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James V. Allred of Texas: A judicial biography

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Rice University, 1991
RICE UNIVERSITY

JAMES V. ALLRED OF TEXAS:
A JUDICIAL BIOGRAPHY

by

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A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE
MASTER OF ARTS

APPROVED, THESIS COMMITTEE

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May, 1991
ABSTRACT

James V. Allred of Texas: A Judicial Biography

by

Patricia A. Tidwell

James V. Allred, Attorney General and Governor of Texas during the New Deal, illustrates the paradoxes of Southwestern political and legal history. Allred was a liberal politician who closely followed President Franklin D. Roosevelt’s policies, but was simultaneously a Southern demagogue who carried with him the implicit beliefs in white superiority that characterized most southern politicians of that age of segregation.

Allred moved powerfully through the ranks of Texas politics, influencing both law and society with his blend of Populist, New Deal liberal, and peculiarly regional beliefs. Allred had national ambitions and opportunities, but remained in Texas after accepting an appointment to the United States District Court, Southern District of Texas.

As a federal judge, Allred administered justice in a reflexive, intuitive style
reminiscent of the chancellor of an equity court. He maintained strict control over his courtroom and his docket, wrote workmanlike opinions, and was well thought of by the bench and bar.

Allred resigned his lifetime position on the federal bench to run for the U.S. Senate. In a typically stormy election, Allred narrowly lost to Senator William L. "Pappy" O'Daniel. President Roosevelt quickly re-appointed Allred to the Fifth Circuit Court of Appeals, but that nomination was blocked, due to political repercussions. Allred practiced law for several years in Houston, Texas, and was finally returned to the Southern District bench by President Truman.

Allred died of a heart attack during a busy day in court in South Texas, while he was attempting to clear the jails of all defendants before he went to the hospital for treatment.
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Chronology

1899  Allred born in Bowie, Texas
1917  Graduated from Bowie High School
1918  Attended Rice Institute, Houston, Texas
1918-19  U.S. Navy
1919-20  Worked at Martin and Oneal
1921  Graduated from Cumberland University in Lebanon, Tennessee with a law degree
1921-23  Practiced law in Wichita Falls, Texas
1923-25  District Attorney for Wichita, Archer and Young counties.
1926  Unsuccessful candidate for Attorney General of Texas
1926-30  Practiced law in Wichita Falls, Texas
1927  Married Joe Betsy Miller of Wichita Falls
1931-34  Attorney General of Texas
1935-39  Governor of Texas
1939-42  Judge, U.S. District Court, Southern District, Texas
1942  Unsuccessful candidate for U.S. Senate
1942  Nominated to the Fifth Circuit Court of Appeals, appointment withdrawn
1943-49  Practiced law in Houston, Texas
1949-59  Judge, U.S. District Court, Southern District, Texas
1959  Died in Laredo, Texas
PROLEGOMENA

This is the biography of a Southern politician during the age of segregation. In 1939, a contemporary work defined as demagogues all Southern politicians except Hugo Black and Claude Pepper. The same book described the South as "a region where democracy has never had a chance to work." About Texas in particular, one Roosevelt administrator reminded a colleague that "it is an uncivilized part of America." This biography attempts to place one individual, James V. Allred, firmly in the context of that time and place while not overlooking his strengths and weaknesses as an individual.

Few who succeed in politics are without either virtue or ability, and seeing a subject by his own perception as well as by that of others is a delicate business. Ideally, biographies of this period are an opportunity to examine its outsized, sometimes outrageous politicians and decide whether or not the times produced the men or vice versa. The good biographer must examine whether the politician, in this case, Allred, was simply a "normal" American politician who was forced to play a particular role and warmed to it or if the men in charge created and sustained the system.\footnote{Robert Pope, "Of the Man at the Center: Biographies of Southern Politicians From the Age of Segregation," (hereinafter "Man at the Center") in J. Morgan Kousser and James McPherson, eds, Region, Race and Reconstruction 92 (1982) (citing A. Mitchie and F. Ryhlick, Dixie Democrats (1939)).}

\footnote{Lionel Patenaude, Texans, Politics, and the New Deal 106 (1983). (Hereinafter Politics and New Deal).}

\footnote{Pope, "Man at the Center" at 95, 99, and 105.}
The opportunity to examine the peculiarities of the time and the region through the life of one individual also involves examining decencies and indecencies mixed with and shaped by each other. Those basic decencies of the South include a tradition of political democracy, a system that valued and respected individual efforts, a social system that created ideals of honor and community obligation, a tradition of meaningful personal contact, even across racial lines, and a religion that taught charity. The indecencies include economic stagnation, violence, cruelty, and underlying it all, racism. In weighing, comparing and seeing how these factors mixed, we must look primarily at the lives of people. That is the challenge of this biography.

It is most difficult for the modern observer to reconcile the progressive politics and the racist demagoguery of the time. Nowhere is this a greater paradox than in Allred. Allred was a curiosity, an exception, a man who never neatly fit into any category. He was a liberal and a redneck; a progressive and a racist; a powerful man, but one frequently outside the power elite; a nationalist who defined himself solely in light of Texas; a Southerner and a Westerner; and finally, an alert, teachable spirit and mind hungry for both wisdom and knowledge who ultimately never realized his potential for legal reform.

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4. Patenaude, Politics and New Deal, at 108. See also C. Vann Woodward, "Biography and the Biographer" in Thinking Back: The Perils of Writing History 29 (1986) where he identifies racism and sectionalism as the central themes of Southern history.

