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TOM CLARK ORAL HISTORY, INTERVIEW I

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By Tom C. Clark

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ACCESSION NUMBER 73-15

LYNDON BAINES JOHNSON LIBRARY
ORAL HISTORY COLLECTION

Narrator Tom Clark

Biographical information:

Associate Justice; b. Dallas, Tex., Sept. 23, 1899; ed. Virginia Mil. Inst., 1917-18; A.B., U. of Texas, 1921, LL.B., 1922; LL.D., Bethany Coll., 1945; Admitted to the Texas bar and Tex. Supreme Court, 1922, U.S. Supreme Court, 1932; assoc. Clark and Clark, Dallas, 1922-27; asst. atty. gen. charge antitrust div. Dept. Justice, 1943; asst. atty. gen. charge criminal div., 1943-45; atty. gen. U.S., 1945-49; asso. justice U.S. Supreme Ct., 1949-67; died, June 13, 1977.

Interviewer Joe B. Frantz

Position or relationship to narrator U. T. Oral History Project

Accession Record Number AC 73-15

General topic of interview:

Discusses his long association with Lyndon Johnson and his career on the court.

INTERVIEWEE: TOM CLARK

INTERVIEWER: JOE B. FRANTZ

October 7, 1969

F: This is an interview with the Honorable Tom C. Clark, Supreme Court Justice, in his offices in the Supreme Court Building in Washington, D.C. The interviewer is Joe B. Frantz.

First of all, Mr. Justice, tell us a little bit about yourself--how you came from Texas to the Supreme Court. That's a long trip.

C: Yes, it would take me a long time. I had been practicing in Texas about fifteen years. I started in 1922 when I graduated at the University. Then-Senator Connally suggested that I might come up here. I'd been, well, not overly fortunate, but I'd been above the average from the standpoint of income. He rather thought that perhaps I should contribute something to the country.

So I came up here and went into the Department. It just happened at that time the Court Packing Bill was up. They didn't have many lawyers that had had any trial experience, so when Chief Justice Hughes sent down word to the trial courts to set the Justice Department cases--there happened to be about three thousand cases that had been on the books for some time. So I went from one court to another trying cases. For example, here in the District we had over six hundred. I would take me a little staff of two or three, and we would try cases day-in and day-out. We were fortunate, we lucked out on cases, and sometimes juries would decide in our favor and things of that kind. So I got a little notice from the powers that be.

Then, of course, I had some warm friends--my family did--of Speaker Rayburn. Then I met Mr. Johnson here about 1937, '38--along in there.

F: You hadn't known him back in Texas?

C: Well, casually. I knew him when, I think he was Youth Administrator at the time. He was in Austin. I used to go down to Austin. I had a firm in Dallas, the old firm my father had 'way back in 1881. So I would go to Austin sometimes when the legislature was meeting, quite often, other times not so often. I met Mr. Johnson there as Youth Administrator, and I think I knew him slightly when he was sort of administrative assistant to Kleberg.

F: When did you come on the court?

C: '49.

F: Mr. Truman appointed you?

C: Yes.

F: Had you known Mr. Truman fairly well?

C: Yes. Roosevelt first appointed me in the Department of Justice to a spot that required presidential appointment and that was an Assistant Attorney General in charge of the Anti-Trust Division. That was in '43.

We had in the Anti-Trust Division prior to my appointment a unit known as the War Fraud Unit. Mr. Truman was the chairman of the Senate Defense Committee, and they went into what we called defense contracts to try to--

F: The old Truman Committee?

C: Yes. --to try to protect the country. So whenever they'd have a hearing the senator, as he was then, would send a transcript down to me--I was head of the war frauds--and I would prosecute. Sometimes, of course, it wasn't sufficient to prosecute on. However, I felt like I should touch all the bases, and so I would go back to Mr. Truman and to his counsel, Mr. Fulton, and we would go over things and see if they could develop certain areas or certain lines that might strengthen our position. So I got well acquainted with him--and that was before I was appointed Assistant.

Then after I was appointed Assistant, about six months after, Mr. Biddle, who was the Attorney General, asked me to take over the Criminal Division and bring together all of the criminal functions of the Department. Before that time they were scattered out between various divisions. So we brought them all together, and of course the main function at that particular moment, '43, was frauds. So I continued to supervise the cases.

Then, as a consequence, that threw me with Mr. Truman from time to time. I tried to attend, although I did not participate, in their committee meetings here in Washington. Quite often I might meet up with Mr. Truman in other spots where he was holding a hearing, if I happened to be in town.

So when the 1944 convention came on I was plugging for Mr. Rayburn for Vice-President, and Mr. Truman was for Mr. Rayburn, too. So I went into Chicago hoping that perhaps we could get some steam up for Mr. Rayburn. I tried to get Mr. Rayburn to come up. We found that you almost have to be on the ground to get any support. He had an opponent in Texas, a state senator who was running against him for his spot--he was a congressman as you know--so he would not come. I called him up. In fact, Mr. Truman asked me to call him and ask him to come, and he said he couldn't do it. So I said, "It looks like Mr. Truman is getting up considerable steam, and people are for him. I just heard by the grapevine--I was not close, but I knew Mr. Hannigan at the time, I later became a close friend of the Hannigans--I understand that Mr. Hannigan has a little note from the President placing Mr. Truman's name, along with two others, as the vice presidential possibilities, which give him a considerable, I think, edge."

And he said, "Well, you tell him I'm for him."

Mr. Truman was at the Blackstone, I believe is the name of the hotel, and I told him about it. Of course, Bob Hannigan was strong for Truman, and there was a senator--I think his name was Jackson, I believe, he was from Indiana anyway--and he happened to be the permanent chairman of the convention, and he was for Truman.

So you'll remember that one night when Mr. Wallace was getting up some steam, Mr. Jackson adjourned the convention. That's attributed to many people. Frankly many people think I had something to do with it, but I didn't, and I don't think Bob Hannigan did either. But Bob was a very, very strong supporter, and I think, the initial supporter, and you might say, as we would use a term in law, the procuring cause of Mr. Truman being nominated.

