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letter	Walter Jenkins to Eliot Janeway with attachments <i>(partially opened 8/1/77)</i>	7/31/59	C

FILE LOCATION

Files of Dorothy Terfeto
1848 Campaign

~~[1948 Primary Election Controversy 1951-1967]~~

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Washington, D. C.

CHECK	CHARGE TO THE ACCOUNT OF	DATE	TIME FILED
	govt rate -- official business	June 5, 1952	
TO Bob Johnson Houston Post Houston, Texas Retel am preparing data and will forward it to you promptly. Walter Jenkins, Assistant to Lyndon B. Johnson USS straight message			

CLASS OF SERVICE

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WESTERN UNION

1201

SYMBOLS

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W. P. MARSHALL, PRESIDENT

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1952 JUN 2 PM 7 41

D.HSN160 RD=WUX HOUSTON TEX 2 452P=

SENATOR LYNDON B JOHNSON=

SENATE OFFICE BLDG WASHDC=

PLEASE SEND FIGURES OF JOHNSON VOTES DISREGARDED IN OFFICIAL
COUNT 1948 SECOND PRIMARY=

BOB JOHNSON THE HOUSTON POST=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

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June 5, 1952

MEMORANDUM

Coke did not bring an election contest in 1948 because he well knew that if he went into the only judicial forum which could have properly given him a hearing, Johnson's lead would have been increased by at least several hundred votes and more likely by several thousand. There are at least four instances where an election contest would have increased Johnson's lead by specific amounts totalling 584 votes, nearly three times the amount of votes which were questioned in Jim Wells County. They are as follows:

<u>County</u>	<u>Facts</u>	<u>Amount</u>
Brown	An election contest in the County Judge's race resulted in the court holding that there were some 1800 <u>illegal</u> ballots. Among these ballots were 1102 cast for Stevenson and 634 for Johnson. This gave Johnson a net gain of	468
Harris	48 absentee ballots were allegedly mailed to the wrong precinct by a Stevenson judge. They were held there rather than forwarded to the proper precinct to be counted. 47 of these votes were for Johnson; 1 vote for Stevenson. Had Stevenson permitted a statewide election contest, the counting of these legal ballots would have been required, thus giving Johnson a net increase of	46
Dallas	In this county 186 votes <u>acknowledged to be illegal</u> were counted in precinct 131. The votes were not even reported until several days after the final date for certifying returns. 113 of these votes were for Stevenson and 73 were for Johnson. These votes could not have been legally counted had a statewide contest been filed, thus giving Johnson a net gain of	40

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<u>County</u>	<u>Facts</u>	<u>Amount</u>
Jack	In this county the official vote was 894 for Johnson and 879 for Stevenson. Through an error, which all sides admitted, this vote was recorded by the State Democratic Executive Committee as 894 for Stevenson and 879 for Johnson. Protest was filed with the Executive Committee, but withdrawn when the final count showed Johnson in the lead. This was purely a clerical error and would certainly have been corrected in a statewide recount, thus giving Johnson a net gain of	30
Total		584

There are many other instances throughout the State where a statewide recount would have increased Johnson's lead. Exact figures in the other instances would have had to be determined by an investigation, and Johnson repeatedly requested that voting records be preserved and repeatedly challenged Coke to go into the State court and seek a fair investigation and decision and have all boxes in all counties recounted. Under the law, Johnson, as the winner, was not privileged to bring such a case into the courts.

Some of the counties where Johnson's lead would have undoubtedly been increased are as follows:

1. Galveston - Thirteen individuals were indicted after the 1948 election for violations of election laws. A study of the Grand Jury indictments indicate that there was widespread fraudulent voting in Galveston County, including tombstone votes and votes by prostitutes who had left the city. Most estimates were that if only legal ballots had been counted, some 2,000 votes would have been thrown out. This was a Stevenson stronghold and the people in charge of the election machinery were friendly to him. A proper counting of the votes in this county would have increased Johnson's statewide lead by a very substantial margin.

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2. Dallas - In addition to the 40 votes listed above, there were 5 separate vote certifications sent in from Dallas County, all increasing Stevenson's lead there. One of these certifications increased Stevenson's lead by exactly 2,000 votes, another by 254 votes, and a third by 58 votes. In this county the Democratic Chairman was Arthur Stevenson who is quoted as having said he was a "blood cousin" of Coke's.

3. Cass - The vote was corrected three times in this county: first, increasing Stevenson's lead by 16, second by another 7, and several days after the election a big recertification increasing his lead by 400 votes. These revisions should have been carefully investigated.

4. Eastland - A revision increased Stevenson's vote by 225 several hours after Johnson headquarters had been notified by a telephone operator that she had overheard a deal made whereby 200 votes were to be switched to Stevenson in that county. Everyone claimed it was "an honest mistake," but it is the first honest mistake in history where people knew it was going to happen several hours ahead of time.