5. Chester Morgan, the biographer of Theodore Bilbo, a Mississippi politician of the segregation era, explained his use of these terms prefaced by the following qualifier, which I adopt: "Both terms have been chosen with trepidation and with care: trepidation because the connotations of both words are elusive and have changed over time; care because when precisely qualified, they capture so perfectly the paradox of Bilbo's career. . . ." Redneck Liberal 2 (1985).
One problem with characterizing Allred is that as a politician, he had little or no coherent political philosophy or he kept it hidden. At times, he seemed a populist; at other times he was a New Deal Democrat; sometimes he acted as a moderate. Allred believed in himself and his political judgments, but he did not express a set philosophy of government and economics. Like Lyndon Johnson, he would not sit down and discuss the philosophy of taxes or poverty or current issues. Like Lyndon, he had an agenda, and when he could get the votes, he would act on it, swiftly and decisively. It was both a strength and a weakness that these men knew how to work the system, worked it for what they thought were good ends, yet had difficulty explaining why they did what they did.⁶

Allred left hints of his motivations and beliefs. Both his personal and professional life must be examined closely to even begin to meet the challenges set forth above. One incident illustrating his humanity and simple ideals is the birth of his first son.

Late Christmas night in 1929, thirty-year-old attorney James V. Allred sat alone at home in Wichita Falls. On impulse, he took a handful of Allred & Allred stationery and wrote a letter to his newborn son. He wrote:

"Jim Boy" -

Your Dad has just come home from the hospital where he left you and your mother. . . . [The radio is playing] "still nacht, holy nacht". . . . Any night is Holy Night when a child is born. So it has seemed to your mother and Dad on this Christmas night - the happiest of all our lives.

What resolutions we have made! - Especially your Dad - to be a better man - one you may be proud of. And how we want to make life just as fine and desirable as possible for you. You'll never be able to envision yourself as we saw you tonight - yet there you were - a little red faced rascal with long black hair. ... Your earliest recollections of [your mother] will, of course, be as a grown up woman, but she is really just a little girl. . . .

Ah what plans I have for you! What a pal I'm going to be to you! And always I'll try to set you a worthy example! I'm sure that in the years to come you'll learn enough about Grand Dad Allred and his people on back to know what it means to be an "Allred." If you'll help me, Son, I'm sure we'll always keep the name clean.

Your loving Dad

In his professional life, in 1926, at the age of twenty-seven, Allred had lost a close election for Attorney General of the State of Texas. The only reservation expressed by his fellow attorneys was that he was too young and inexperienced, and his boyishly handsome face did not help refute the charge. He was also single, another political liability which he remedied soon after that election, marrying Joe Betsy Miller. In 1931, two years after the birth of his first son, he won the Attorney

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7. Family Memorabilia, Allred Papers, Container 551. Sadly, James Allred, Jr., "Jim Boy," only survived his father by six years. After a childhood surrounded by politics and religion in oppressive doses, and a youth in which he married the same woman three times, he died in a plane crash in South American, engaged in his chosen escape - flying. The birth of his daughter affected Allred as a grandparent just as deeply as the birth of his own children. Upon is first sight of Lisa, Allred promptly and permanently gave up his one great vice - smoking cigars - in a gesture of his continuing desire to do better, start over, make a clean, fresh world for the new child. Allred was affected by the birth of these children in a poignant, hopeful way explained only by Southern literary like William Faulkner and Katherine Anne Porter. The fact that Lisa was subsequently taken by her father and hidden in South America for most of her childhood is significant only as one detail in a Southern Gothic family. This family, both ancestors and descendants, only partially, but crucially defined Allred.

General's office. Apparently, Texas voters were convinced that he was old enough, and his statewide political career was launched.

In 1949, eighteen years after he was elected Attorney General, a shrewder Allred with an impressive resume, including two terms as Governor of Texas, sat quietly at home again, answering and sending telegrams, hoping to become the newest federal district judge in Texas. Lack of experience was no longer a problem, and indeed he had already served two years on that same judicial bench. His move back to the federal bench marked the final step in his political/legal career.

How Allred, the son of a poor family, became Governor of Texas and a federal judge is a study in Texas society, law, and politics. Allred was inseparable from the context in which he was born and molded and nurtured. That family context was a mixture of Southern Gothic traditions with the remnants of the Western pioneer myth. Briefly, Allred's grandfather, William Allred of North Carolina, started wandering in the early 1830s. He began to travel Southwest, eventually crossing the Red River and stopping to visit with a brother in Marshall.

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9. Although JVA was still the youngest governor in the United States when he took office. Biographical Questionnaire filled out by JVA, Allred Papers, Container 560. In fact, the word "experienced" seems to have been an important word around the Allred household during the ten years (1939-1949) in Houston. Jim-Boy and David, the two oldest sons, started a chicken business at home. They worked hard to make money from their little business. People still comment on the sign they hung in front yard: "Eggs for Sale From Experienced Hens." Telephone Interview with JVA's son David Allred, (March 4, 1991.)
Texas. William and his wife Eliza finally settled in Bells, Texas, where there is still an Allred family cemetery.

Allred's father, Renne, continued the migration, eventually settling in the Bowie/Wichita Falls area of Texas. Renne tried to homestead a tract of land in that area, but it was difficult to make a living. Renne was a deliveryman at one point, taking his wagon out of town to meet the train at dawn and delivering produce and other foodstuffs to the local grocery. The grocery paid him in food, not money. He occasionally worked at grading dirt roads. In addition, the family owned a wagon yard, a place where people could temporarily pen their horses, wagons, or buy feed and supplies for traveling on horseback. In 1899, James V. Allred was born, one of seven children. Finally, in 1904, Renne became a rural mail carrier. He was a strict, somewhat rigid man.

