

INTERVIEW I

DATE: July 3, 1984
INTERVIEWEE: PHILLIP TOCKER
INTERVIEWER: Lewis L. Gould
PLACE: Mr. Tocker's residence, Austin, Texas

Tape 1 of 1

G: Mr. Tocker, before we get into the particulars of your interest in highway beautification and the billboard question, perhaps we should get you to say a few words about yourself so that we have some biographical information that will orient those who are listening to the tape.

T: I am a graduate of the University of Texas with bachelors and law degrees in 1933, and I am a licensed attorney in the state of Texas principally and have been since my graduation in 1933. In addition to being an attorney and representing for many years the Outdoor Advertising Association of America, which is the association of members who are in the business of off-premise advertising having a so-called standardized structure, both painted bulletins and poster panels, in the course of my representation of this association, serving it as chairman of the board of directors and as president of the association, I also became an owner of some of these companies in various parts of the country until my retirement in 1975.

G: Well, that ought to provide us with good biographical background.

When did you first meet President or Mrs. Johnson? What are your first memories of them?

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T: I knew President Johnson when he was on the staff of Congressman Dick Kleberg of Corpus Christi. At the time I represented the national cotton council and endeavored to activate beneficial legislation for the cotton interests of Texas. It was then that I first met Lyndon Johnson and later knew him in a casual capacity when he was congressman representing Austin. My first intimate association with Lyndon Johnson was when he was majority leader in the United States Senate in connection with the passage and subsequent amendment of the so-called billboard bonus law of 1958.

The billboard bonus law of 1958, which was first proposed by a Republican administration, controlled outdoor advertising within six hundred sixty feet of the interstate highway at the time the interstate system was first authorized and was being built. The law governing that action provided for a bonus, a carrot so to speak, of one-half of 1 per cent of what a state was otherwise entitled to for highway construction if that state would control outdoor advertising within six hundred sixty feet of the interstate in accordance with the national policy set forth in that federal law. You have to understand that the federal government itself cannot directly regulate the erection or maintenance of signs in a state. That is the prerogative of the state. But by using an incentive such as a bonus, a carrot so to speak, the federal government induces a state to pass such a law, even though the state has the full authority to enact such legislation without the payment or without any incentive from the federal government.

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G: By analogy it would be something like what's trying to be done with the--not a bonus, but the drinking [and] driving question, they're getting the states to--

T: The drinking and driving question is being taken care of by both a carrot and a stick.

Now, the carrot approach was used in 1958 when the billboard bonus law was first passed. The crux of that legislation, interestingly enough, became the crux of the [Highway] Beautification Act of 1965. The point of controversy in the billboard bonus law of 1958, at which time I first had my contact with Mr. Johnson, was the fact that the law as passed in effect gave the secretary of commerce complete authority as to the location of a structure within the six hundred sixty-foot strip of the interstate system. The billboard interests didn't want that complete authority to be vested in the federal government, but the law as passed in 1958 did vest that dictatorial power in the secretary of commerce.

Thereupon in 1959 I was requested by the Outdoor Advertising Association of America to go to Washington and endeavor to attain the passage of an amendment to that billboard bonus law of 1958 in order to eliminate from the secretary of commerce's dictatorial authority the right to determine where and how a billboard could be located. And that was done by providing, as the amendment provided, that zoned and unzoned commercial areas were excluded from the control of the billboard bonus law of 1958. In other words, the secretary of commerce, the federal government, would have no authority to set the

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standards for the erection and maintenance of billboards in zoned commercial areas or unzoned areas used for business purposes. That authority would still remain in and be under the control of a state, county or local jurisdiction.

G: The author of that amendment was--?

T: The author of that amendment was Senator [Robert] Kerr of Oklahoma and Congressman Wright of Texas in the House.

G: That's Congressman Jim Wright, the current majority leader?

T: That's right.

Interestingly, Senator Johnson as majority leader in a very close fight supported that concept by assisting Senator Kerr in getting that amendment adopted. It was then that I first worked closely with Senator Johnson, although I must say that my contacts were principally with Senator Kerr of Oklahoma. But Senator Johnson voted with Senator Kerr and endorsed by such vote the principle of excluding from the control of federal government the erection and maintenance of billboards in zoned commercial and business areas.

(Interruption)

G: Well, let's resume. [I have] one or two more questions about the bonus bill. As I recall, President Johnson wrote a letter that was subsequently often quoted, asserting his opposition or difficulty he had with some of the bonus legislation and being in favor of the amendment and asserting quite strongly a position that was later brought up again when the question came up in 1965. Is that your memory?