F: He was the national committeeman from Missouri, wasn't he?

C: At the time, he was what we'd call the Commissioner of Internal Revenue here in Washington.

F: Oh, yes.

C: Mr. Roosevelt had appointed him. You remember, he was a--well, we'd call him Collector of Internal Revenue--we have several districts, you know, over the United States--at St. Louis. He had come up with Mr. Truman, I mean by that in politics, although he was across the state from him, as you know.

But when he came here, Bob consolidated his acquaintanceship pretty well, made a lot of new friends, and he soon became the Democratic Chairman. So during this period he was the Democratic Chairman. You remember the one before him--what was his name, he was a theater man up in Pennsylvania, I played poker with him. Mr. Frank Walker.

F: I don't know either.

C: Anyway, Bob had done the work for several years while the other man was chairman.

F: You had quite a reputation on the Court for being an expediter of work. Does the court have a real backlog problem?

C: When I came here we had filings of about 800 a year, and the year I left it was around 3,400. So when you consider--

F: The same number of justices.

C: Yes. Well, you see under our interpretation of the Constitution, the Constitution says there shall be one Supreme Court. We consider that just in the language of what the Constitution says as one and that each justice makes up an integral part of it. In other words, although the Congress sets the number of justices, when it does set them at nine that means that each

of the nine has to take an active part in it. In other words, we can't farm out the work to panels of three, nor could we farm it out to law clerks, for example, as do, they claim, some of the courts.

So we have to pass on every item. For example, say, in 800 items, that means that I would have to, during the sitting months of the year--which would be about eight months out of the year or nine--I would pass on about a hundred things a month. When it's 3,400 or 3,500--they say now last term it was 3,600--say, you sit for nine months a year, which would leave you a three months interval which is just about what they had this year--they adjourned on June 10, I believe it was--that would mean that you were handling 400 cases a month. That's four times as much as when I was here. So that means that every day you have to pass on--well, every week, it would be a hundred a week.

We worked seven days a week, though. The court has no time limitations. We'd sometimes sit down here until 7 or 8 or 9 o'clock at night. I'd come down here practically every Saturday and most Sundays. About five years, when I first came here, we sat on Saturdays. We decided our cases on Saturday. But then we got up enough votes among the golf players to where we switched. We added some hours to the first four days, and then we were able to sit Friday and decide our cases, and that gave us a day off if we got through Friday. If we didn't get through Friday, of course we sat Saturday. I never did play much golf even after that happened. So the court now follows that same procedure.

But I'd say, in answer to your question, that it's not a matter of the number of justices at all, because if we had, for example, twelve--that would be three more. The only thing that would do would be to add the burden of three more voices, and you'd have much more confusion. Some people say there's a lot of confusion--I don't think so--but there would be more confusion than ever, because you'd have three more to deal with when it came to a composite of opinion on the court. So we do have a considerable number of cases but, no, we don't have backlogs.

The reason we don't is because we have what's known as a certiorari system. Before you can have an argument in the court, you have to knock on the door and four justices have to go to the door and let you in. By that I mean to say that your case has to have in the judgment of at least four justices not only that a federal question is involved in it, but a substantial, substantial federal question. Then if you get four votes, then you get an argument in court. Then nine justices vote on it. If you get five out of the nine, then you prevail. So, we usually on account of the certiorari system are able to take care of our docket. For example, although there were, we'll say, 3,500 cases last term, there were about 6-percent of those that went to argument. The balance of them were all disposed of summarily because they didn't muster four votes.

F: Do you think that the court to a great extent influences the Justice and his attitude toward the law? We spend a lot of time in the pre-appointment days and the pre-certification days or confirmation days worrying about Justices' attitudes, whether they're liberal or conservative and so on; and yet so often it seems to me that a Justice does a turnabout from the way you would expect him to stand, once he comes on the court.

- C: I'd say, from a study of the court that I've been carrying on now for thirty years--1940--and from service on the court as an active member of the court for eighteen years, and now two years of what they call retirement, I would say--
- F: Pretty busy retirement, I've noted.
- C: And you take on Brennan even--I love all these folks, particularly the ones I served with--but take Brennan, I used to play golf sometimes with Eisenhower and he told me that Brennan had disappointed him; that Judge Vanderbilt, who was then the Chief Justice of New Jersey and upon whose court Brennan sat, had told him that Brennan was more of a conservative judge, and he found out--
- F: He found out that he was a personal friend with Brennan.
- C: Yes. Now, I think both Brennan and Chief Justice Warren are two of as distinguished judges as we've ever had on the Supreme Court, and I think they'll go down in history as contributing as much as any Justice who ever sat there. I really believe that Warren will be equal to, if not ahead of, Marshall.
- F: I rather share that. You came up here then at a time of the Court Packing fight, and Mr. Johnson was back there running on a down-the-line with Roosevelt theme. Was official Washington aware that one young Texan at least was sticking his neck out?
- C: Yes, they were. I remember--I think it was in that campaign--Mr. Roosevelt went down I believe to Houston, or Galveston, or somewhere.
- F: Galveston.
- C: And he came out for Mr. Johnson, who was then running for I believe, Buchanan's place. I'm not sure.
- F: That's right.
- C: I get these names mixed up sometimes.
- F: It was Buchanan.
- C: And, of course, that was terrific, that the President would take a little neophyte that happened to be up here for several years as an administrative assistant, and then later was Youth Administrator. Most of them thought that he went down there for that purpose, which really, if he did, that was a tremendous, tremendous step for a President to take for a single congressman. He must have had tremendous faith in Mr. Johnson.
- F: And in days when you didn't get around as easily as you do now.

C: No. I saw him in Dallas, I remember he dedicated the statue of Robert E. Lee. Well, I was shocked. I had never seen him before. He went up a little platform that they had built especially, and it seemed like it was agony for him to get along.

F: Did you see much of Congressman Johnson after he came up here?