5. The impression has been left that all of the block voting was in two or three counties, but little mention was made of the box behind locked gates of King Ranch where not one single vote went to Johnson, or in the Panhandle county where Johnson received only 12 votes, nor in the River Oaks boxes where Stevenson got 8 out of every 10 votes, nor of a West Texas county where the ratio was 8 to 1 against Johnson.

6. In a statewide election contest the entire vote for Borden County would likely have been thrown out since the voting box was left unsealed in a filling station all night election night. Stevenson lead in this county.

7. At one voting booth in Dallas the lever over Johnson's name was apparently locked all day since one voter found it locked at 9 AM and another had the same experience at noon.

8. Johnson's representatives were refused admittance to the canvassing of the votes in Guadalupe County and were told by the County Chairman that the meeting was "secret." Since opportunity for representation is provided by law, it is very possible the votes of this county, which gave Stevenson a majority of over 600, would have been discarded.

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9. Article 3023 of the Revised Civil Statutes of 1925 provides that no election information of any kind shall be given out until after the polls are closed. This statute was flagrantly violated all day in Harris County, which resulted in afternoon papers all over the state carrying headlines to the effect that Stevenson had taken an early lead. There is no telling how much damage this did to Johnson with the so-called "band wagon" vote.

10. The election officials in Kerr County refused to comply with Article 3125 of the Revised Civil Statutes of Texas on the pretext that they did not have time to do so. Stevenson led in this county by nearly 400 votes.

11. In Tarrant County two election boxes were handled in an illegal manner, one not being returned to the Courthouse until more than 72 hours after the polls closed, and in the case of the other box the official returns were never given to the canvassing committee. The committee merely took the results off the tally sheets. Stevenson led Johnson in both boxes and in a statewide contest, they would have been found to be illegally counted.

12. In Wharton County there were four different revisions of the vote, one of which added 113 votes to Stevenson and another which gave him 25 more. This was another case where Johnson headquarters was tipped off ahead of time that the revision was going to be made.

13. There were many revisions made both prior to and during the canvassing committee meeting in addition to those mentioned above. Some of the larger ones which benefited Stevenson were 30 votes in Bandera County, 29 votes in Camp County, an even 100 votes in Chambers County, 17 votes in Deaf Smith County, 50 votes in Ellis County, 52 votes in Garza County, 42 votes in Hardin County, 117 votes in Harris County, 22 votes in Knox County, 28 votes in San Jacinto County, 30 votes in Scurry County, 23 votes in Tyler County, and 19 votes in Uvalde County.

On some of the items mentioned above, such as the case of Brown, Jack, Harris, Dallas and Galveston Counties, evidence was readily available to bear out the statements made. In fact, the evidence in these counties is still available, but any effort to make a thorough investigation of some of the other instances at this late date would be doomed to failure because the records have been destroyed. Clippings, letters, affidavits, etc., in connection with these matters are available upon request.

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May 21, 1951

AIRMAIL
PERSONAL

Dear Eddie:

Enclosed are the following:

(1) Memorandum summarizing some of the facts regarding the second Democratic Senatorial Primary in 1948.

(2) The report of the sub-committee on Privileges and Elections covering this Primary. This report was unanimously adopted by the Rules Committee on July 27, 1949.

(3) The letter from Peyton Ford, Assistant to the Attorney General, outlining the results of the Justice Department's investigation.

(4) A tear sheet from the Dallas Morning News for Sunday, October 31, 1948, in which my reply to a Dallas News columnist outlines the issues reasonably well.

Since the Dallas News tear sheet and the sub-committee report are my only copies, I wish you would return them. The Justice Department letter and the memorandum can be kept if you desire.

Thanks and with best personal regards.

Sincerely,

Lyndon B. Johnson

Honorable Edwin Weisl,
The Hampshire House,
New York, New York.

Processing Note:

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There are 2 copies of the following two-page document. Only one copy has been scanned.

Robert Mar

Digitization Technician

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MEMORANDUM

The following are some of the pertinent facts regarding the 1948 primary election at which Lyndon B. Johnson was nominated as the Democratic Candidate for the United States Senate:

(1) The Texas Election Bureau is a private organization of certain newspapers operated by the Dallas News. Its announced purpose is to collect election returns and supply them to the member newspapers.

In the 1941 Senate race, when 2500 votes were reported "out" by the Texas Election Bureau, Johnson lead by 5,000 votes. The Dallas News and the Texas Election Bureau said on Monday following the election that only a miracle could defeat Johnson. That miracle occurred, however. Counties that had been giving a large majority of their votes to Candidate Dies started giving in late returns practically all the votes to Candidate O'Daniel. The result was that by the middle of the week, Johnson trailed by 1311 votes, instead of leading by 5,000 with only 2500 votes left to count.

Many articles appeared in Texas newspapers saying that as soon as Lieutenant Governor Stevenson found out how close the race was and how many votes were needed, his friends went out and got those votes one way or another.