James Allred's low social status became obvious to him at a very young age. As a child, he had a shoe-shine stand, sold newspapers on the street, and worked in a soft drink bottling plant. One family story was that he was playing with Eddie Weldon, collecting "craw-dads." The boys went to Eddie's home all muddy and dirty, where Mr. Weldon told Eddie to go in the house and get cleaned up and "quit

10. His brother was a county judge in Marshall. Telephone interview with David Allred (March 4, 1991). Unless otherwise indicated, the family history in the beginning of this prolegomena was graciously detailed by Allred's middle son, David Allred. David Allred also helped illuminate the feeling and the tone of the family.


12. Campaign literature, Allred Papers, Container 552.
running around with trash." Young Jimmy heard and was very hurt. 13 Similarly, Allred's second-grade teacher, Mrs. Elliot, gave him an anonymous valentine when she saw that he was not going to receive any from the children. She recycled one of her own valentine's, erasing the original sender's name and signing it "A friend." Allred never forgot those dramatic and traumatic events of his childhood. 14 His talent for problem-solving and political compromise derived in part from this Southern heritage of deep and painful crisis and division.

Allred's mother, Marye Magdelene, insisted that each of her children attend Bowie Commercial College for courses in typing, shorthand, and business. Consequently, after Allred graduated from Bowie High School in 1917, he learned some business skills and then entered Rice Institute in Houston in 1918. After one semester, during which he pumped gasoline at a local Gulf station to earn money, 15 he entered the U.S. Navy and was in training as a yeoman when the war ended.

Allred returned to Wichita Falls and "read law" in the law firm of Martin & Oneal. In those early years of the twentieth century, reading law as training for the bar was gradually being replaced by law schools and formal training. Previously, "an individual could 'read law' with a practicing lawyer or a judge and take an exam made up by the local judge. The standards varied according to the local gatekeepers, but generally did not place onerous demands upon the applicant's time, money, or

13. Family stories, Allred Papers, Special Container 83. David Allred remembers hearing that the terms "Allred dirt" and "dirt poor" were freely applied.


Allred was intelligent, ambitious, and seemed to enjoy a certain aptitude for the law. He decided to attend Cumberland Law School in Lebanon, Tennessee. Cumberland Law School offered something of a crash-course in law, and had a reputation for turning out politically-minded attorneys. Allred attended Cumberland for a year and graduated in 1921.

From 1921 to 1923, Allred practiced law back in Wichita Falls, and then became District Attorney for a tri-county area, serving Wichita, Archer, and Young counties. In private practice, Allred defended Black people, and unusual practice for attorneys in that region. Eventually, politics beckoned. Governor Pat Neff wanted to appoint Allred's boss, Ben Oneal, as District Attorney, and Oneal reluctantly agreed, with the understanding that he would appoint Allred as his chief assistant. Oneal explained that he would quickly train Allred, resign, and return to his own practice, and Neff would then appoint Allred as the new District Attorney. Neff reportedly agreed, and that is what happened, making Allred a very young District

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16. Beverly Cook, "Women Judges in the Opportunity Structure" in Women, the Courts, and Equality, 157 (L. Crites and W. Hepperle, eds., 1987). The new legal education system was not as available to women as was the older system, under which women sometimes studied with their husbands or fathers. Somewhat ironically, Allred, one of the last of the lawyers to train in the old method, eventually appointed Sarah Hughes to the bench, one of the first women to get past the barriers of the new method.

Bernard Martin and Ben Oneal were the principals of the firm at which Allred began to read the law. The Martin and Oneal families were prominent in Texas law and politics for several generations. Telephone interview with Mrs. Howard Martin, daughter-in-law of Bernard Martin, (March 17, 1991.)

17. David Allred indicated that this characterization came from the family.


Attorney at the age of twenty-four. For the next 25 years, his life was shaped by politics, intrigue and action. It was as District Attorney that he began to attract publicity and admiration. People began to notice that he was special.

Allred was handsome and well-groomed in his appearance,²⁰ and was also a champion talker and an enthusiastic problem-solver. He was animated, alert, interested in politics, a young Democrat, -- an ideal figure for the local press to light upon. A local newspaper began to mention him frequently; all he needed was one good case to propel him into the limelight. That case eventually came, replete with the drama and eccentric characters of which good Southwestern tales are composed.

A local mayor’s daughter eloped and married young Buster Robertson, a ne’er-do-well from the wrong side of the tracks. The mayor’s wife was reportedly horrified and stricken. The mayor told his daughter that her husband had better not let himself get caught anywhere in the mayor’s sight. Apparently, the mayor ran into Buster and, in a fit of pique, shot him several times, killing him. The mayor was a very wealthy man. The general feeling was that the ambitious young District Attorney would not prosecute the case. Allred promptly had the mayor indicted, and tried, for murdering his son-in-law. He was found guilty. The publicity made Allred

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²⁰ Photos, Allred Papers, Containers 551, 554A. The photos of Allred in action are a marked contrast to the posed shots. The posed photos show a sleepy-eyed, genial-looking man, but the action pictures show his eyes wide open, snapping, and a cowlick of hair falling onto his forehead. When he was giving a speech, he was intense, charismatic. He was 5'11" tall, according to his 1949 U.S. Passport. Allred Papers, Container 553. He was known as quite a speech-maker, according to Senator Ralph Yarborough, (Interview, Fall, 1989).
a hero throughout the state, and the local newspapers began writing editorials, urging him to run for public office, which he did. 21

