me about the reports on it. I'm not sure that he ever [did].

F: It wasn't a real concern of his.

T: No, I didn't think so. However, I must say that I never did think there was any possibility. President Kennedy's progress at that time had not been very great and his re-election was by no means reassured. They could not have afforded to have dropped him [Johnson] from the ticket.

F: Finally in the summer of 1963, President Kennedy did name you to the district judgeship. Had the House Rules Committee come to a point where it sort of satisfied him, or did he see somebody in sight to replace you?

T: No, that had not developed. No, I think really with the Vice President urging me and I think also Mr. Rayburn before he died had talked to him about it. Then Carl Albert, who was going to be the speaker, had also talked to the President. They convinced him, I'm sure, that it was something that he should do.

F: How did you get the word?

T: Well, I can't remember that now.

F: A call from Bobby Kennedy?

T: No. No, I never did talk to Bobby Kennedy, the attorney general, about the appointment. It's a strange thing. I cannot remember how I got the word. I knew it was imminent, I knew that I was going to be appointed. It may have been through word from the Vice President, but I can't remember how I got the word, just to tell you the truth. It just came to me.

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F: You had no problem with Senator Yarborough as far as confirmation was concerned?

T: Well, he cleared me. For a good while he and the Vice President were having problems on the appointments in Texas. I think it's fair to say that Senator Yarborough knew that my appointment was very important to the Vice President, and I think he wanted to use the delay on saying that he would clear me and see if he couldn't get some other appointment somewhere. However, I must say that when the time came, he cleared me for confirmation and has always supported me for all the other appointments.

F: Senator Tower posed no problem on that appointment.

T: No, not on that appointment at all. He was very good about it.

F: You had no confirmation problems?

T: No. You see, I was a member of the House then, and it went to the committee; it was cleared, and it went through the Senate. I don't believe I even appeared before the committee.

F: Where were you sworn in, the White House?

T: No, I was sworn in at El Paso. The judge who had retired lived there, and I decided that--

F: Who was that, Thomason?

T: Yes, Judge [R. Ewing] Thomason. So I went to El Paso and was sworn in in December of 1963.

F: In November of 1963, President Kennedy was assassinated in Dallas. Where were you at the time? Were you down here?

T: I was in Dallas.

F: Were you part of the parade group.



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T: Yes, I was in the parade. I don't remember how many cars back now--at that time I did remember--but I was in one of the cars.

F: Had you followed the group from San Antonio to Houston to Fort Worth to Dallas?

T: Yes.

F: You had been in on the whole thing, and you had thought it was going quite well?

T: Splendidly, yes. Oh yes, it was much more successful than I had anticipated. It was very successful.

F: The same was true in Dallas?

T: Yes, the crowds were out, and they watched it, [the parade]. I think it was fine.

F: Back where you were, tell me what your impressions were.

T: I'm trying to think who all was in the car. I remember Larry O'Brien was; I remember George Mahon, a member of the Texas delegation; and Jack Brooks. Now I don't remember who else, but I remember those four. We were riding along, and then we heard what were the shots. We didn't know for sure what it was at first, but you could sense that something was wrong. You could just sense that something ahead had gone wrong, what, we didn't know for sure. We kept going along and got more and more concerned about it, saw people running in this area below the textbook depository. I remember turning and saying, "Well, Larry, I know you are concerned. Maybe we can get this driver to take us on to the [Trade] Mart."

So we did. We asked there what had happened, and they said, "Well, the cars went by here fast. They looked like they were going to the hospital."

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F: They didn't really know anything yet.

T: No, not at the Mart. His cars had gone on. So then we went to the hospital.

F: You still didn't know who was shot or what had happened?

T: No, not until we got to the hospital, and we asked what happened. Somebody told us that Kennedy had been shot. I asked about the Vice President and they said, "No, he walked in." Then we learned that Governor Connally also had been shot.