C: I first met the congressman, I'd say, two or three months after he came here. I got quite busy--I came here in February of '37--and I got quite busy on all these cases I was talking about. Then in October '38 I transferred to the Antitrust Division, and the Congress adopted what they called the Wage-Hour Law. So I got acquainted with Mr. Johnson about that time over again. I had known him before, but I was thrown with him more.

Then my brother Bill, an older brother, had known him well and had supported him in his campaign for Congress, although we of course were not in his district.

F: You never were in a position to participate in any of his campaigns, were you?

C: I claim that I had a part in his senatorial campaign.

F: In both of them? Both the '41 and '48?

C: I think that the President would say that too. No, not in the '41 one. I think that was Pappy O'Daniel. No, I have the distinction of having sent Mr. Johnson a telegram of congratulations from Alaska. I was on a boat trip on what we called the Inland Passage with Mrs. Clark and Ramsey, our son. I had heard on the radio that he was twenty-five hundred and some odd votes ahead, and so in my enthusiasm I assumed his election, and I sent him a telegram or a seagram, or whatever you call them--a cablegram--I think it was from Valdez. It was a little hole in the wall.

F: I know that place.

C: It's where the boat landed. After I got back on the boat--we were at Seward--and I never did know until I got to Seattle that he had been beaten--had been counted out.

F: What did you do in the '48 campaign?

C: Well, Mr. Truman--

F: That was the one against Coke Stevenson and was, of course, a national election year too.

C: Well, my participation in it--as you well know, I was Attorney General and I did not participate in any of the pre-election campaigns or any of the party campaigns--

F: Primaries, yes.

C: The President had a policy which I thought was a wise one and one I followed although he didn't ask me to follow it at all--of course I was for Mr. Johnson. I did of course know all about his, I believe that's the year he had the "landslide" of eighty-seven votes--. And, as I remember, a case was brought--I believe one of our district attorneys, or perhaps he had gone out as district attorney, Mr. Smith, I believe it was, of San Antonio, had presented a petition to Judge Davidson in Dallas with reference to an injunction against the Secretary of State of Texas or something of that kind, and it was brought here. Of course, I knew that they had filed a petition here, that they had asked Justice Black, who was the Justice of the fifth circuit, to pass on it, and I being a student of the Supreme Court, of course I had kept up with it pretty carefully; and being a friend of Mr. Johnson I was naturally interested in it.

F: This was no concern of the Justice Department?

C: No. Of course, we had a lot of complaints. It was under *Smith v. Allright*. That's a lawsuit. Primaries are made part of the integral process of election in states where the primary is a tantamount to, you might say, a general election--like it would be in Texas at that time. So the theory was adopted by the court prior to this time, of course, that any discrepancies--fraud and things of that kind, or miscounts that were conducted in a primary would be tantamount to having been done in a federal election, in a general election. The Jaybird Case out of Texas raises a point on that. So we had quite a few complaints. I remember we carried on an investigation through Houston. I can't remember that district attorney's name right now. He was acting. Later on I brought him here when the Senate had some contest over Mr. Johnson's seating.

But, the part that I played, and I think that although it was after the primary--you'll remember that there was a write-in that year. Mr. Truman was taking a whistlestop, as they call it; back there then we would try to get us a private train, and since then we try to get us a private TV.

F: That was that "give them hell" campaign.

C: Yes. So Sam Rayburn and myself flew down to El Paso and got on the train when Mr. Truman came in from New Mexico, and we rode with him across the state. When we got to San Antonio, Mr. Johnson got on. It might have been before that even. There wasn't any place on the train. So I had a section, and he slept in one of the berths in the section. I remember one morning when we were in Uvalde, Mr. Johnson and Mr. Truman and myself went up--Mr. Garner was a very early riser, as was Mr. Truman, and I'm an early riser myself. So it just happened that when I got up, which was about daylight--it was in the fall, late September or first of October, school had already started--I went in the last car where we had the back platform from which the President always spoke. There wasn't anybody in there but Mr. Truman. He was having some coffee and I talked with him a little while. He said, "Well, Mr. Garner has been down here already, and he has gone around to some office or something, and he's coming back."

So I said, "Well, let me go get Mr. Johnson before you go up." So by the time that Mr. Garner got back, there were about fifteen of us, I guess, altogether on the train, and we

went up with Mr. Garner. We walked up to his place and the President. Mr. Johnson was with us of course, and he was of course an active campaigner for the Senate, and Mr. Truman came out for him in his speeches all through Texas.

We had a practice roping off the back part of the train so that when the President spoke you would not be able to get closer than fifteen feet from the back platform where he spoke. And I would usually go out and shake hands and mingle with the crowd and get the reactions of the people and anything I could find out.

So I think, Mr. Truman coming through Texas and mentioning Mr. Johnson at practically every stop and calling him "Senator" may have had some effect upon the situation.

Then the people who would come to the train would be, of course, Democracy's leadership, and also it would be very powerful news media, like I remember Amon Carter and Tom Gooch up in my country. And I think Houston Hart was there and Mr. Will Hobby and ones like that. Then I remember the man in Austin--

F: Marsh?

C: Marsh. And Fentress was there. I had gone to school with young Fentress, and I think he runs the paper now. So I think that that whistle stop tour through Texas may have been of some assistance.

Then finally we ended up at Bonham. We had Bob Kerr come down. Bob was sort of an Alben Barkley type. He was a free wheeling and arm swinging speaker, and he spoke off the cuff. I remember Mr. Clay, I believe it was--anyway--no, it wasn't, either, it was our ambassador to Russia, flew in there, and he had some reports he wanted to make to the President. I flew back with him to Washington from Bonham and got this briefing that he wanted to give to the President, then later I gave it to the President.

So we first heard the speech that Kerr made, and then the train went on into Oklahoma, Mr. Johnson was with them all the time, either before San Antonio--I know he was at San Antonio and went on the rest of the way with us.