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T: My memory about that is reflected only in the announcement that President Johnson made when he convened the White House Conference on Natural Beauty, that he was going to propose legislation to control outdoor advertising because in his opinion the billboard bonus law of 1958 as amended had been ineffective. As a matter of fact, only twenty-six states adopted that law before it expired.

G: It was going to expire in 1965, too. That's why that year becomes important.

T: The only comment I ever recall President Johnson making about the 1958 act is what I've just recited. Let me see just a moment.

G: Sure. We have plenty of time.

(Interruption)

T: I am reading from the conference call publication, which I just referred to, in which I quote as follows from President Johnson's call of that conference, quote: "The authority for the existing program of outdoor advertising control expires on June 30, 1965, and its provisions have not been effective in achieving the desired goal. Accordingly, I will recommend legislation to ensure effective control of billboards along our highways." Unquote. That's the only thing I have ever seen expressing his assessment of the effectiveness of the 1958 act.

G: Well, as I recall, there's a letter that he wrote to a constituent somewhere in the late fifties saying that he was in favor of the position that was requested by the billboard industry at that time. But that's really irrelevant to our discussion.

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From the material that I have seen, the industry was having conversations with the Department of Commerce in 1963 and 1964 reflecting changes in the law that embodied some of the concepts that you've been discussing, discussions with Lowell Bridwell, a federal official at that time. And these were a prelude to the negotiations that you ultimately had with Bill Moyers. What were some of the issues that were involved at that time, as you recall them, that the industry wished to have embodied in federal legislation if it could be obtained?

T: Well, that's correct, the reference that you made to the conversations in 1963 and 1964 with representatives of the Department of Commerce, which then had jurisdiction over the highway system, and particularly Mr. Lowell Bridwell, whose exact title and position with the Department of Commerce I don't recall at this moment. I do recall very vividly that he was a reporter for the Washington Daily News, the Scripps-Howard paper in Washington, at the time the billboard bonus law of 1958 was enacted and at the time it was amended in 1959.

The Department of Commerce kept agitating for further control and, realizing that our industry was an integral part of the problem, counseled with us periodically and we endeavored to try to work something out with the department that would be satisfactory to all concerned. But even during those conversations, the continued central element of the discussions involved the extent to which the federal government would endeavor to intrude into locally zoned commercial and local areas used for business that might be unzoned. That was always the factor that was the critical point of difference.

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G: And would become the critical point in the legislation.

T: That's right.

G: Before we get into the Highway Beautification Act of 1965, people reading this in the future somewhere down the road may need to have a sense of the diversity within the billboard industry itself, because it is not a monolithic industry with only one set of interests. Perhaps the simplest way to ask the question would be to say, the Outdoor Advertising Association, what kind of billboard owners did that primarily represent, and what were some of the other kinds of billboard owners and what were their interests as they perceived them?

T: The reference I make to standardized outdoor advertising and my representation of those in that business must be clearly understood as not encompassing all of what is generally considered by the public to be outdoor advertising. Standard outdoor advertising involves a comprehension quite different from that entertained by the public at large. This medium, available in more markets and exposed to more people than any of the other major advertising media, comprises only about 1 percent of all commercial signs, displays and devices visible to the public eye. For example, in 1969 I wrote a paper published by the University of Notre Dame in which I pointed out that off-premise outdoor advertising, which is the standardized outdoor advertising medium that I represented, is an advertising service that rents space to advertisers generally on structures built and maintained by the outdoor plant operator on premises leased from the owner thereof. The rental period varies from thirty days to five years. Off-premise

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outdoor advertising is composed of two classifications, the rural roadside sign and the urban marketplace medium. The Outdoor Advertising Association is composed of members that operate principally in the urban marketplace medium.

Now, the following data represents a conservative industry estimate for 1965. I guess that would have to be adjusted today, but for ratios would be pretty close. Electric signs: the number of displays is 7,100,000; the number of companies, 4300; number of employees, 54,500. Commercial signs: number of displays, 16,900,000; number of companies, 7400; number of employees, 10,000,000. The rural roadside sign business in 1965 accounted for 800,000 displays by 1000 companies in the business. So far as the standardized outdoor advertising medium is concerned, the number of signs is about 1 per cent of the total.