F: What was Larry O'Brien's reaction, do you remember?

T: No, I don't.

F: What was yours?

T: I was shocked, just as shocked as I could be.

F: What were things like at the hospital?

T: Of course, there were a good many people going in and out. We couldn't learn anything. We were standing in the hall.

F: Did you see the Vice President out there?

T: Yes. Someone came and got me and said, "The Vice President wants to see you." I went into a little room; they had it curtained off. Mrs. Johnson and the Vice President were there, and it was a very tense, quiet time.

F: Were there a lot of people in there with you?

T: No, not very many. There would be three of us sometimes, and then one of the Secret Service men would come in and out. Maybe one or two other members of the delegation would wander in and out. But most of the time it was President Johnson, Mrs. Johnson, a Secret Service man, and me. Very little passed between us. We didn't know what was happening, just did not know what was happening. We did not know about the condition of

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the President and I remember the Vice President saying that he was just praying that everything was going to be all right. I walked out once to try to see if I could find out what was going on, but either nobody knew or they didn't tell me. I came back and then I cannot remember whether Mrs. Johnson at that time went to see about Governor Connally and to see Mrs. Kennedy or not. I know she did go, whether it was then or a little later. President Johnson suggested that maybe I [should] keep a log of what was happening, and I made some notes on a piece of scratch paper. Somebody has it now.

Then about that time, somebody came to President Johnson and said, "Mr. President, the President is dead."

F: Was the Vice President pretty calm through all of this?

T: Yes, yes, very calm. All through the time he was just as calm. In fact, right then he took charge. He said, "Now what should we do?" He talked to this agent in charge, a Secret Service man, Rufus Youngblood.

He thought perhaps they ought to go on to the plane. At that time, no one knew what was happening anywhere. It was rather unfortunate that part of the Cabinet had gone to the Far East and wasn't in touch with anybody.

The communication facilities at the hospital was very poor. So after Mrs. Johnson had made these trips--I don't know when she did--and saw Mrs. Kennedy and Mrs. Connally, President Johnson suggested to Mrs.

Johnson when we did go that Mrs. Johnson go in one car and that she be accompanied by Congressman Brooks, and that he and I would go in another car. After we got into the car, the late Congressman Albert Thomas came out. At first the Secret Service man didn't want to let him in, but the President said to let him in. The driver of the car, [Dallas] Chief of Police Jesse Curry, started sounding the sirens. The President said

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"Let's don't have the sirens. We don't need to have those." So they were cut off, or maybe they called to the motorcycle policeman; I have forgotten whose sirens [they were]. They may have been on [a motorcycle]. I got back in the back seat. I was on one side of the President and the Secret Service man was on the other side, and Congressman Thomas was in front.

F: You just drove [in] more or less normal traffic, I guess.

T: Yes, that's right. For some strange reason, it just seemed normal traffic all the way. Without incident we got to the plane, Air Force One, and went on in there. I remember that the three of us, Congressman Thomas, Congressman Brooks and I, thought maybe we ought to get out of the cabin and went up to the front to sit down. The President wanted us to come back and sit with him, and we came back.

I can't remember all of the things that happened, of course, but the President was calm, collected. He was concerned about what was happening to the other people. Also, we discussed whether or not he ought to take the oath on the plane. I think I thought that perhaps he ought to go back to Washington to take the oath. I think it was then decided he should take it there. He was in touch with the Attorney General. Of course, I did not hear the conversation on the telephone, but I knew that he was going to call him to get advice from him, and also he needed somebody there to call and dictate the oath. I'm sure he got advice as to whether to take the oath there or in Washington. Apparently, the advice was to take it there. He then wanted Judge [Sarah] Hughes, whom he had known a long time, to administer the oath, and she came to the plane. Then they called, of course, a number of people. I remember they called Mrs. Rose Kennedy, the President's mother; both President and Mrs. Johnson talked to her.