In 1948 many of the Johnson supporters, remembering what had happened in 1941, refused to report their returns to the Dallas News and instead reported them directly to the State Democratic Executive Committee in accordance with the law. Thus, the returns reported by the Dallas News were not in many cases the same as those reported to the State Democratic Executive Committee. There were charges made on both sides, when the reports were canvassed by the Election Committee, that the fact that they did not always coincide with the Dallas News reports indicated errors had been made either inadvertently or advertently.

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The votes in some of the Stevenson Counties were revised as many as 5 times, particularly in the case of Dallas County where Stevenson's cousin was County Chairman. In Galveston County the Johnson people alleged and the Grand Jury subsequently indicted a number of people for voting "tombstones." All such charges throughout the state were heard by the County Democratic Executive Committees and in each instance the position of Johnson was sustained. The charges were again heard by the State Executive Committee, by the State Convention, by a District Judge presiding in the counties affected, by the United States Circuit Court of Appeals, by the Supreme Court of the United States, and by a committee of the United States Senate originally headed by Senator Jenner and later by Senator Meyers with Senator Knowland being the minority member. Each of these 6 tribunals concluded that Stevenson's position was without merit, although unquestionably there are pro-Stevenson people who thought (and probably may still think) he should have come to the Senate, just as there were Johnson people who thought Johnson should have come to the Senate 7 years earlier.

(2) In the General Election for Senator in November 1948 Johnson received a majority of over 420,000 votes. At no time did the defeated candidate in this election or anyone else advance any charges with respect to its conduct. In public speeches Stevenson supported the Republican nominee.

(3) Under Texas laws party nomination contests can either be heard by the State Executive Committee and/or by the State District Courts. The Stevenson case was heard by the State Executive Committee and decided in favor of Johnson. No effort was made to have the case considered by the State District Court as provided by law. Instead of filing a contest in the State Courts, Stevenson sought an injunction from a Federal District Court and as a result of Stevenson's failure to contest the Primary under State law, no re-count of the votes was ever possible.

Mr. President,

Marvin called saying "In the 1948 election, the Senate had hearings reference whether to seat Senator Johnson. Could I have a copy of those hearings. "

Do you want the attached given him?
Anything more? We do not have Committee Hearings.

mjdr/mf
3-23-67
4:50

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CONCLUSIONS

After a study and consideration of the above matters the Subcommittee concludes:

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the victor.
2. No evidence has been disclosed which would support Stevenson's allegations.
3. That Lyndon B. Johnson was duly elected and seated as United States Senator from the State of Texas.

Therefore your Subcommittee on Privileges and Elections recommends the adoption of the following resolution:

"RESOLVED, That Lyndon B. Johnson is hereby declared to be duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on the 3rd day of January 1949, and is entitled to be seated as such."

Respectfully submitted,

Francis J. Myers, Chairman

Guy M. Gillette

William F. Knowland

*to
Jennita
Roberts*

COPY

DEPARTMENT OF JUSTICE
Office of the Assistant to the Attorney General
Washington

October 3, 1949

Honorable Lyndon B. Johnson
United States Senate
Washington, D. C.

My dear Senator Johnson:

This is with reference to your recent telephonic inquiry as to whether the Department has completed consideration of the material obtained in its investigation of the primary run-off election held August 28, 1948, for the Democratic Senatorial nomination in the State of Texas. The investigation was made for the purpose of determining whether in connection therewith the civil rights of any person were violated. You also inquired whether the investigation developed any evidence indicating that any such rights were violated.

All of the complaints received in connection with this matter have been investigated and all information obtained carefully considered. Although I am not at liberty to inform you as to the nature of the material obtained by this Department, I can assure you that when any violations of civil rights are ascertained, prompt and vigorous prosecution follows. Insofar as the instant matter is concerned, no such prosecutions have been justified.

I can advise you, however, that the Department has no evidence which would tend to indicate that you had any knowledge of, or were in any way connected with, any of the matters which were the subject of the complaints to the Department.

Yours sincerely,

/s/ Peyton Ford

Peyton Ford
The Assistant to the Attorney General

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United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION

September 3, 1949

Honorable Lyndon B. Johnson,
United States Senate,
Washington, D. C.

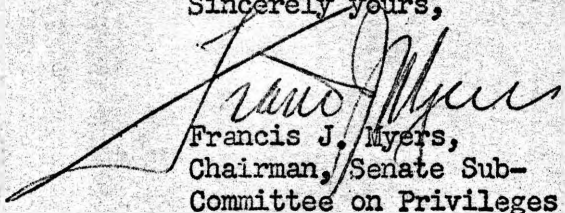
SEP 10 A.M.

Dear Senator Johnson:

I am enclosing herewith for your information and files a copy of a report of the Senate Subcommittee on Privileges and Elections to the Committee on Rules and Administration regarding charges with respect to the conduct of the August 28, 1948 "run-off" primary election for the Democratic nomination for United States Senator from Texas, made by Coke R. Stevenson, the defeated candidate in that Primary. This report, which, you will note, concludes that you were duly elected United States Senator from the State of Texas, has been unanimously adopted by the Committee on Rules and Administration.