- G: So that when the administration, the Johnson Administration or any other, interested themselves in highway beautification, they were dealing with a legislative matter that affected the lives of many, many people across the United States and a constituency that could make itself heard at main levels in many ways with a great deal of effectiveness.
- T: You have to think only of the large number of tourist signs that you encounter for all of these tourist spots along the highways that are called outdoor advertising that in truth and fact are owned by the establishment itself which has gone out on its own and put up these signs. That type of business, of course, would be affected as would

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be the owner and user of every sign. But the point I want to make is that the association I represented dealt principally within the urban area, and that outdoor advertising must be understood then to include 99 per cent of all the rest of the signs which our association did not represent and in which we have no interest. We didn't represent the outdoor advertising in rural areas along highways. We didn't represent transit advertising. We did not represent on-premise advertising, which is an important item to bear in mind, because the administration at all times and consistently made it clear that they were excluding from their program on-premise advertising. On-premise advertising is defined as a structure or a sign that advertises a product sold on or a service rendered on the premises on which the sign is located. Now, if they tried to regulate those, they would really have a hornet's nest to deal with, because there are hundreds upon hundreds of thousands of those kind of signs. They'd have every shopkeeper in the country on their necks. So when you talk about beautification, it is hard to fit the concept of beautification in with a program that will leave all those kind of structures uncontrolled.

G: I suppose the question that will occur to somebody listening to the conversation or reading the transcript would be then the impulse that animated the administration in opening negotiations with the Outdoor Advertising Association. Why do you think they came to you, meaning by you, your organization, in 1964 and 1965?

T: I think the answer to that is very simple. They knew we had the political power to thwart their program, that is, despite the fact

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that we could be an easy target. Now, the individual owner of the sign, an on-premise sign, had numbers that far exceeded the number of the members of our association, but they were not organized and we were organized. I think that accounts for the fact they knew that if we undertook to oppose their program, it would fail or it would have a more difficult time in succeeding. On the other hand, they wanted to specifically exclude those that could really make it very uncomfortable for them. So they just consciously excluded a substantial segment of what the problem was, and that is why I find it so hard to describe this as a beautification program, but that's how it was done.

G: They are using the label just for easy definition at the moment.

Well, then at some point in 1964 or early 1965, you and a representative of the administration, Mr. Bill Moyers, begin discussions about the substance of the legislation. I guess the thing I need to ask you is your personal recollections of how Mr. Moyers impressed you or how he seemed to you as a person in this early stage of what I know would later become a controversy, but as you first encountered him, what was he like?

T: Well, there should be a little introduction to that. It was not Bill Moyers particularly that negotiated for the administration with me. I believe it shifted from Lowell Bridwell speaking for the administration through the Department of Commerce, to the White House when Johnson issued his White House Conference on Natural Beauty, when he brought in all segments of society to Washington for a three or four-day conference to deal with this subject. When it moved into the

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White House, I met frequently with not only Bill Moyers but with Jack Valenti, with Jake Jacobsen, with Secretary [John] Connor, with Lowell Bridwell and so forth. But finally it did narrow down somewhat after we came to a reasonable meeting of the minds; it did narrow down, mechanically speaking, to Bill Moyers principally. But Lowell Bridwell and the Secretary of Commerce, Mr. Connor, and subsequently Alan Boyd, secretary of transportation, were also involved.

G: Well, I don't want to leave them out, but of course the points of ultimate controversy relating to the legislation, Mr. Moyers and yourself have a central role in what the administration proposes and then later on when there is a difference of opinion between yourself and the administration. So I'm just curious as to how those discussions, which are reflected in the letters that we've looked at, what kind of an arrangement or discussion or understanding do you think you and the White House had in April and May of 1965 as the beauty conference of late May approached?

T: You're right. When we got down to the point of what the specific recommendations would be in the bill that they proposed to submit to Congress, my contact was principally with Bill Moyers. I found him to be a very personable, highly intelligent young man, and I believe that he was endeavoring sincerely to follow the President's recommendations, and I'm sure he kept the President informed of the progress of our negotiation. I might also add another name that was very deeply involved in this and that was Larry O'Brien and Vice President Hubert Humphrey.

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But when it got to the point where the conference was in session and I was requested by Mr. Laurance Rockefeller, who was the general chairman, to serve on the panel dealing with outdoor advertising, and we began to shape up what we thought was our agreement, my contact became restricted to Mr. Moyers. Up until the time the amendments to the bill that came out of the committee were separately introduced and offered on the floor of the Senate, I thought Mr. Moyers and I were getting along famously.

G: Before we get to those amendments, because I know that's another part of the story, you were at the White House then in late May, May 24 and 25, working and talking with Mr. Moyers. Were you then shaping the legislation into its final form at that time?

T: Yes. We had agreed on the shape of the legislation. And we agreed to publicize the fact that we supported the legislation. For example, I was asked by Mr. Moyers to write a letter to every member of Congress and the United States Senate expressing my support on that and my association for the legislation that was introduced on behalf of the administration in Senator [Jennings] Randolph's Committee on Public Works in the Senate. I did so. I also testified. That legislation provided for the control of outdoor advertising, except on-premise advertising, along the interstate and the primary [highway] system within six hundred sixty feet of the edge of the right of way, but excluded control in areas zoned for commercial purposes and areas unzoned but which were actually used for business purposes. We came

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to an agreement on that. The rural sign people were not happy with that bill.