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Then, of course, Mrs. Kennedy came on the plane and the other Kennedy people. The President was solicitous of all their concerns and wanted them in the room when he was sworn in. He asked if Mrs. Kennedy did not want to be present. They administered the oath, and he suggested we get the plane on the way. The President was as calm and collected as I believe I have ever seen him.

F: You were on the plane going back?

T: Yes.

F: Where was your wife? In Texas or in Washington?

T: She was in Texas. She was at El Paso. My family had already moved.

F: She had no idea where you were?

T: No, it was too bad, I never did talk to her till I got back in Washington that night. Then I called her and told her I was all right. Of course, I'm sure she thought I was all right by then.

F: What was it like on the plane?

T: It was busy, and, of course, it was very quiet, very calm. There was still a great feeling of shock on the part of people who realized what had happened. There were some of the Kennedy people who were grieved, you could tell that. But it also was busy, the President was busy. He was talking to people on the plane and getting his statement together, finding out where members of the Cabinet were.

F: The Kennedy people themselves, the professional White House staff, went right to work for President Johnson?

T: Yes.

F: There wasn't any lost motion there.

What was it like when you got back to Washington? You went into Andrews [Air Force Base], didn't you?

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T: Yes, we went into Andrews, and the President and his party went on. I went back to where I was living at that time. I believe the next morning the President called me, and I went out to where they were living, The Elms. [We] had breakfast and talked a while.

F: Was it a whole group out there for breakfast?

T: No, there weren't too many people there. Just a few of his close staff members were there, Mrs. Johnson was there, Horace Busby was there, and one or two others. I won't be positive who they were, I can't be.

Then I went down with him to the White House. We went on over to the Executive Office Building where he had had his office as vice president. I was there for a while with him and went on back to the Capitol, as I recall, that day.

F: What did you do during the remainder of those four days or so?  
You went to church services, I think, with him on Sunday.

T: Yes, that Sunday he and Mrs. Johnson called me, and I went to church with them. I was with them a good deal during that day. During those few days, I was in and out of the Executive Office Building where he was.

F: The transfer seemed to be going pretty smoothly?

T: Yes, seemed to be.

F: Did he talk to you about any undue problems?

T: Yes, he told me about some of his problems. For some reason, there was some delay in his being able to get to the White House Executive Office, and he wasn't sure what the reason was, but that, of course, finally worked out. There were some other problems, but he was not letting it upset him. Of course, he had all of these people who had come from abroad for the funeral. I was not in any of those meetings or anything.

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- F: Did he ever talk with you about whether he should keep on certain Kennedy personnel?
- T: No, I think he had decided. He told me he had asked them all, said he needed them and wanted them to stay. No, he never did indicate to me any reluctance to ask those that he wanted to stay, at all.
- F: And shortly after that you were confirmed?
- T: Well, I had already been confirmed in July, and I had already resigned effective December 19. So I left and was sworn in at El Paso.
- F: Did he give you some kind of farewell luncheon?
- T: He came to the Capitol, busy as he was. The Texas delegation had their luncheon that day, and he came to the Capitol.
- F: Was this their normal Wednesday luncheon?
- T: Yes, this was their luncheon, and back there is a picture of it, right back up there on that wall there. He presented me with the commission. I think he's speaking up there now [in the picture]. I had seen him, I think, the night before I left. I went down and had dinner with him at the White House, and the next day he was there [at the luncheon].
- F: Did he ever talk to you about your successor in Congress?
- T: Oh yes, yes.
- F: Who he ought to be?
- T: Well, I'm not sure about that, that he ever talked about who he ought to be. But he and Congressman Pickle had been friends for a long duration, and I am sure that he was very happy to see him elected. And I'm sure [he] was instrumental in helping him a great deal.
- F: So then you went on the court, and I presume that kept you pretty busy for a while.
- T: Yes, sir.

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F: You saw him off and on. I know, in the spring of 1964, once you went to the Houston Symphony with him.