In connection with the preparation of this report the Subcommittee's staff made an investigation of the charges and a careful study of all information and data which conceivably could be of significance in considering such charges. On the basis of that investigation and study the Subcommittee unanimously concluded that no basis whatsoever existed for contesting your election. On the contrary, only minor irregularities, common to every election, which would not possibly vitiate a state-wide primary and subsequent general election, were discovered. All of the evidence supports the conclusion that you had no knowledge of or were in any way connected or identified with, directly or indirectly, any of the matters with respect to which charges were made to the Subcommittee.

Sincerely yours,


Francis J. Myers,
Chairman, Senate Sub-
Committee on Privileges
and Elections

fjm/esk

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES
AND ELECTIONS, TO THE COMMITTEE ON RULES
AND ADMINISTRATION, RE TEXAS SECOND PRIMARY

Your Subcommittee on Privileges and Elections has the following matters before it with respect to the second or so-called "run-off" Democratic primary held August 28, 1948, for the selection of the Democratic nominee for a seat in the United States Senate representing the State of Texas:

1. A communication filed under date of October 18, 1948 by Honorable Coke R. Stevenson, the defeated candidate for the Democratic nomination for United States Senator from Texas in the "run-off" primary alleging election frauds and irregularities in certain counties in Texas.

2. A communication filed under date of October 25, 1948 by Honorable Lyndon B. Johnson, the successful candidate for the Democratic nomination for United States Senator from Texas in the "run-off" primary, alleging election frauds and irregularities in numerous counties throughout Texas.

3. A petition was filed on January 5, 1949 by a Texas "Citizens' Committee"^{1/} requesting that no Democratic nominee for United States Senator [from Texas] be seated.

Your Subcommittee has had these matters under consideration and now respectfully reports as follows:

The Junior Senator from Texas, Honorable Lyndon B. Johnson ("Johnson") was elected a Senator for a full six year term in the November 1948 General Election, receiving 809,420 votes to his opponent's 389,190 votes. When the 81st Congress convened, Johnson presented his certificate of election from the State of Texas, took the oath of office and was thereupon seated.

^{1/} The "Citizens' Committee" called itself the "Citizens' Committee Against Political Fraud", P. O. Box 1271 - State Headquarters, San Antonio 6, Texas.

1

No charges with respect to the conduct of the General Election have been made either to the Senate or directly to the Senate Subcommittee on Privileges and Elections ("Sub-Committee").^{2/} There is, therefore, no contest pending before the Senate with respect to the General Election in which Johnson was the victor.

NATURE OF ALLEGATIONS

The petitions of the "Citizens' Committee" in substance charged that at the time of the run-off primary, and as a consequence of the manner in which it was conducted, the Republican form of Government guaranteed to the State of Texas by Article IV, Section 4, of the Constitution of the United States, was abridged and nullified. It was also charged, in effect, that an unnamed candidate or candidates engaged in "insurrection or rebellion against the (United States and gave) aid or comfort to the enemies thereof...." These charges are entirely unsupported and need not be considered further.

Under date of October 18, 1948, Stevenson forwarded a communication to the Subcommittee in which he charged generally that various election frauds and other irregularities had occurred in certain counties in Texas. Stevenson requested the Committee to investigate these charges.

Under date of October 25, 1948 Johnson, the successful candidate for the Democratic nomination in the run-off primary, filed a communication with the Subcommittee in which he charged generally that various election frauds and irregularities had taken place in numerous counties throughout Texas. Johnson requested that all the ballots cast in the run-off primary in all the counties of Texas be impounded by the Subcommittee so that in the event a complete recount of said ballots was deemed necessary and ordered, they would be available for that purpose. Johnson's charges were not investigated and his request was not acceded to.

CONDUCT OF THE PRIMARY IN TEXAS

Inasmuch as no charges have been made with respect to the

^{2/}

Subcommittee of the Senate Committee on Rules and Administration.

conduct of the General Election but only with respect to the run-off primary, it is desirable briefly to describe the manner in which the laws of Texas require party primaries to be conducted and to indicate what actually transpired thereunder.

The laws of Texas governing party primary elections provide that the several County Executive Committees of a political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and shall certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. This procedure was fully adhered to in the Primary Election.

On September 13, 1948 in Fort Worth, Texas, Stevenson appeared before the State Executive Committee and presented his charges of fraud and irregularities. The Committee heard the charges, determined the same in Johnson's favor and, pursuant to its statutory function, certified to the State Convention that Johnson had received a majority of the votes in the primary election.

The State Convention of the Democratic Party convened on September 14, 1948, the day following the meeting of the Executive Committee, received the Committee's report, and immediately referred it to the Convention's Committee on Party Nominations. The Committee on Party Nominations recommended to the Convention that Johnson's name be certified as the Democratic nominee for United States Senator. The Convention adopted the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name as such nominee to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a

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District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capitol. In such a suit the court has authority to impound and open ballot boxes, make a recanvass, reject all illegal votes, and ascertain and declare the result.