F: Quite possibly would have hit Uvalde before you came to San Antonio unless--

C: Yes, that's right. He was at Uvalde, I know. He may have gotten on right at the beginning. It would have been a good thing and I imagine he did.

F: You were in the Justice Department in those days when Mr. Johnson was congressman there. Did you get an idea that he was going further than just another effective congressman?

C: I thought so. Of course, Mr. Johnson had considerable to do with my appointment as an Assistant Attorney General by Roosevelt.

F: He did?

C: You see, I barely knew Roosevelt.

F: I wondered if he played any role in that.

C: Mr. Johnson was a close friend of Jim Rowe. And Jim Rowe--

F: I've had several interviews with Jim Rowe.

C: Oh, you have?

F: Yes.

C: He's a very fine man. He was what we called the assistant to the Attorney General. It presently is what is known as Deputy Attorney General. Back there then we had five Assistant Attorneys General, and then we had one the Assistant Attorney General--capital T-H-E. Of course he handled the appointments for the bench as well as to the Department. The Attorney General of course, had the final say on appointments, but they were initiated largely in the area of the Assistant. So being a good friend of Mr. Johnson, Mr. Johnson approached him, and also the President--Mr. Johnson was very close to President Roosevelt. So I was appointed in March 1943.

F: Mr. Johnson kind of led the way in this.

C: Yes, he did. So I, of course--and whatever I say I try to be objective about it, but I have a warm affection for the Johnson family. Our family has been thrown together. I don't think there's a picture here right now, it's at home, but Mrs. Johnson and Mrs. Clark christened boats together and submarines and one thing and another, and they went to New York quite often together; our children were friends together. So there's a thread of affection and of admiration that has been all through our lives, beginning along about the time I mentioned.

But I remember well, soon after or before I was appointed Assistant, Mr. Johnson and I went down to St. Louis at the instance of Mr. Hannigan to the Cauliflower Club, which was sort of a political club. I got Mr. Hannigan to give Mr. Johnson a place on the program, and he made a good speech down there, and was able, through his warmth and his ability, to bring--although he didn't know Mr. Hannigan too well up to that time--attention toward him by Mr. Hannigan. I had told Bob then that I had thought we ought to try to get Mr. Johnson into the White House as one of Mr. Truman's assistants--along the line of Roosevelt's assistants who had a passion for anonymity. I talked to Mr. Johnson about it and although I think he would have eventually turned it down, he evidenced some interest in it back there then.

F: You don't think Mr. Truman ever talked with him about it though?

C: I don't think he did.

F: Other than this '48 visit, did Mr. Johnson see much of Mr. Truman during those congressional days?

C: When he was in the House?

F: Yes.

C: Yes. Let's see, he went in the Senate in '50.

F: He went in the Senate after the '48 election, at the beginning of '49.

C: I'm sure he saw him some before Mr. Truman was elected in '48 because back there then-- you see I was appointed Attorney General in '45--I know he knew Truman and Truman knew him well.

You see, we had what they called a Board of Education over there. Long before I was Attorney General, I used to go to it. And now and then Mr. Truman would come there. Of course, Mr. Truman was sitting there with Mr. Rayburn in this little room that we called the Board of Education when Mr. Roosevelt died. He came over there quite often. We would sit over there. They would call me up and I'd go over twice a week, I guess, on the average. We would sit and talk, nothing in particular, but sometimes we'd talk about legislation, some times we'd talk about other things.

F: When did you all tend to meet--after hours?

C: Oh, yes, always.

F: What were after hours?

C: It was really amazing. I have been over there again and again, and Mr. Johnson would call up Bird--and it would be about 8:30 or 9 o'clock, or maybe 9:30 at night--and he'd say, "Well, I'm going to come out and I've got six people." By the time we got out there, Zephyr would have some popovers cooked, and we'd have the best meal you ever tasted.

On other occasions, we'd go to Martin's over on Wisconsin. Sometimes we went down to Herzog's on the river. Most of the time we got steak with some tomatoes and some salad, which would largely be this cut up slaw that Mr. Rayburn loved, as did Mr. Johnson, and corn on the cob. We'd get some of that. I don't remember Mr. Truman going with us on any of these meal expeditions, but these would all occur after we had the other meeting. Usually we'd sit there maybe from 7 o'clock till 9. Then we'd go out to dinner and get in about 11 perhaps, something like that. We'd talk about, as I said, various things, sometimes I'd have some legislation up there--the department had a lot of legislation up there. Sometimes there'd be things in the Senate that they'd talk about even though neither one of them were in the Senate. They'd usually blame the Senate for things that hadn't gone by.

So it was quite an educational process, and I'd say a very distinct privilege to be in such elite company, and have the experience and--

F: Primarily it was made up of the legislative branch people.

C: Yes, mostly the House. I was over there with Felix one time. I didn't go after I was in the Supreme Court. Oh, I think I went once or twice but very seldom.

F: Did you meet regularly, or did people just drift into Mr. Sam's office?

C: Just drift. Didn't have any hours. You'd go in and look in--

F: Look in and see if anyone was there.

C: Well, sometimes there wouldn't be anybody there. Sometimes Deschler would be there. He was the parliamentarian. And you'd get a drink. Mr. Rayburn usually kept his supply in a big drawer in his desk. Most of the time when I got there there would already be two or three there--Hale Boggs, the Speaker, and Mr. Johnson, and most of the time Deschler, and quite often some others, sometimes Mr. McCormack, not too often though.

F: Were any Republicans ever brought in?

C: Yes, Charlie Halleck was there. They were very close. I've seen Speaker Martin there quite often. Indeed, when I was appointed as Assistant Attorney General--it wasn't a quid pro quo--but they wanted to get another Assistant authorized by the Congress, so I went up to see Mr. Rayburn and he said, "Well, let's call Joe (Speaker Martin)." So he called Joe around and the two of them talked about it. They said, "Well, you tell the Attorney General that if he wants another assistant, we'll get it through the House." It was just that simple.