T: Yes.

F: And then you went to church with him again.

T: Yes. You see, we made visits to Washington, and when we did they were nice enough to have us visit them. But they were just personal, social visits.

F: Did you stay in the White House?

T: Sometimes, yes. They were very kind.

F: Any special occasions or just in as friends?

T: Just in as a friend.

F: Now in 1964, there is not much you can do about the campaign, because you are a federal judge.

T: That's right.

F: Did he talk to you about it at all?

T: Very little, very little. It has to be said for him that he was very careful in his relationship with me as a judge. I think he showed great restraint. He recognized that as a federal judge I had certain limitations, and he was very careful about it. As a matter of fact, it has been very remarkable how very careful he was about talking to me about my duties as a judge, or anything like that. [He] never made any suggestions.

F: In 1965 you were named to the Court of appeals. Any particular circumstances surrounding that?

T: Well, it's very interesting. He had talked to me about it before, and I had been rather reluctant to be appointed. It wasn't because I didn't appreciate the honor of it; I just wondered if I could do the job. I enjoyed being a district judge, and I wasn't sure I ought to be appointed.



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He would talk to me about it. I don't remember him ever saying, "I want to appoint you, I'm going to appoint you, what do you think about it?" He did talk about it along those lines. He had also been kind enough to suggest once that if I wanted to serve on the Court of Appeals of the District of Columbia, the Court of Claims there, he would appoint me. But I wasn't sure that he ought to appoint me. At any rate, as I recall, I told the deputy attorney general then, Ramsey Clark, that if he wanted to appoint me and did appoint me, I would do the best I could. I think we finally came to that point. He asked me about it one day, and I said, "Well, you appoint me. I'll do the best I can." I just didn't feel that it was up to me just to say I wouldn't take it.

So without any notice, one afternoon I had gone home, and a newspaperman called me and asked if I had any statement. I said, "Statement about what?" He said, "About your appointment to the Court of Appeals." I said, "Oh, quit pulling my leg." So he read it to me from the Associated Press dispatch.

F: You thought he was just trying to get a rise out of you.

T: Yes, that's right. Well, there had been so many rumors about it, you know, and so many people had asked me about it. So then I called him and thanked him. By that time I have moved back to Austin. Judge [Ben] Rice had passed away, and he was the judge in this position. We were living in Austin then.

F: You were sworn in out at the LBJ Ranch?

T: At the Ranch, that's right.

F: Whose idea was that?

T: I believe it was mine. I was in Washington for my confirmation, and I told him that I sure would like to be sworn in this time--since I had

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been sworn in at El Paso and he hadn't been able to be there--where he would be. I wasn't sure that it was appropriate to suggest the White House. They were leaving to come to Texas, and I asked him what about just being sworn in at the Ranch. He said he thought it would be fine. I think it was my idea. It could have been his, but I think it was my idea. We didn't make it a big affair, just invited a few friends who were around the Ranch and a few other close ones.

F: Who swore you in, the President?

T: No, Judge Herman Jones, the state district judge here. He and I had been law partners. He had been my deskmate in the Texas Legislature.

F: I've known Herman since time immemorial. He's from Decatur and I'm from Weatherford, you know.

About the time you were sworn in, we had a little hassle here with the Travis County Bar Association, which was a white-only affair at that time, and I know you sort of forced its hand.