It must have seemed to Allred that he became Attorney General only to manage the job-seekers and favor-mongers of the State. Texans, like the rest of the nation, were in the agonizing grip of the Great Depression. Poverty in Texas was legendary, even when no State prospered. One of the first federal relief bills of the era, the Federal Emergency Relief and Reconstruction Act, authorized federal loans. It made the recently created Reconstruction Finance Corporation, (RFC) responsible for allocating and distributing those loans. Once a governor applied for the loans, the RFC certified that all state and local funds were exhausted, thus acquiring the right to inquire into matters that had hitherto been jealously guarded as state secrets. In 1931-32, RFC federal agents came to Texas and reported that the relief committee in Travis County was "the worst encountered anywhere in the United States." Those men in charge were "only a degree above literacy" and one was rumored to demand two dollars from every Mexican placed on the relief roles. The "whole set-up," according to one field representative, was "primitive, inefficient, and wasteful." 22

Because of those conditions, many who had known Allred from the old days wrote him, asking for help. For example, in July, 1933, he received a letter from Tom Roark, of Wichita Falls. The letter read in full:


Dear Sir: Am writing you for just a little favor Jimmie hear is what i want i want the job of watching after the grocery stores and to see that they dont sell groceries in a profittearing bases i see where there will half to have some one of that kind to watch after that i use to sell groceries and i believe i can handle that dont you. pleas help me some way if you possible can and oblige your friend.

Characteristically, Allred replied:

Tom, it would be a pleasure to me to help you secure the appointment you mention if I knew of such an opening or who would make it. I haven't heard anything about any such proposition, but if you do, write me and I shall be glad to endorse you to the proper officials.

He was unfailingly polite to those who wrote him, but a hint of impatience crept into a reply to a young relative who wrote, asking him for a better job:

Believe me, anyone with a job of any kind is pretty lucky now. You have no idea how many people are in to see me all the time here, and how many I have tried to help. 80% of all my callers, and 95% of my correspondence have to do with jobs. . . . Personally, I have been very busy trying to perform the duties of his office. You can well appreciate just how hard that is for a country boy from Bowie.

It must have been a heady and demanding experience to move from District Attorney in rural northern Texas to state Attorney General, but Allred seemed to have risen to the challenge with his usual straightforward style. Amazingly, he began by suing all major oil companies in Texas. Allred's duties included the oversight of the oil and gas industries, a responsibility added to the Attorney General's office in

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23. Letter from Tom Roark to JVA, (July 29, 1933), Allred Papers, Container 185.
1929, along with the responsibility for bringing antitrust suits. Allred, in his first term as Attorney General, "shocked the nation's business world by bringing suit against Standard Oil, fourteen other oil companies, and two petroleum associations for violating Texas antitrust laws." It was years before those suits were concluded, with Texas antitrust statutes validated on appeal, and Allred was Governor by then. However, he won several other cases against oil and gas companies, collecting revenues for minerals found on public school lands. "Allred won 50% of all bonuses and rentals from some four million acres for the Permanent School Fund."  

His reputation as Attorney General was built largely on that demonstrated willingness to challenge big business, especially the oil and gas companies. This won him support from the population at large, but deep enmity from the oilmen of the state.  

On the other hand, during those early years of the New Deal, the Texas oil fields began to produce thousands of barrels of crude oil, far beyond the allowable rate set by the Texas Railroad Commission. That production glut lowered the price


27. Jim Mattox, "A Sesquicentennial View from the Attorney General's Office: 150 Years the People's Lawyer" (1986), Allred Papers, Special Container 83. JVA was very aggressive in his lawsuits on behalf of the State. He became known as the new Jim Hogg, who was the most famous and successful Attorney General in Texas history until that time, and arguably until current times. Hogg also held the record for the biggest money judgment won by the state. (Approximately a million, eight hundred thousand.) JVA's administration came in second with one million, seventy-three thousand, five hundred dollars. Interview with Senator Ralph Yarborough (Fall, 1989).

28. Ibid.

29. Walter Moore, Governors of Texas, 31 (1963); Williams, "Huey, Lyndon and Southern Radicalism" in Essays at 229 (No Texas politician could oppose the oil industry and hope to survive).
to ruinous levels. Secretary of the Interior Harold Ickes and others in Washington, including Texas Vice-President Garner, were strong advocates of some kind of Federal control, but Attorney General Allred stood with Sam Rayburn in insisting that Texas could handle the situation alone. He wrote to Roosevelt, stating that the oil situation in Texas was under control and in good shape, when even the governor admitted that such was not the case.\(^{30}\) This successful effort to keep Texas oil production out of Federal control did not abate the oil industry’s negative attitude toward Allred, but it did increase his reputation as a decisive leader who would not offend distinctive Texas sensibilities. This incident combined with the antitrust lawsuits outlined above illustrate that the paradoxical Allred again did not quite fit into the traditional Texas political mold. He had his own ideas about things, but those ideas were acted upon rather than explained.\(^ {31}\)

Allred’s use of the formal opinion letter was probably the next most significant action as Attorney General. The formal opinions of the Texas Attorney General sometimes have a profound effect on the administration of the government, as did one of Allred’s. That opinion would ultimately endanger his Senate confirmation as federal judge and place Allred in U.S. constitutional history.\(^ {32}\) Allred was not

\(^{30}\) Patenaude, Politics and New Deal at 103.