So they created another Assistant. We called it the War Division. And I matched Hugh Cox to see whether I'd get the War Division or the Antitrust Division. I won the Antitrust Division, and that's the one I wanted.

F: It came up right for you that time.

C: Yes. And Hugh took the new division, which was the war division.

F: Did you see much of Senator Johnson during the 1950's?

C: Oh, yes, I saw him quite often. He and I used to take walks nearly every Sunday--not every Sunday but quite often. Before we moved into 2101 Connecticut, we lived on Moreland Street and they lived on 30th Place--right across the street from Edgar Hoover, or almost across the street. So we went over there quite often, and they came around to our place some. Then when I moved, about '45, late '45, I moved down to 2101 Connecticut, I would

sometimes meet Mr. Johnson and we would walk some, sometimes up and down Connecticut, sometimes other places, and talk about various things.

F: Did he talk with you much about the possibility of his becoming what was then the Minority Leader in the Senate?

C: He mentioned it several times. We had a little sort of poker club that some of us belonged to--Stu Symington and some of the others. I remember Stu spoke to me about it, too. I remember speaking to the senator from Arkansas--

F: McClellan or Fulbright?

C: Fulbright. And he was opposed to Mr. Johnson. But I think after--

F: Just on youth, or short service, or personally?

C: It may have been. I rather think perhaps the fact that he was from Texas was some reason for it. There were two things, I think, that made him the Leader, and one was the senator from Georgia.

F: Dick Russell.

C: Dick Russell. I think that Dick Russell possibly had a better understanding and grasp of the rules of the Senate than any man that had been there. And he had a very wide knowledge of Texas history.

F: Texas history?

C: Yes. He was a close friend of Mr. Johnson and had visited Texas, particularly on Padre Island quite a bit. And so he had a warm affection for Mr. Johnson. Sometimes Dick would come over to the Board of Education, and we would go out to the Johnsons'. Other times I'd meet him out there when he'd happen to be there. So I think he was one of the ones that gave Mr. Johnson very good support.

Then he had been active; as you know, Mr. Johnson doesn't leave anything unturned. He was busy all the time, and he does his homework. He's a very hard worker and a very effective one. I know of no one that has more persuasion. So I think those two things combined to make him at the young age he was a leader in the Senate.

F: On the Supreme Court when you deliver an opinion such as your so-called Black Monday Case--the desegregation decision of 1954--that offends some sections of the people--not necessarily a territorial section but some group of people--does your mail come from all over? Do you personally get a reaction from that?

C: Well, I'll tell you. When I first came here I had been used to getting mail because as Attorney General I'd get lots of mail. When I fired John Rogge they logged the mail, and there were over 26,000 pieces of mail that came in within the next three or four days.

F: What was this, organized?

C: Well, I don't know that it was. Walter Winchell came out on--he used to have a Sunday program.

F: I remember that Sunday night program, and I remember his feelings on Rogge too.

C: Oh, boy, he really gave me the devil on Rogge! So I think that's what ginned it up. I don't think it was otherwise organized.

F: Ordinarily not that many people would care whether John Rogge came or went.

C: They never heard of him. So I would say that one who comes through the Attorney General's office, or any office of that type, he's rather steered to that thing. He doesn't pay too much attention to it.

So when I came here, I'd had my secretary--you know, she'd been one of my secretaries down at the Department of Justice--I told her just to keep the mail. If it was just crank stuff not to show it to me, and if it was personal--she knew usually who my friends were. So most of the time I'd never see it, but sometimes when I would write an opinion like on the Prayer Case our mail would pick up for awhile.

On the segregation case it was pretty bad.

One of the worst experiences I had was when I was Attorney General on the Tidelands Oil Case. I had filed a suit against California. At the time I said publicly in a release that I thought that Texas was a different footing because it had been a sovereign nation, and that when it joined the Union it said that it would pay its own debts and keep its own land, and that therefore it had enjoyed what we commonly called the three-mile limit--which was an old Grotius theory, that a cannonball would go that far, and that therefore the sovereignty owned it because it could control it. It was sort of like water out west; if you control it, it's yours.

So I tried to distinguish it. But Price Daniel was Attorney General of Texas. And of course he was anxious to try to keep in the limelight, and so he came up and was going to--

F: He built a career on that case.

C: --and file an amicus curiae, what we'd call a friend of the court brief. And I told him then, "Well, you've put me in a very awkward position, because if I win this case and you've come there and argued that Texas is on all-fours with California, then I'm going to have to file suit against Texas." And he did that, and that's what happened.

But when I filed a suit down there I got a tremendous amount of mail. I would go down there. It just happened that soon after I filed that case I'd been invited to speak to the Texas Bar in San Antonio. And I used to get some of the most scurrilous telephone calls you ever heard in your life from people that would say that I was a thief and a rascal--

F: And certainly a renegade.

C: Yes. And had betrayed all of Texas, you'd have thought. The idea of filing a suit against your own state!

So it's not confined to segregation and things of that kind, although on the segregation I used to get quite a few things. I remember one time some gentleman called me--I never did find out who he was. He wasn't a gentleman, but he was a man, and told my daughter who then lived in Dallas that he was calling for Speaker Rayburn. Of course, he was pretty smart in that regard. He knew I'd come to the phone. So I went to the phone and he said, "Well, I wanted to tell you that I think that the segregation case is an outrage, and for you to have joined it is contrary to your upbringing. I'm sure your father has turned over in his grave."

I said, "I'm sorry I won't be able to talk to you about it. We have other cases in the court that are backed up to this one, and I wouldn't be able to talk to you." He went on talking, and I said, "Well, you've got me on the phone on false pretenses, and I don't want to insult you, but I'm going to have to hang up."

He said, "Well, before you hang up, I just want to tell you that I understand you have four granddaughters, and I hope each one of them marries a Negro." He slammed up the phone.

So you get a lot of that stuff, and it doesn't affect you as a Justice. I sat here all these years, and I don't believe I ever heard a Justice mention the mail that he got in a conference. In fact, I don't ever remember any Justice saying, "Well, this is going to have a bad public reaction."