T: Well, I don't want to speak forth. Here are the circumstances. At the time, while I was district judge, (short empty space on tape here, but no material deleted) I went over to make a speech to the Bar. As I sat down, the president--he's deceased now--Mr. [Kirk] Kuykendall turned to me and said, "We had a peculiar experience. You know our constitution provides that only white members can belong to this thing [the Bar]." Of course, I was just amazed. I had belonged to the bar association all these years ever since I had joined in 1936. He said, "We had two Negro attorneys come up and pay for their luncheon, and we decided we had better admit them." I said, "Well, I'm sure glad you did, because if you hadn't I wouldn't have made the speech." Strangely enough, on the manuscript of my speech I had stated that I was going to ask the Travis County

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Bar Association to furnish a panel of lawyers to be appointed to represent indigent defendants. I struck that part from my manuscript, because I decided I would not do that. I came back to my office after I had made the speech and I thought about it a good while. I called two lawyers who were members of the board of directors and told them, "I have belonged to this bar association all my life. I did not realize that it was a segregated bar association." And they were amazed, as I recall. I said, "Now I want this changed. I don't know how it's going to be changed, but I want it changed. I don't want to create a public spectacle out of it and that's what it would be if I resigned and stated why I resigned. But it has got to be changed."

Well, we had a lot of problems with it. The president, Mr. Kuykendall, did not want to change it. I had been told that it would be changed by a given time, and they didn't do it. I had been sworn in by that time, you are right. Then the director with whom I had discussed it, Mr. Hume Cofer, came to me and said he just was sorry they had not been able to change it. So I suggested to the then-president of the bar association, Mr. [John] McKay, that I would like to meet with the president and the directors of the bar in my chambers. They came up, and I stated to them about what I have said to you about how I had discovered it. I could not ask the Travis County Bar Association to assist in the implementation of the Criminal Justice Act with this in it; it had to be changed.

They called a special meeting of the bar after appropriate notice to change the constitution, as I recall. They had it over here at the courthouse and were going to take it by secret ballot. I must say that this is to the credit of the young members of the Travis County Bar: they were there en masse; they got up and made a motion that it be taken by open vote.

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When it was done, it was apparent that nobody had any objection to it. So when you say I forced it, I didn't force it, I just was the motivating factor. And of course it was a very bad thing, when the State Bar of Texas, the parent bar, had never done it. It had always been an integrated bar.

F: In general, Austin and the University have a very good and, I think, dignified record on integration once this became an issue.

T: That's right.

F: Did Lyndon Johnson put any particular pressure down here to get facilities integrated, as far as you know? I mean, did he look on this as a personal commitment?

T: I don't know that. I have no knowledge that he put any pressure on anybody. However, I must say that I wouldn't have been surprised if he hadn't said he hoped it would be, but I have no knowledge that he put any pressure on anybody. But I would not be surprised if he had not said to any and everybody he could, "I have pride in Austin and I have pride in the University, and I hope that they will be in the forefront of furnishing equal opportunity for education."

F: Did he ever comment at all on any decision you rendered? You had some pretty ticklish ones or sensitive ones.

T: Yes. I think it's fair to say that he was pleased by the decision of the court outlawing the poll tax. I don't think it's immodest for me to say I think he was rather proud that I was the author of that opinion. I think he was pleased, without saying anything in advance to me about it, that I had always, on the Court of Appeals, upheld the Brown Decision bringing about integration in the South, which, of course, was not easy.

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F: He was very correct, though, in never talking over a case with you before [the decision].

T: That's right. He has been very correct all the time I have been a judge and he has been president, because he has never talked to me in advance about a decision.

F: I am aware, of course, of your work with Gallaudet College. Was he himself interested in it?

T: Yes, very. He took a great deal of interest in it. I remember several times, even as senator, he used to get after me. He said, "You ought to be telling me what I can do for Gallaudet College. I want to help them." He was very interested in education of the deaf. He of course came to know my mother and was a great friend of hers. She had a fond regard for him. He took great interest in the education of the deaf and when he became president, he continued that interest. He was kind enough and good enough to suggest my wife's name--my wife, of course, with my mother had become interested in education of the deaf--to serve on different committees in and out of government. She has taken a great deal of interest in it. He [Johnson] has taken a great interest in education of the deaf, not only Gallaudet, but in recommending legislation for a model high school for the deaf and in establishing a technical institute for the deaf up in Rochester, New York. All of those programs came about as a result of his personal interest in the education of the deaf.