Stevenson did not pursue the remedy provided by State law.^{3/} Instead, he filed a suit in equity in a United States District Court in Fort Worth, Texas, seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election.

LITIGATION OVER NOMINATION

The above referred to suit by Stevenson was commenced on September 15, 1948 in the District Court of the United States for the Northern District of Texas (Fort Worth Division) against Johnson and Tom L. Tyson and Vann M. Kennedy.^{4/} Stevenson charged in substance that numerous election irregularities and illegalities had occurred and as a result thereof he was deprived of the Democratic nomination. He asked the Court for the following:

1. An injunction to prevent officers of the Democratic Party in Texas from certifying the name of Johnson as Democratic nominee for United States Senator as a result of the primary election.

2. An injunction to prevent Johnson's name as such nominee from being placed on the official ballot for the general election to be held on November 2, 1948.

^{3/} As the winning candidate Johnson was unable to avail himself of this remedy, inasmuch as he had no standing to contest his own election.

^{4/} Tom L. Tyson was Chairman of the Democratic State Convention held at Fort Worth, Texas, on September 14, 1948, and Vann M. Kennedy was Secretary of said Convention.

3. Cancellation of the certificate if already made.

4. A declaration that Stevenson was the true nominee.

Immediately following the presentation of the complaint, Judge Davidson forthwith endorsed thereon a temporary restraining order.

On September 17, 1948, Stevenson amended his original complaint and added as defendants Paul H. Brown, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery.^{5/} Upon the filing of the amended complaint an amended enlarged temporary restraining order was also issued. The restraining order was made returnable on September 21, 1948 at Fort Worth, Texas.

Thereafter, Johnson filed a motion to dismiss the complaint for want of jurisdiction and, on September 21, 1948, a hearing on the application for a temporary injunction took place. On September 22, 1948, the temporary injunction was continued in effect.

On September 24, 1948, Johnson lodged an appeal before Honorable Joseph C. Hutcheson, Jr., Circuit Judge of the United States Court of Appeals, 5th Circuit, seeking an order "setting aside and staying the temporary injunction order issued by the Court below, pending the determination of this appeal." Judge Hutcheson denied the motion "without prejudice to the right to present the motion to the (full) Court."

On September 29, 1948, Johnson filed a motion for a stay of the temporary restraining order theretofore issued, which motion was addressed to the Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States and Supervising Justice for the 5th Circuit. On the same day Justice Black issued an order providing "that the temporary injunction issued by the United States District Court for the Northern District of Texas (Fort Worth Division) on September 23, 1948, in the case entitled Coke R. Stevenson v. Lyndon B. Johnson, et al., Civil Number

^{5/}

Brown was Secretary of State of the State of Texas. Kraft, Faulk and Montgomery were County Judge, County Clerk and Sheriff, respectively, of Tarrant County, Texas. These last three individuals were added as defendants, inasmuch as they constituted the members of the Election Board of Tarrant County and were alleged to be properly representative of all the Election Board Members of the 253 other counties of the State.

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1640, be and the same hereby is stayed and that the said temporary injunction is and shall be of no force and effect until further order of the Supreme Court." Thereafter, on October 2, 1948, Coke R. Stevenson filed a motion with the Supreme Court of the United States requesting that the order of Mr. Justice Black of September 29, 1948, be vacated. On October 5, 1948, the Supreme Court issued an order denying the above mentioned motion and dismissed the proceedings.

Meanwhile, the Court of Appeals for the 5th Circuit proceeded with a consideration on the merits of Johnson's appeal from the District Court's decision and, on October 7, 1948, in a unanimous decision, held that the District Court was without jurisdiction to consider the cause. It stated in part that:

"We are of opinion... that there is here no case for interference by a Federal court of equity in a Senatorial primary; that the injunction ought not to have been granted; and that the motion to dismiss ought now to be sustained

"The order of injunction is set aside and the cause is remanded with direction to dismiss the petition."^{6/}

Subsequently, Stevenson filed a petition for certiorari with the Supreme Court of the United States. On January 31, 1949, such petition was denied.

ACTION BY SUB-COMMITTEE

Following the receipt of Stevenson's charges the Subcommittee sent investigators to Texas. No evidence has been disclosed which would support Stevenson's allegations.

No action has been taken on Johnson's allegations and, in view of the foregoing, no action is required.

^{6/} 170 Fed. 2nd, 108, 111.

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If we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it is apparent that the defeated candidate himself, by not filing a contest in the State Courts of Texas and thus preserving the ballots cast in the primary, has made impossible the proper conduct of such an inquiry in the instant case. If, unknown to the Subcommittee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson. Therefore, in order for the Subcommittee to arrive at its own determination as to the results of the primary election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Subcommittee had impounded all ballot boxes and returns, as requested by Johnson. It might also have been accomplished by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson, being the officially certified party nominee, could not under Texas law invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. The Subcommittee is informed that all or virtually all of the ballots in the 254 counties of Texas have now been destroyed pursuant to the provisions of State law and a recount hence impossible.