F: Go ahead and plow through the case.

C: Well, the only force of our opinions, as you well know, is in the way in which they're written and the common sense of them and the clarity with which they're spoken. So we don't have any army and we don't have any exchequer. So we have to have only the force of opinion that will rally support to the court through the public. That has been true ever since we had a Supreme Court. You know, Andy Jackson told John Marshall, it's reputed, that he could enforce his own opinion. Well, later on Jackson enforced it himself, whether he said that or not. And the same is true of Holmes when Roosevelt told him--Teddy Roosevelt--that he wasn't going to invite him to the White House any more after the Northern Securities Case. Well, of course I'm sure that was a great blow to old Holmes, but I understand he didn't go down there any more.

F: When did either Senator Johnson or Vice President Johnson--at what period did he begin to notice young Ramsey as something more than your boy?

C: Well, of course he had known Ramsey. Ramsey used to go over there and freeze ice cream. They used to have a manual crank ice cream freezer. Then I think--I wouldn't be sure of this--but I believe that he got Ramsey a little job back with the Interior Department, in the summer, you know, when school was out, when Ramsey was about 15 or 16. He carried the chain on a cadastral engineer survey up in the Rocky Mountains for about two or three months. I know that Mr. Johnson was proud of some of the things that the engineers said about him. I think that would be about the first time that he had come to his particular notice. Of course, from time to time Ramsey would go over there with us, as would our daughter. We have a daughter, Mildred. So I wouldn't say that he showed more favoritism for Ramsey than he did for Mimi.

F: Did Vice President Johnson confer with you regarding the appointment of Ramsey as Assistant Attorney General?

C: Yes, I asked him to speak to President Kennedy.

F: What about his elevation to the Attorney General?

C: No, he didn't talk to me about it. As a matter of fact, I never talked to Mr. Johnson about any matters with reference to appointments. I never asked him to make an appointment after he became President. I did ask him to get Mr. Kennedy to appoint Ramsey originally as head of Lands Division.

I'm sorry, I thought you were speaking of Deputy Attorney General. You see, Mr. Johnson did intercede for him as an Assistant Attorney General in charge of the Lands Division. Ramsey had an idea that he wanted to come up here, and it was a great surprise to me because he had never shown any interest in this area. He had been practicing law in Dallas for about ten years. We had been fishing on Caddo Lake one day, and he told me then that he'd like to come up here--which was in the summer. I suggested at the time that perhaps he ought to get a position in the campaign in some way, the Kennedy campaign. Mr. Johnson had already been nominated as Vice President.

He said, "Well, you know I haven't taken much dish in politics, and I'd rather not do that."

So I said, "Well, it's going to be difficult to get you appointed to something."

He wanted to be head of Antitrust.

So, after Mr. Kennedy and Mr. Johnson were elected I talked to Mr. Johnson about it, and he said, "Well, I think you should take it up with Mr. Kennedy."

So I talked to Mr. Rayburn, and he said the same thing. So I took it up with Mr. Kennddy, and he said I'd have to see his brother. Then I talked to Mr. Johnson. Meanwhile I believe Kennedy had already taken office--I believe this was after January 20--and I called Mr. Johnson one day and I said, "I don't seem to be making much headway, and I wish you'd call up the Attorney General."

So he called me back and he said, "Well, there's not any chance at all for Antitrust. They've already promised that to a man from Minnesota. The only place that's not filled is Lands."

And I said, "Well, I don't think Ramsey would be interested in that, but I'll call him."

So I called him and he said, yes, he'd take it.

So I called the Vice President back, and he said, "I'll talk to him." He called me back a little while later and said, "If you want me to do this, I'll level on it, but otherwise if you don't think it's a good thing, I won't do it." He said, "We're going to have to level on it."

So I said, "Well, Ramsey said he'd like to do it, so if you can get him the spot it will be fine." That's the way he was appointed.

I never talked to him--that was before he was President. After that I never talked with him--but he, Mr. Johnson, elevated Ramsey to Assistant Attorney General and then to Attorney General, but I never talked to him about the latter two spots, but I did talk with him personally about the beginning. I think though, in fact he told me several times, that he was very proud of Ramsey.

F: Ramsey made his own record once he got that foothold.

C: Lands was a sort of a graveyard of the department. At the same time Ramsey, I think, pulled it out of the graveyard. Indeed, I went over one time--I was the housekeeper here on the court, and Mr. Justice Black and myself used to go over to appear before the Appropriations Committee every year. I usually do the talking and Mr. Justice Black did the amenities. So, before I started talking, Congressman Rooney, who was chairman of the committee, he said, "Well, we hope you do as well as your son did."

And I said, "How's that, Mr. Congressman?"

He said, "Well, he cut \$250,000 off his budget."

I said, "I couldn't do that well. Our budget is so little--"

F: You couldn't afford that.

C: "It's only a million and a half, and we couldn't cut that much off. And besides Ramsey takes after his mother."

I thought we were off the record. About two or three months later it came out in the paper when they had released the record. From what the Congressman told me--Ramsey never told me this, Ramsey is very close-mouthed--he had cut about 10 percent off the Lands Division budget. John Rooney told me that that was the first time, and he'd been there a long time, that he had ever heard anybody cut the budget--that they always wanted to raise it.

So I think he made quite a name, and I know Bobby Kennedy called me up and told me that he wanted to apologize, that he had told some people that he thought that Ramsey shouldn't be appointed because he'd never had any experience as an administrator and that there were 150 lawyers in the Division, and that he'd never run a law office that had had anything like that in it, never run a law office in his life; that he didn't know anything about administration, and he just wanted me to know that he had not only a warm regard but an admiration.

F: Ramsey never did get caught, as far as you knew, in that sort of "sniping" that went on between Bobby Kennedy and Vice President Johnson?