\(^{31}\) Another example of Allred’s peculiarity was his comparatively fastidious speech, diet, and mannerisms in contrast with Lyndon Johnson, Jack Garner, the Fergusons, and others with whom he shared cultural and political traditions. Allred was also a teetotaler like the old Populists. See Williams, "Huey, Lyndon, and Southern Radicalism" 222-223 in Essays.

\(^{32}\) Redford, supra, note 26, at 60. See Part One and Epilogue of this thesis.
consistently noble. As Attorney General, he fought the Ku Klux Klan in the courts,\textsuperscript{33} a risky practice at that time. Yet, his actions against Blacks in the dispute over the "white" Democratic primary, (discussed below in conjunction with his nomination to the judiciary,) show him to be not only a courageous man who defied some of the most powerful and ruthless forces of his time, but also a man capable of hard, condescending, blatantly political demagoguery at the expense of a very large class of oppressed people, the Black citizens of Texas who simply wished to vote in the Democratic primary. Since Texas was a one-party state,\textsuperscript{34} this right to vote was the equivalent of the franchise. No person of Allred's intelligence and training could have failed to see that the right to vote guaranteed by the Fifteenth Amendment of the Constitution of the United States was sharply abridged by forbidding Blacks to vote in the Democratic Primaries. Yet Allred enthusiastically endorsed this position just long enough to win the Governor's race. Both progressive and racist actions were repeated at intervals throughout Allred's life. The Jekyll/Hyde racism was less dramatic, frequent and obvious in Allred's life than, for example, in Bilbo of Mississippi or the Long brothers of Louisiana or Tom Watson of Georgia, but it was discoverable in his actions, dangerous in its subtlety, and depressing in its reflection of southern history.

\textsuperscript{33} Cartoon of Allred "throwing the book at the KKK", Allred Papers, Container 551, Oversized scrapbook. Allred may have been following the orders of Governor Miriam Ferguson who ran as an anti-Klan candidate. Calvert, Texas at 283-284.

\textsuperscript{34} Patenaude, Politics and New Deal at 102.
In other ways, Allred matured as a lawyer and a politician during his years as Attorney General. He learned about managing a state bureaucracy,\textsuperscript{35} about motivating a large staff,\textsuperscript{36} about paying political prices,\textsuperscript{37} and about the practical divisions between private and public law.\textsuperscript{38}

He learned even more about campaigning when he ran for Governor in 1934. He won easily, and served the traditional two terms, from 1935-1939. When he took

\textsuperscript{35} In Allred's administration, there were seventeen assistant Attorney Generals, rather than the hundreds holding that position now. Each assistant covered a substantive area, for example, the "land desk," the "highway department desk." Sometimes the work could be accomplished by an individual, but major opinions were read and voted on by everyone. Allred was personally responsible for everything that went out of the office. He was also responsible for litigation management of those seventeen lawyers who were out trying cases for his office. Apparently, he did a good job; within his first year, people were talking to him about running for Governor. Interview with Yarborough (Fall, 1989).

\textsuperscript{36} Allred had a group of young lawyers, most of whom did not have a great deal of experience trying cases. They were litigating against the founders of the big law firms that were springing up at that time - men of formidable experience and power. JVA would say to them: "You go on out there and try it; you're representing the STATE of TEXAS; you stand up there and tell that judge that you're there represent the State of Texas. You're as big as any of them; go fight 'em." Senator Yarborough remembers: "And you'd go fight 'em." Interview with Yarborough, ibid.

\textsuperscript{37} According to Yarborough, JVA made no bones about his being a Roosevelt man while he was Attorney General, but he tried not to get sidetracked into quarrels with the Fergusonian administrations. Nevertheless, he began to pay his first big political prices for positions that he took. His friendship with Oneal, now Senator Oneal in the Texas Legislature was bandied about as the real reason that JVA sued the big oil companies in the antitrust suits. Also, JVA's office took aggressive positions to obtain money from oil bonuses paid on mineral rights owned by schools. That money went into the Permanent School Fund. The oil companies and ranchers who owned the oil lands were furious because the bonuses had been going to them. They reportedly threatened that if JVA pursued that course of action he would not win a single one of the 128 West Texas counties on the T & T railroad between Fort Worth and El Paso, if he ran for Governor. According to Yarborough, who helped manage JVA's first Governor's campaign, JVA did indeed lose all but one of those counties. Interview with Yarborough (May 28, 1990).

\textsuperscript{38} As Allred became more and more immersed in public service, the attorneys who were his contemporaries moved to the growing Texas cities and formed law firms. According to Yarborough, they did not habitually mention their poor, rural roots like JVA did. The separate career paths continued, even though most of them began practicing law as a D.A. in some rural area, learning how to sway a jury in a courtroom, or a county attorney, county judge, etc. As they moved up a new social ladder and Allred moved up a political ladder, he began to enjoy tweaking them about their common roots. The more the practice of law became sophisticated, the more Allred dwelled on his modest, rural roots. Interview with Ralph Yarborough (Fall, 1989).
office, the problem of poverty in Texas was possibly even greater than when he became Attorney General. The federal relief was being phased out, as the federal emergency relief acts were nearing their nullity dates and some states were not able to meet basic human needs. In Texas, relief standards declined, causing one welfare association to report in 1935 that relief plans for "human needs in Texas were partially paralyzed." The report went on to describe people living beneath aqueducts, early deaths brought on by hunger and disease, high infant mortality rates, crowded hospitals, and a general "degradation of the body and spirit."39