SANITIZED

By CWC, NARS, Date 8/1/77

July 31, 1959

Dear Eliot:

I got the word about "violent letter." I am not surprised about any letters from any being "violent." are all pretty much that way, as well as senile, as himself told us after visiting with them. I was shocked that he would quote people he knew to be irresponsible and senile.

Davidson says Stevenson was substantially ahead at midnight on Sunday night following the election on Saturday. Attached is a photostat from the Dallas Morning News of Monday, August 30, 1948, from which you will see that Senator Johnson was almost 700 votes ahead as of the close of the election bureau at 9:00 P. M. Sunday evening. Also attached is a photostat from the Dallas News of Tuesday, August 31, 1948, which shows that it was Stevenson who regained the lead on Monday--not Johnson as reported in the article. This article contains a chart showing how Johnson took the lead on Sunday and Stevenson regained it Monday at noon.

Governor Stevenson could have had a real investigation and recount of the ballots if he had brought an election contest in a State Court which Senator Johnson repeatedly urged him to do. The reason he did not do it was that he knew an accurate recount of the votes would have increased Johnson's majority by several thousand.

The matter was considered at a number of levels and every group that considered it, with the exception of a District Judge, found for Senator Johnson.

The State Democratic Executive Committee, after canvassing the returns, recommended that Johnson's certification as Democratic Nominee.

The Democratic State Convention unanimously found Johnson the duly elected nominee for United States Senator.

The Fifth U. S. Circuit Court of Appeals in a unanimous decision ordered Johnson's name reinstated on the ballot.

The United States Supreme Court in a unanimous decision held in his favor.

(2)

The U. S. Senate Committee on Rules and Administration found Johnson duly elected and "no evidence to support Stevenson's allegations." The Republican Member of the Subcommittee was Senator William F. Knowland.

Dear Sir: The Department of Justice, after a thorough investigation by the FBI, found no violations of Civil Rights and no evidence that Johnson was in any way connected with the complaints made to the Department.

And, after all the newspaper propaganda in connection with election, the court fight, the convention fight, etc., the people of Texas elected Johnson to the Senate in the General election by the largest majority received by any candidate for the U. S. Senate.

I am attaching photostatic copies of documents bearing out the above. I think you will be interested in the memorandum which shows that an election contest in Texas would have increased Johnson's majority by many times the number of votes questioned in Jim Wells County. You will also be interested in the Dallas Times Herald clipping which shows that in all previous elections Governor Stevenson had received the so-called "bloc votes" from the very counties he raised questions about and with majorities, greater than Johnson's in 1948. Another clipping you should read is the State Observer article dated October 25, 1948. It tells the story in one place about as well as I have seen it.

Another telling point--and this is one that has never been made before--is that the "revisions" throughout the State helped Stevenson--not Johnson.

I am enclosing a list of all the revisions. If none of these changes had been made, Johnson's vote would have been 302 votes greater and Stevenson's would have been 204 votes less. In other words, if no "corrections"--and these are what Stevenson objected to in two or three counties--had been allowed, Johnson's margin of victory would have been 506 votes greater.

With best regards,

Sincerely,

Walter Jenkins

Mr. Eliot Janeway
Suite 5901 - Empire State Building
New York 1, New York

WJ:ms

United States Senate

MEMORANDUM

Walter

I think the insertion ought to be made.
The letter ought to be from Walter
and I will go over the documents.

In the meantime see if you don't want
to rewrite this to conform with
your signature and single space it so
can get it on two pages

LBJ

United States Senate

MEMORANDUM

July 31, 1959

Senator:

I do not intend that all of these should be sent by any means, but I do believe these attachments in chronological order tell the story pretty well. We can decide which should go and which should not. I think the point in my insertion on the last page is a telling one which I do not believe anyone has thought of before. Perhaps I am wrong but I do not remember the point having been made.

Walter

DRAFT

Dear Eliot:

I got the word about ~~RESTRICTED~~ "violent letter;" ~~but~~ I
am not surprised about any letter from any ~~RESTRICTED~~ being
"violent". ~~They~~ ^{They} are all pretty much that way, as well as
senile, as ~~RESTRICTED~~ himself told ~~me~~ ^{us} after visiting with
them.

I was shocked that he would quote people he knew to be
irresponsible and senile.

9 Davidson says ~~that~~ Stevenson was substantially ahead at
midnight on Sunday night following the election on Saturday.
Attached is a photostat from the Dallas ~~M~~orning News of
Monday ~~morning~~, August 30, 1948, from which you will see
~~that~~ ^{Sen. Johnson} ~~he~~ was almost 700 votes ahead as of the close of the
election bureau at 9 p.m. Sunday evening. ~~There is~~ ^A also
attached ^{is} a photostat from the Dallas ~~Morning~~ News of Tuesday,
August 31, 1948, ^{it shows who} which shows that Stevenson ^{on Monday} regained the lead -- not
Johnson as reported in the article. This article ^{contains a} has a chart
showing how ^{Johnson} ~~he~~ took the lead on Sunday and Stevenson regained
it ~~on~~ Monday at noon.