F: In June of 1966 he rather unexpectedly showed up at a commencement at Gallaudet. Was this when you received your honorary degree?

T: No, I got that degree years before. No, I was not there in 1966. Now, he appeared when he was vice president and delivered a commencement address, but I was not there when he unexpectedly showed up. Now, Mrs. Thornberry may have been, but I was not.

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F: In 1968, then, in June, you are announced as an appointee to the [United States] Supreme Court to fill the vacancy caused by Justice Fortas' elevation to the chief justiceship. What is the background on that? How much notice did you have on it?

T: I was at a party in the home of [Texas Supreme Court] Chief Justice and Mrs. Robert Calvert. I was out in the yard, and Mrs. Calvert came out and told me that I was wanted on the telephone. I couldn't imagine who would be calling me on the telephone there. I went in, and it was the President. He said, "I had always hoped that someday you and I would both be retired and could spend some time on the Pedernales, but that's not going to happen." I said, "Why?" I mean, I was surprised. He said that he was the next day sending to the Senate the name of Mr. Justice Fortas to be the chief justice and my name to fill that vacancy in case Mr. Fortas did become chief justice. Of course, I was overcome. There was very little I could say except to thank him and tell him I would do the best I could.

F: I understand Mrs. Thornberry was fairly elated.

T: Oh, yes. Of course, it was quite a surprise, but she was, and of course I will always cherish the confidence the President showed in me.

F: When did you begin to get an idea that there was going to be a storm over Justice Fortas?

T: Of course, I worried about it right at the time a little bit. The circumstances were such that the President was leaving office. He was not a candidate for re-election. At that time the campaign was on. I may have intimated something to him about whether it wasn't a pretty big load for him to be carrying both of us. I was thinking really about myself rather than Mr. Justice Fortas at that time. He said no, that he had checked with the leadership, that he had discussed it

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with all the people he could. Of course, this part of it, I suppose, we'll have to keep in confidence for a while. He said, "I have a friend here," and it was Senator Russell from Georgia, whom I had known over the years and with whom I had gone hunting and had a rather high regard for as a friend. He told me Senator Russell had agreed to support both Mr. Justice Fortas and me. And then he put him on the phone. He made some suggestions about a statement I should make, and then he said, "I'm for you all the way." I felt like from the discussions that the President had had with the leadership on both sides of the Senate and then, of course, Senator Russell with his influence with the southern senators, that probably there was a likelihood that both of us could be confirmed. But when I got to Washington for the confirmation, I began to see that there would be problems. And then I had learned that Senator Russell had apparently changed his mind, that something had happened there. I began to see that there was going to be a determined effort to keep the name of Mr. Justice Fortas from coming up. I have the feeling and have always had the feeling, that if Mr. Justice Fortas' name had come up at that time, if it had not been for the filibuster and they had been allowed to reach that name, that he would have been confirmed.

F: He really got lost in the delay, didn't he?

T: That's right. You see, there was a filibuster, and finally they just couldn't get a vote. They never could get a direct vote on the confirmation. Of course, when that vacancy failed to materialize, I asked the President to withdraw my name after Mr. Justice Fortas had asked that his name be withdrawn. Of course, this was prior to any of the other problems that arose afterward.

F: That really meant then: no vacancy.

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T: That's right. I always have felt, maybe incorrectly, that, if there had been a vacancy and my name had come up, I would have been confirmed.

F: You brought something that critics of the Supreme Court have long complained about, and that is the fact that you did bring a pretty sizable judicial experience, as well as legislative experience, to the job. So often on appointees, they do claim that he [the nominee] doesn't have the judicial background for it, but that didn't hold in your case.

Did the President ever talk to you about his disappointment in the way the Court turned out?

T: Yes, yes. Of course, he was extremely disappointed.

F: Did he feel it could have been handled differently?