C: I think that when he was in Lands Mr. Johnson asked him some things about the Department. He kept Mr. Johnson advised from time to time, I think. He never told me that. I remember Tommy--he's our grandson--would go out to Mr. Johnson's with Ramsey and Georgia, his wife. Mr. Johnson told me one time--Tommy had been out there one afternoon and they'd had a swim and one thing and another. So he said, as he was leaving, "Tommy, did you have a pretty good time!"

He said, "Well, Mr. Vice President, this is the best time I ever had but once."

And the President asked him: "When was that?"

He said, "When Granddad let me drive the golf cart." He went out there quite often. I remember when we were over at the swearing-in, Tommy and the Vice President seemed to be very friendly. So I rather think that he and Ramsey had pretty good rapport during his days when he was Head of Lands Division, although Ramsey never told me that at all.

F: It didn't seem to hurt Ramsey any to have this identification with Johnson.

C: No. I think it got him started. You have to have a start, as you well know. This lady that was just in here a minute ago, Mrs. Ethreidge, is the Chief Justice's wife from Mississippi, and she was saying, "While my husband is a very distinguished jurist"--which he is, and I think is blazing trails down in Mississippi, which they need. She said, "Well he doesn't have any political connections, and I don't think could ever be justice."

I said, "No, I wouldn't say that. If he does a good job as Chief Justice, he may be." But you nearly always have to have some foot in the door.

F: Somebody has to sponsor you somewhere.

C: You have to have some foot in the door, yes.

F: Did President Johnson ever talk to you about any of the current problems of the time, like law and order, for instance?

C: After I retired he asked me to come over there one time. As you know, I retired in June 1967. I would say this would be about the winter of that year, or maybe the winter of '68. There was a lot of talk about crime, the crime wave, and the Supreme Court causing it and everything. So we talked over there, I'd say, half an hour.

Then about two or three weeks later he asked me back again, and I talked to him again about it. Meanwhile, I had been sort of formulating in my own mind just what I thought about it. So those are the two times, and both of those were after I went off the court.

F: Did you discuss your comparatively early retirement with the President? You, of course, are still quite vigorous and capable of putting in a lot of work. I think most people were surprised when you did retire. I was.

C: Is that so?

F: I was looking forward to another ten years or more with you.

C: No, I never had talked to him about it personally. You see, the Department of Justice has over 50-percent of the cases in the court. That's not to say that they're Department of Justice cases entirely. There would be cases that come from other agencies in the government. But at the same time it's an untoward circumstance for a father to sit in cases that his son has had something to do with. Although he may not have had anything to do with them, the public thinks he has something to do with them.

You know there's more to justice than just trying cases and dispositions and judgments. The appearance of justice, I think, is more important than justice itself. I know that's a strange thing for one to say, but I believe that because only a smattering, a very small number comparatively, of people ever come into--even enter into a courtroom, much less have any entanglement with the law. Even counting the ones that go there as visitors, there's a very, very small percentage. But they get their perspective, their image, their view, of the judicial process from what they saw in the courtroom. Those that didn't go there--which are the millions and millions of the other people--they get theirs from what people say and what they read in the papers. So I think that the appearance of justice is most important.

Now, I know we have fifty chief justices and other associate justices of the states. We also have five hundred appellate and trial judges in the federal system. And for one to sit on the Supreme Court, it might--wouldn't say it's an invariable rule at all--have an effect upon them. Those people who are fortunate not only to have children but to have sons, and the sons quite often follow in the father's footsteps in the law. So when the son practiced before you that's not an unheard of circumstance. I know quite well--a friend of mine that I went to school with in Dallas used to practice before his father who was a federal judge in Dallas, and I thought it was an untoward circumstance, particularly during the depression when these big bankruptcy cases like Paramount and those types of cases would come along, and you'd find out the son was representing some trustee or somebody in the case. I thought that that made a bad impression.

You know, judges owe a higher degree of not only duty but of public appearance, I think, than the average person. After all, they judge right and wrong between individuals and between the state and individuals.

F: They're a little like Caesar's wife.

C: That's right. If they maintain a bad image, it's going to not only hurt the judicial process but it's going to hurt the whole system of democratic society.

F: Did you retire because Ramsey was getting the appointment?

C: Yes, I did.

F: Well, I think probably you did the right thing on that from a public relations standpoint, a public image standpoint.

Did Mr. Johnson ever talk to you about his problems with the Fortas appointment?

C: No, he didn't.

F: Did he talk with you about the appointment of Homer Thornberry?

C: No. Homer and I are old friends. I failed to mention Homer on our board of education. He used to be one of the ones that came there. After Mr. Johnson came to the Senate, Homer came quite often. They didn't live too far apart.

F: You now have worked with a number of presidents, starting with Franklin Roosevelt, in relatively high placed positions. You've observed them. Do you see any differences in general between the way that Mr. Johnson ran his administration, and the way the others did?

C: Yes, I do. I was, of course, not close to the intimate operations of any of the Presidents other than Mr. Truman. But I think that Mr. Roosevelt tried to set by his fireside talks and by his talks and messages to Congress and his speeches, a policy. Then he would turn that

over to Tommy Corcoran and the others that were in his entourage--like Hopkins and the others. While Mr. Truman was not that type, he didn't have people of that kind that he would use in that manner, that's not to say that Mr. Roosevelt's policy was not the better nor that Mr. Truman's was the worse, but it's just to say that it was just a difference in personalities. Mr. Roosevelt was an extrovert that had great competence, and Mr. Truman did too; but at the same time Mr. Roosevelt had some flamboyancy about him that Mr. Truman never had. Mr. Truman was a dedicated person, and he was one that you could count on regardless of what the results or the consequences might be. He would stick by his guns. Mr. Roosevelt some times backed up. I don't say that in any criticism of the President at all--

F: No, I've read instances of that.

C: But you take the things that were not--by that, I mean to say issues that were in public notice--in Mr. Roosevelt's times, aside from the war, in which we didn't have too many problems. I, of course, prosecuted a lot of people, Nazis and things like that. But the problems that occurred during Mr. Roosevelt's time were not too much removed, aside from the war, from those of Mr. Truman's, other than Mr. Roosevelt had more of a depression situation.