Allred entered the Governor's office under those circumstances, knowing that there was little available to tax and many social programs that desperately needed funding. The governor he replaced, Miriam (Ma) Ferguson had not been successful in her attempts to initiate sales and income taxes. Further, the State was in the middle of a severe drought. Allred quickly became extremely interested in tapping more federal funds. He knew that even though the worst of the depression was over, private industry could not pick up the slack that large scale cuts would cause, nor could the state government carry the cost. Prior to his inauguration, he visited Roosevelt in Washington. Allred quickly became identified with the New Deal

philosophy; in many ways, he was the New Deal symbol in Texas. Perhaps more importantly, Texas became a prime recipient of the largess of the New Deal.\footnote{Patenaude, Politics and New Deal at 95-102. Patenaude stressed, along with others, that Allred "belied the stereotype of the Texas politician." While very critical of the Ferguson and O'Daniel administrations, Patenaude's praise for Allred is tempered only by the observation that Allred was politically ambitious and knew how to impress the right people. Patenaude demonstrates how Allred used his political capabilities to get more and more federal help for Texas and administer it better than it had been, once obtained.}

Allred never trusted private enterprise and powerful property owners to cure economic ills.\footnote{Cf. Charles Zelden, Justice Lies in the District: A History of the United States District Court, Southern District of Texas, 1902-1960 322-365 (1990) (dissertation on file with author). Zelden's footnote twelve on page 323 incorrectly defines Allred's liberalism as defined by the acceptance of "primacy of private property and the dominance of the corporate business system. What made them [Allred, Connally, and Ingham] liberals was their acceptance of government action in those areas not materially affecting the state's economic sectors, such as basic aid to the poor or pro-business government regulations. Where government action threatened private property rights or hindered growth, they quickly sided with the state's conservative majority in opposing such actions." Allred's record as governor contradicts this assertion, and his support of the chain store tax which interfered heavily in private enterprise and growth tends to belie it specifically. He called a special session and successfully pushed through the chain store tax which made it easier for small, independent mom-and-pop store operations to compete with large franchises. This obviously did not encourage outside business or quick, easy growth from big franchises. The chain store tax special session is documented in Calvert, Texas at 312.}

His experiences with the Texas legislature and the Texas oil industry during those years when the economic future of the State was constantly jeopardized gave him more than just political shrewdness. It made him into an economic nationalist and an advocate of social welfare. It strengthened his tendency to identify with the underdog and to perceive himself as a champion of the oppressed.\footnote{On Allred's perception of himself as a champion of the poor, he is quoted as saying "every penny the old people got for five years up until July, 1941, my administration raised." The Dallas Morning News (July 1, 1942), cited in Patenaude, Texans, Politics at 98.}

As Governor, Allred shaped history in a number of other ways. He reformed the Texas Rangers, stopped parimutuel betting in Texas, improved relations with Mexico, and installed old-age pensions, unemployment insurance, and other New
Deal programs. He also insisted on giving women equal representation on the Democratic Party State Executive Committee. The woman he appointed as the first female judge in Texas was Sarah T. Hughes who went on to become a significant actor, swearing in Lyndon Johnson on the airplane after J. F. Kennedy was assassinated and making the ruling on Roe v. Wade that was upheld in the U.S. Supreme Court.\footnote{On JVA and parimutuel betting, see Kent Demaret, Baptists and Bangtails (1973). Sarah Hughes was the first woman judge in a federal court or state court of last resort in Texas. Cook, "Women Judges" at 148. Also, on JVA and Hughes, see newspaper clipping, Corpus Christi Caller Times, (October 30, 1960), Page 6, Col 4-6, Allred Papers, Container 560, and newspaper clipping, Wichita Falls Times, (August 11, 1985), Section E, Page 1, Allred Papers, Special Container 83, on New Deal programs, see Allred Papers, Container 556, passim, and newspaper clipping, Austin American-Statesman, (July 19, 1936), Allred Papers, Container 560.}

Historians have consistently pointed to Allred as an exception in the parade of Governors throughout the period. His unsuccessful attempt to install a state income tax, to reduce rates on public utilities, and register and regulate lobbyists earned him the hatred of corporate Texas. No subsequent Governor has endorsed such a broad, liberal program.\footnote{George Green, The Establishment in Texas Politics: The Primitive Years 13-14, 45 (1979); Patenaude, Politics and The New Deal, and Calvert and De Leon, Texas also summarize his reputation similarly.} During a time characterized by more than one southern historian as producing only conservatives or radicals,\footnote{Williams, "Huey and Lyndon" at 219; Woodward, "The Future of the Past" at 281.} Allred was a genuine, white, New Deal liberal.\footnote{Representative Maury Maverick of Texas was one of the few other Texas politicians to stand out as a liberal. What follows at text is a construction and definition of the term liberal.} The influence of the civil rights movement of later years is presently so strong that any notion of a liberalism devoid of active commitment to racial justice is almost
unthinkable. By the standards of the New Deal, however, a liberal was one who sought an improvement in the status of the average working person, who supported laws for the economic and social welfare of the masses, regulation of trusts, improvement of working conditions in industry, better educational facilities, improved health regulations, and relief spending. Even more significantly, the "genuine" liberal continued zealously for such programs after the New Deal slid into disfavor, as did Allred. He continued to admire the President and believe that a liberalized Democratic party building on Roosevelt's example was the best hope of Texas. Only later did the liberal focus on unemployment, tenancy, farm policy, and other economic issues begin to threaten rather than hide the underlying assumptions of white supremacy.