T: No, I don't think that. I don't think he felt that it could have been handled differently. I think he felt that some people who he thought would support him had let him down. I think he also correctly felt like it was a result of a good deal of political intrigue.

F: In the middle of this, Senator Sam Ervin, who fancies himself quite a constitutionalist, invited you to discuss your poll tax ruling with him.

T: Yes, he brought it up. I never did quite know what Senator Ervin wanted me to do. I assume he didn't expect me to repudiate it. Of course, I wrote it for a court, and, as I told him, I couldn't take away from it, change it, or explain it, that it was there, it stood for what it said, and that, with all due deference and respect, I just would have to decline to discuss it with him.

F: In other words, that case was over.

T: That's right, and whatever reasoning for it was there in black and white. I mean, for a judge, separate and apart from the court, to spend his time discussing the case or apologizing for it is not proper.

F: Did you ever talk with Justice Fortas about these two appointments?



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T: I never did talk to him afterward. He called me after we both were named, and we discussed it briefly on the phone. At that time, of course, we did not realize what was in store. But I have not seen him since or talked to him.

F: Going back just a little way, in March of 1968, as you know, the President announced that he would not be a candidate again. Did this take you by surprise?

T: No, not exactly. I was up at the Ranch in November of 1967. He called me off to one side and told me that he was not going to be a candidate for re-election, that he knew I wouldn't say anything to anybody about it, but that he had decided that he was not going to run and just wanted to prepare me. Of course, I did not say anything about it. I thought about it quite often. At that time, he did not know when he was going to make an announcement of the decision. I was in New Orleans for a sitting of our court when it came over the television. In a way I was surprised and sad about it.

F: You were watching the speech.

T: Yes, I was.

F: Suddenly you started listening.

T: That's right. Of course, I didn't expect it. I just happened to be watching the news, you understand.

F: Were you at home?

T: No, I was in a hotel room in New Orleans.

F: Alone?

T: I believe I was.

F: So you really didn't have anyone at the moment to talk to about it?

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T: No. No, that's a funny thing. I didn't talk to anybody about it till the next morning when I got ready to go to the bench. The two judges, and I don't remember who they were, were both, of course, deeply shocked about it. I think one of them was Judge [Robert] Ainsworth. I can't remember who the other one was.

F: I don't remember the composition of that circuit court exactly. How many of those were Johnson-Kennedy appointees?

T: Let's see. We now have fifteen members of the court, so it's a little difficult to know. When I went on the court, Judges Tuttle, Jones, Brown, and Wisdom, that four, had been appointed by Eisenhower. Judge Rives had been appointed by Truman. Then Judge Gewin and Judge Bell were Kennedy appointees; those were the two on the court. Eight are President Johnson's appointees.

F: Does that make any particular difference as far as decisions are concerned? Does there tend to be a conservative and a liberal--

T: No, I don't think so. Except I notice that the appointments being made now by Mr. Nixon might be by some people termed more conservative.

F: It hasn't been long enough to show up yet.

T: No, it's not. I must say President Eisenhower made some excellent appointments on the court. I must say that the appointments made by President Johnson have been of high caliber to the court of appeals. They have been of high caliber; it reflects credit upon him and his administration.

F: Have you seen much of the President since he got home?

T: No, but, of course, I guess it's sort of a switch? I'm the one that's busy and gone all the time now. I see him every once in a while, but

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again, it's social, personal visits.

F: He seems to be taking his retirement fairly well.

T: I think it is remarkable how he is taking it. His disposition is wonderful. I think he's doing a good job at being a retired president, I really do. I think people admire him, I think they admire the way he is handling himself.

F: Judge, can you think of anything else we ought to talk about?

T: No, we have talked about a good deal. I'm sure there are some things I'll think about later, but I can't think of anything now.

F: If you do, I can always come. Thank you.

[End of Tape 1 of 1 and Interview I]

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