But you take the problems of blacks and whites--and you remember FEPC, of course--and that's about all that Mr. Roosevelt did. And that was done in a sort of political way, and he never followed through on it. But you take Mr. Truman, now, I think he set the pace. I think Mr. Johnson outshone Mr. Truman in this respect, but Mr. Truman had a dedication to a principle that nothing could change him, and I dealt with him many times.

While Mr. Roosevelt was either disturbed some about trying to do more in the civil rights field and didn't do it--I don't know whether it was because of politics or whether it was because they had run pictures of Mrs. Roosevelt with blacks and things like that or what it was. He never confided in me, I knew him casually just through Mr. Johnson but Mr. Truman on the other hand called his Commission of Civil Rights that printed, you might say, a charter to secure these rights. I'm sure you're familiar with it and if you're not, you ought to read it. You'll see right there in those pages, which are not very many--you can read it in a half hour or an hour--the really basic principles that Mr. Johnson followed.

I think what Mr. Johnson did was through his acquaintanceship, which was firm and devoted, to Mr. Roosevelt, that he got the great warmth of Mr. Roosevelt and the great feeling of equality that people should have. But Mr. Johnson had what Mr. Roosevelt didn't have, and that was the courage and the know-how of putting those things into effect. And when you compare Roosevelt, Truman, and Johnson, you'll see that there was a progression in integration. Roosevelt accomplished very little, indeed. Of course, he was at the beginning, and of course there would be more acrimony and more viciousness when you start things in the beginning. Then Truman took it a step further. He integrated the armed services. He had these other programs that he had with reference to employment and things of that kind. Then came along Mr. Johnson, who did more than any President, I think, since Abraham Lincoln in this area to bring about in reality the provisions of our 14th

Amendment. It's over a hundred years old--last year it was a hundred years old. And at the time that Mr. Johnson started, along about in the early '50's, as I remember, in getting bills through the Congress, it was really a tremendous feat. I don't believe there's any President that has been able to put through programs as effectively as he did. It's just unfortunate that he got entangled in foreign problems.

F: Would you hold with those observers of the court that there is a sociological court?

C: No, I don't think that's true at all. Some think that on account of us citing Myrdal in that footnote, Gunnar Myrdal, that we did in fact make the blend more sociology than we did law. But that's not true at all. It's an old theory of the Brandeis brief, we used to call it, where instead of just putting up cold principles you try to delve into some of the economics and the background, the morals and the mores and the things like that that are involved in the case. And if you'd read carefully the cases like Sweatt against Painter which came from Texas--and which was here two years before Mr. Warren came--you'd find language that Chief Justice Vinson wrote in that opinion--that is a forerunner of Brown vs. Board of Education.

F: It didn't affect as many people--

C: No, but it was really a clarion call for Brown against the School Board. And then McLaurin and Sipuel and that line of cases. As a matter of fact, we had Brown on file here during that period of time. It was here for four years. We sent one of the cases back one time so South Carolina could determine whether or not a bond issue that they had already voted and were spending the money would bring their school system up to being equal, for the blacks as well as the whites, which was the old Plessey vs. Ferguson doctrine, which we destroyed.

In fact, not in Brown as people say, did we overrule Plessey. We implicitly overruled Plessey I think, 'way back in Sweatt and Painter, McLaurin and those cases.

So I would say that sociology to some extent should be considered. I think that there's not any question but what where you have a segregated people, whether it's black or white or it's green or yellow or whatever it is, that there's bound to be, from the standpoint of the one that's the minority, some connotations to it; that is, that one is inferior to the other. And that's particularly impressed upon young minds. So I think where we made our mistake is not telling the school boards when we started out, "You must start from the first grade or the kindergarten and go up."

We left that with the trial courts and they started at the twelfth grade and went down, which was like running up against a brick wall. By the twelfth grade the sociological aspects of it had taken such a hold that people's minds were already steeled against the idea of integration. While if it had started while they were just babies, we wouldn't have had nearly that much trouble.

F: What you did, also, was both anticipate and face it anew each year, whereas if you'd gone gradually from the first grade forward it would have been just--

- C: And we'd have been much better off. As it is now, now fifteen, sixteen years later, we haven't made much progress.
- F: You've made some.
- C: Well, we've made some. I think the school cases have started a movement that has been tremendous. When you consider that all of the advancements that have been made, one, in public facilities such as transportation--
- F: You can see what you've done in Washington really.
- C: Yes. Such as restaurants, like this Heart-of-Atlanta case and things like that--all based on a statute that Mr. Johnson got through. Then in the area of education and the areas of housing, things of that kind, have been tremendous. But most of all it has been, and I think most important, it has been in the area of employment and training. And I think if we're able to push that a bit stronger than we have, we're going to see I believe a decided change. Indeed there has been a tremendous change in the last fifteen years. Before that, if you take back to 1920-25 when I was a kid in Dallas, it's a different world.
- F: It has been a social revolution that has been relatively bloodless. You can still see the clouds, but I don't think it has hurt as much as it could have. In one sense does it make any difference to the justices on the Court who's in the White House, or whether it's Republican or Democrat?
- C: No, it doesn't make any difference.
- F: You go on and just do your work, as it comes up?
- C: Yes. They have a practice down there that whenever they have a state dinner, as they call them--that's when some visiting potentate is here--they start by inviting the Chief Justice and then down the line to the junior justice in the tenure. Then they start up with the Chief Justice again. Sometimes they have one or two justices for dinner. But that's about all there is to it. I think some justices may be closer to Presidents. It's nothing untoward that a President who has been accustomed to talking with a Justice before he's appointed might continue to talk with him. Although I must be frank to say that neither Mr. Truman nor Mr. Johnson ever talked with me about any case after they became President of the United States.
- F: Can you think of anything else we ought to cover?
- C: Not a thing. It's good to see you.
- F: I appreciate this, Mr. Justice. Thank you very much.