While Allred paid a price for his New Deal liberalism, (mostly in his failed bid for the U.S. Senate when the philosophy was going out of style,) he also benefitted from his position as a Roosevelt man. Roosevelt personified the state as protector. It became commonplace in those years to say that people felt toward the President the kind of trust they would normally express for a warm and understanding father who comforted them in their grief or safeguarded them from harm. People spoke of the President as someone as immediately concerned about their personal problems as a family member. Roosevelt gave people the feeling they could confide in him directly. He shared from his generosity of spirit. The White House staff necessary

to answer personal letters to the President increased from one to fifty during Roosevelt's tenure. Allred, as his imitator, defender, and state counterpart during the New Deal must have received significant "spillover" goodwill and positive image enhancement. That phenomenon may even account for some of the continuing and sincere adoration of Allred that persists to this day among those who remember him. And indeed, Allred learned from the people as they relied on him, confided in him, and re-elected him. He learned to stay accessible, to avoid self-aggrandizement, to be courageous on their behalf.

It would be hard to over-emphasize the "Roosevelt man" aspect of Allred during his political career. Like Roosevelt, he focused on the plight of the farmers. Like Roosevelt, he believed that government action could provide some economic liberty for the masses. And most of all, both men relished the game of politics. Unlike many other competent government men, they also had the instinct for politics and the stamina that democratic politics requires. What was said of the Roosevelts applied equally to Allred: "Politics was food and drink to them; they loved its murky air and sly chicanery." When Roosevelt wrote that the function of government was the maintenance of a balance that would allow every individual to

48. Wm. Leuchtenburg, "The Roosevelt Reconstruction: Retrospect," in J. Boskin, Opposition Politics 26, 31 (1968). See also Page Smith, Redeeming the Time 461 (1987) ("despite the grim facts, the people began to recover their morale. Times were still hard, but something was being done. The President was clearly determined to do all in his power to relieve human suffering; just that fact was enormously reassuring")

49. On JVA, see Patenaude, Politics and New Deal at 95; on FDR, see Smith, Redeeming the Time, at 365.
find safety if he wished and power according to his ability, he spoke for Allred.\textsuperscript{50}

If Allred had a political philosophy, it was that.

Indeed, Allred himself achieved a certain amount of power through his personal ambition and ability. However, he did not manage to grow completely past the state in which he was content to simply occupy a spot where he could practice benevolence toward those who remained at lower levels of society. He had the potential to help facilitate a greater liberation of the oppressed, but, similar to the New Deal itself, (under one view) he settled for tinkering with the existing systems.\textsuperscript{51}

He left Texas in better financial shape than he had found it, but with his personal finances in a shambles. He was at least fifteen thousand dollars in debt when he left the Governor's Mansion.\textsuperscript{52} Toward the end of his term as Governor, Allred was presented with several options. He would have been a welcome addition to many of the prospering, new law firms in the cities. He was offered a position as Assistant U.S. Attorney General, but declined, even after a possible future solicitor general's position was tentatively thrown into the offer.\textsuperscript{53} As in every other career

\textsuperscript{50} Smith, Redeeming the Time at 368 and 370.

\textsuperscript{51} Rhonda Levine, Class Struggle and the New Deal 4-7 (1988) (mainstream New Deal historiography centers on exactly how novel, radical, and successful were the New Deal policies.) Levine points out that the mainstream discussion frequently conceals class conflict and simplifies property and power relations. At any rate, the New Deal in Texas, administered by Allred, fell something short of radical, and firmly upon mainstream liberal. The New South did not tolerate radicals.


\textsuperscript{53} James T. DeShields, They Sat in High Places (1940). It is not clear why Allred declined the Washington job offers. He was concerned about several of his family members at that time, and that may have been part of it.
move of his life, however, he remained a public servant at work in Texas.
Part One

Allred's First Tenure on the Federal Bench

and Senate Campaign

1938 - 1942
The Setting

Throughout the late 1930s, there was a growing need for more federal district court judges throughout the United States. Because of the other pressing problems of this era, stemming from both the Great Depression and World War II, there was a delay in ameliorating the situation by a round of judicial appointments.

Roosevelt traditionally appointed judges known to be champions of the underdog. Perhaps more importantly, Roosevelt made it clear that his judicial appointees must demonstrate a record of loyalty to the New Deal.1

Appointment and Confirmation

On July 11, 1938, in a dramatic news conference from the back of a whistle-stop train, President Franklin D. Roosevelt appointed his friend James V. Allred to the federal judgeship in the Southern District of Texas, an area ranging from Houston to the Rio Grande Valley. It was a recess appointment since we the Senate did not have an opportunity to vote on it, and Allred decided to finish his term as Governor before assuming the judicial office. That delay of almost a year allowed confirmation hearings in the Senate to proceed.

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Most observers thought the confirmation would be nothing more than a formality, but that was not to be the case. Several problems plagued the confirmation and ultimately delayed the proceedings for months. Allred was understandably dismayed. The first problem arose when the newspapers reported that Allred planned to run for the U.S. Senate against incumbent Tom Connally. Rumors surfaced that Allred would conduct a campaign while retaining his judicial office and he was forced to vigorously deny them, saying

[T]here is absolutely no foundation for these stories. I have not and any such plan and do not have any such intention in the future.