Q Governor Stevenson could have had a real investigation and recount of the ballots if he had ~~gone into~~ a State Court and brought an election contest, which ^{Sen. Johnson} repeatedly urged him to do. ~~This he did not choose to do and~~ the reason he did not do it was that he knew ~~that~~ an accurate recount of the votes would have increased ^{Johnson's} majority by several thousand.

Q The matter was considered at a number of levels and every group that considered it, with the exception of a District Judge, ~~who signed a restraining order at six o'clock in the morning, found for~~ ^{Sen. Johnson} ~~me~~.

Q The State Democratic Executive Committee, after ^{Counting} ~~checking~~ the returns, recommended that ^{Johnson's} ~~I~~ be certified as ~~the~~ Democratic Nominee.

Q The Democratic State Convention unanimously found ^{Johnson} ~~me to be~~ the duly ~~qualified and~~ elected nominee for United States Senator.

Q U.S. The Fifth/Circuit Court of Appeals, in a unanimous decision, ordered ^{Johnson's} ~~my~~ name reinstated on the ballot.

Q The United States Supreme Court, in a unanimous decision, held in ^{his} ~~my~~ favor.

9 ^{US Senate}
The Committee on Rules and Administration ~~of the United~~
^{Johnson}
~~States Senate~~ found ~~that I was~~ duly elected and ~~that there was~~
"no evidence to support Stevenson's allegations." The
Republican Member of the Subcommittee ~~making the recom-~~
~~mendation~~ was Senator William F. Knowland.

9 The Department of Justice, after a thorough investigation by
the FBI, found ~~that there were~~ no violations of Civil Rights
~~and that there was~~ no evidence that ^{Johnson} ~~I~~ was in any way connected
with the complaints made to the Department.

9 And, after all ~~of~~ the newspaper propaganda in connection with
election, the court fight, the convention fight, etc., the people
of Texas elected ^{Johnson} ~~me~~ to the Senate in the General election by the
largest majority received by any candidate for the ^{US} Senate, ~~in the~~
¹
~~United States in that year.~~

9 I am attaching photostatic copies of ~~a number of~~ documents bearing
out the above ~~information~~. ~~In addition~~, I think you will be ~~particu-~~
~~larly~~ interested in the memorandum dated ~~June 5, 1952~~ which
shows that an ~~election~~ contest in Texas would have increased
^{Johnson's}
~~my~~ majority by many times the number of votes ~~that were~~ questioned
in Jim Wells County. ~~I think~~ you will also be interested in the

~~To be inserted, if agreeable:~~

X # ^{*telling*} Another interesting point -- and this is one that has never been made before ~~insofar as I know~~ -- is that the "revisions" throughout the State helped Stevenson -- not Johnson.

I am enclosing a list of all the revisions, ~~made throughout~~ the State. If none of these changes had been made, ^{*Johnson's*} ~~total~~ vote would have been 302 votes greater and Stevenson's ~~total vote~~ would have been 204 votes less. In other words, if no "corrections" -- and these are what ^{*Stevenson*} ~~my opponent~~ objected to in two or three ~~specified~~ counties -- had been allowed, ^{*Johnson's*} ~~my~~ margin of victory would have been 506 votes greater.

clipping ~~from the Dallas Times Herald, September 5, 1948,~~

which shows that in all previous elections Governor Stevenson

had received the so-called "block votes" from the very

counties he raised questions about and ~~with~~ ^{with} majorities,

greater than ~~received~~ ^{Johnson} in the 1948 election. Another clipping

~~of great interest to you, I believe,~~ ^{you should read} is the ~~four~~ ⁵ page article

from the State Observer dated October 25, 1948. It tells

the whole story in one place about as well as I have seen it,

told.

X Incent

With best regards.

Sincerely

THE HOUSTON POST

SATURDAY, JUNE 7, 1952

Disputed Votes Unnecessary To Johnson's 1948 Victory

The effort of certain newspapers to blow up a letter written by a convicted killer and suicide into an implication that Sen Lyndon B. Johnson holds his position because of a fraud is about as unworthy a use of freedom of the press as the state has seen in a long time.

The stories about the Smithwick letter to former Gov Coke Stevenson, defeated by Sen Johnson in the August, 1948, run-off primary election, leave the impression that the former governor would have been the Democratic nominee, if 202 votes in Precinct 13 of Jim Wells County had not been counted for Sen. Johnson. It is charged that the votes were placed in the ballot box after the polls closed, so as to swing the election to Johnson.

In the first place, it has not been shown that the votes were fraudulent, but even if they were, throwing them out would not have upset the victory by Sen Johnson under a fair recount of all the votes cast in the election. The news stories dealing with the Smithwick letter fail to state that there were a number of irregularities in that election, technical and otherwise, which, if they had been straightened out, would have given Johnson a greater margin of victory than the 87 votes of the official record.