G: I gathered from the materials in the Johnson Library that you sometimes had difficulty selling or persuading your colleagues in the industry that the arrangement that you'd arrived at was in their interest or was what should be done.

T: That's right. But you're speaking of some of our members--

G: Yes.

T: --who were principally in rural advertising business, those in states like Iowa and Oklahoma and places like that, who had a large number of their structures in unzoned areas that were not used for business purposes. They naturally didn't want to have to take their signs down.

There was one item that was not in the administration's bill which we, the Outdoor Advertising Association, had stated that we reserved the right to try to have taken care of despite the fact that we agreed to the bill as introduced. We took the position that we would insist and retain the right in the Congress to have the administration's bill amended to provide for compensation for structures that were lawfully erected and in existence that would have to come down because of the legislation, not only our members' structures but anybody's structure. In that respect we were working for not only the members of our association but anybody who had lawfully erected a sign that was required to be removed within a certain period of time under the legislation proposed by the administration.

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G: This is a point of continuing controversy within this whole question of billboard control, is it not, because the advocates of billboard control argue that the police power of the states is an appropriate method and the industry maintains that compensation is the appropriate method. So that there is an issue that operates here, and so that when you say that you are reserving the right, it was a large right in terms of the industry you represented.

T: That's right. Now, that's called the amortization versus compensation principle. That's correct. The administration did not agree and it would not go along with the provision for compensation. We agreed on every other provision in the administration's bill, but took the position that because the administration's bill did not include a provision for compensation, we were going to retain the right to try to obtain it, and we did.

Before we get to that, I would like to direct attention to the fact that during this White House Conference on Natural Beauty there was a roadside control panel of which I was a member. I was asked to serve and I did. "The roadside control panel's recommendation to President Johnson was to amend the federal law, to provide that the grant of primary and interstate funds be conditioned with the requirement that the erection and maintenance of all outdoor advertising signs, displays and devices in all areas within a thousand feet of the outer edge of pavement of the primary system and interstate system of highways be controlled." I'm reading from the panel report. "A majority of the panelists were of the opinion that no off-premise

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advertising should be permitted in any areas adjacent to the primary system or interstate system. One panelist, Mr. Tocker, is of the view that off-premise advertising should be permitted in commercial, industrial and business areas without regard to their being zoned as such.

"A vote was taken at a panel meeting following the panel session and all panelists present with one exception"--and Tocker was that exception--"voted to recommend that no off-premise advertising be permitted in any areas adjacent to the primary system or interstate system. Senator Neuberger"--that's Maurine Neuberger--"and Mr. Bridwell were unable to be present at this meeting. Senator Neuberger has requested that the report reflect that she would have voted to exclude off-premise advertising in areas adjacent to the primary system and the interstate system except those zoned for commercial and industrial uses. Mr. Bridwell has asked that the report show that he would have voted to recommend that off-premise advertising be permitted in areas zoned for commercial or industrial uses and in areas where the land was in fact commercial or industrial as defined by appropriate regulations."

G: Sticking with the administration?

T: That's right. Now, this is something that not many people know and I want it to reflect on the record. At the very time that this panel [met], which had been convened and reported by President Johnson and his agents to make recommendations, the agreement between ourselves and the administration had already been reached, and Mr. Bridwell, who was the government's representative at this time, knew it, because you

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see the reservation he made in his recommendation. And obviously Senator Neuberger knew what it was, too. But the other panelists were astounded when they heard the President advise the gathering at the conclusion of the conference what he was going to recommend by way of legislation on outdoor advertising. And what he was going to recommend is control except in commercial areas, which reflected our agreement.

G: And you heard him say that? You were there when he made that announcement?

T: I was sitting in Bill Moyers' office looking out the window where President Johnson was speaking on a platform erected in the White House grounds to this whole gathering. And I didn't hear him, I couldn't read his lips, but Bill Moyers told me that was what he was saying.

G: That's what the transcript of the discussion--

Let me check and see if we are running out of tape here, so we can change if necessary.

End of Tape 1 of 1 and Interview I

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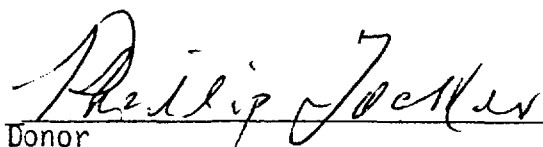
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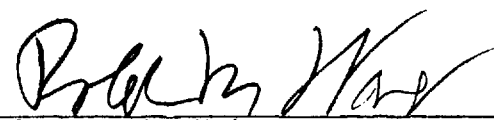
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