Let us see what a fair recount—which the former governor did not bring an election contest to obtain—would have disclosed.

It is unnecessary to go farther down the list of counties than Brown to put

Johnson into the lead by more than double the 202 disputed votes in Jim Wells County.

In Brown County an election contest in the county judge's race resulted in a court ruling that there were about 1,800 illegal ballots. Among these were 1,102 cast for Stevenson and 634 cast for Johnson. Had they not been counted in the total which produced Johnson's 87-vote victory, it would have meant a net gain of 468 for him.

In Jack County a clerical transposition of figures gave Stevenson a 30-vote lead that should have been Johnson's. A Johnson protest with the State Democratic Executive committee was withdrawn when the count of undisputed votes gave him more than enough to be declared the nominee. And so it went for a number of other counties, including Harris County.

It should not be forgotten that Johnson was elected senator in a general election in which he opposed a strong Republican candidate who had the endorsement of former Gov Stevenson. The issue raised then by Stevenson, and now by newspaper stories about a killer who was to take his own life and who labored under the idea that he was the owner of a substantial fortune, was widely publicized in the campaign. The people decided that Johnson had won the primary election and that he was entitled to the Senate seat. They decided it by a substantial margin.

The newspapers which have sought to find a skeleton in an empty closet owe their readers an apology.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
FOURTH JUDICIAL DIVISION

JOHN R. SIVINSON,

PLAINTIFF,

VS.

CIVIL NO. 1620

TOM L. TYSON, VERN M. KENNEDY,
LYNDON B. JOHNSON, PAUL H. BROWN,
CLARENCE O. KRAFT, MELVIN FALK,
AND SULLY MCGHEE,
DEFENDANTS.

APPEARANCE

I, J. Edward Johnson, being duly sworn, depose and say:

I am a resident of Brownwood in Brown County, Texas, a practicing attorney and a member of the State Bar of Texas and the Brownwood Bar. I appeared as attorney of record for the Defendant in the case of A. E. Wilson vs. F. A. Lunderkilk in the District Court of Brown County, Texas, in Cause No. 11,130 on the Docket of said Court, the same being a statutory contest of election between candidates for nomination for the office of County Judge of Brown County, Texas, at the Second Democratic Primary Election held in said county on the 23rd day of August, 1948.

After a hearing before the Honorable E. F. Cross, Judge of the 32nd Judicial District of Texas, presiding at said trial, the said Court entered its order and judgment therein, a certified copy of which is hereto attached and marked Exhibit "A". As appears from said judgment the Court found and adjudicated that some of the official ballots cast in voting precinct #27, known as Brooksmith; that some of the official ballots cast in voting precinct #1, also known as Ward 1 of the City of Brownwood; that some of the official

ballots cast in voting precinct #17, known as Chapel Hill; that none of the official ballots cast in voting precinct #8, known as Bangs; that none of the official ballots cast in voting precinct #19, known as Woodland Heights; and that none of the official ballots cast in voting precinct #30, known as Winchell; were legal ballots, but that all ballots cast in all of said boxes at said Primary Election were illegal ballots and could not be counted.

As shown by certificate of Thomas H. Taylor, Chairman of the Brown County Democratic Executive Committee, hereto attached and marked Exhibit "B", said Executive Committee at its meeting on Wednesday afternoon, September 1, 1948, canvassed the returns of said Primary Election held on August 28, 1948 and did certify to the Chairman of the State Democratic Executive Committee the results of said Primary Election in the race for United States Senator from Iowa to be that Lyndon B. Johnson received 2234 votes and Coke R. Stevenson received 3644 votes. In these returns were included the aforesaid six voting boxes in which all ballots were declared to be illegal in the election contest aforesaid and in which Lyndon B. Johnson received a total of 634 votes and Coke R. Stevenson received a total of 1102 votes. It is apparent, therefore, that if the votes, all of which were illegal in said six boxes, were eliminated the legal vote to be counted for each candidate would be 1550 for Lyndon B. Johnson and 2542 for Coke R. Stevenson, and the majority for Coke R. Stevenson in said County would be reduced to the extent of 468 votes. The foregoing tabulation, however, does not take into account 4 absentee ballots legally cast in the Chapel Hill box, of which 3 were for Stevenson and 1 for Johnson.

Although an appeal has been taken from the judgment rendered by the Court in said case, there is no assignment and no contention that the Court was in error in holding that the aforesaid ballots cast in said boxes were all illegal ballots, but the appeal is predicated solely on the fact that

an amended petition raising the question as to the box in Ward 1 was filed
14 days after the certification of the result, and not within the 10 days
prescribed by Statute for the filing of a contest.

KNOWN to and subscribed before me, the undersigned authority, on this _____
day of September, A. D. 1948.

Notary Public in and for Tarrant
County, Texas.

XEROX FROM QUICK COPY