When I am confined as U.S. District Judge, I will then be out of politics and would not . . . permit myself to be drawn into any controversial political activities. I would regard any such activity . . . as improper as a Judge. I want to be a credit to the judiciary. . . .

As 1938 drew to a close and nothing had been done about Allred's confirmation, he wrote to Vice-President Jack Garner, asking him to hurry the President along in sending the nomination to the Senate. He asked Garner to give him an estimate of how long the confirmation process would take, saying "I should

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2 "[it] should be a matter of routine." Letter from John Nance Garner to James V. Allred (hereinafter JVA), (Dec. 23, 1938), Allred Papers, Container 458, File 1, "Federal Judgeship." It should be noted that Allred had close political rather than personal friendships with both Roosevelt and Garner. Roosevelt's announcement of Allred's nomination, however, came as a great shock to Tom Connally, another prominent Texas Democrat who was currently not on the best of terms with Roosevelt. He had not been informed of the Allred appointment, a political slight. Lionel Patenaude, Texans, Politics, and the New Deal 76 (1983).

like...to qualify...as soon as possible since I have no other income." Garner assured him that it wouldn't take long.⁴

At the end of his term, Allred left the Governor's mansion and moved his family to Houston where he practiced law privately for awhile. The Senate subcommittee began to debate his nomination, and confirmation seemed imminent until Texas Democratic Congressman Martin Dies and Senator William King began to fight Allred's confirmation. Although Allred had been told that it would not be necessary for him to go to Washington, Senator King invited him to be present at the hearings. Allred telegraphed that he was content to stand on his record, but if "the committee desires to interrogate me I shall be happy...to appear before you."⁵ He send Garner and Senator Connally (who seemed reassured that Allred did not seek his Senate seat) a copy of the King telegram and asked their advice. Garner wired back:

Telegram received. Your wire to Senator King was very fine indeed. I suggest you just sit tight and keep quiet and await developments. Best wishes.⁶

Several issues emerged from the committee debate on Allred. First, some Senators argued that since Allred had not been a resident of the Southern District before his appointment, he was not qualified for the position. Allred's supporters


⁵. Telegram from JVA to Senator William King, (Jan. 26, 1939), Allred Papers, Container 458, File 1, "Federal Judgeship."

met this with proof that there was no law against it. In fact, it had been done in the past without protest. Also, it was obvious that as Attorney General and Governor of Texas, Allred had no choice of residency. Supporters pointed out that the Governor is a citizen of the entire state.

Another issue was the curious opposition of Martin Dies, the chairman of the House committee on Un-American Activities, sometimes known as the "Dies Committee." The committee was formed in 1938 to investigate un-American activities in the U.S. It evolved into a powerful anti-communism committee over the years, but when Dies threatened to go after Allred, it was a very young committee with an uncertain future. The attack by Dies carried ugly implications that Allred was a communist sympathizer, especially to the Texas conservatives who opposed Roosevelt's policies and who know Allred as a "Roosevelt man." Some of the conservatives were just unhappy that Roosevelt was getting another judicial appointment. The implications died out as it became obvious that there was nothing questionable about Allred's patriotism. Finally, during the hearings, Dies

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7. Letter from Col. Chesley W. Jurney, Senate Sergeant at Arms, to JVA, (July 13, 1938), Allred Papers, Container 458, File 1, "Federal Judgeship."


9. Letter from Lyndon Johnson to Ed Clark, (Jan. 23, 1939), Allred Papers, Container 458, File 4, "Federal Judgeship." Also, some Texans believed that Allred was objectionable because he had too many friends in the North and Northeast regions of the country. Letter to Senator William King from M. K. Alexander, (Feb. 14, 1939), Allred Papers, Container 458, File 3, "Federal Judgeship." Supporters were forced to rebut the carpetbagger accusations. See, for example, the telegram from Kenneth Krahl, officer of the Sons of the Republic of Texas, to Senator William King, (Feb. 14, 1939), Allred Papers, Container 458, File 3, "Federal Judgeship," assuring King of Allred's true Texas roots.
came down with appendicitis and gave up the fight. It later surfaced that Congressman Dies probably did not have any objections to Allred but used the nomination to pressure some Democratic Senators to pass an appropriations bill that would continue to fund his Un-American Activities committee.

A more serious issue involved the advisory opinion on the white primary issue that Allred wrote when he was Attorney General. He had written that blacks could not vote in Democratic Party primary elections. Allred's opinion was only a flicker in the larger controversy that raged in and out of federal and state courts for years, but it came back to haunt him when a Black Texan, the plaintiff in the famous Grovey case that produce the controversial Allred opinion, appeared before the subcommittee to testify that Allred had handled the race issue poorly, both as Attorney General and as Governor.

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10. Letter from Glen Mae Woodal to JVA, (undated), Allred Papers, Container 458, File 1, "Federal Judgeship."


12. See Epilogue, supra.

13. Telegram from Fred W. Moore, a Houston attorney with Williams, Lee, Sears, and Kennerly, to Senator Morris Sheppard, (Jan. 26, 1939), Allred Papers, Container 458, File 1, "Federal Judgeship." A Houston man wrote to Senator Tom Connally on Allred's behalf, saying that the Black man testifying before the Senate committee was just one man who was displeased with Allred. He gave his opinions on the "negro question," predicting racial trouble in Houston if the committee dragged out the Allred confirmation very long over the racial issues and concluding that Blacks could change their politics but couldn't change their color or their character. Letter from S.M. Gibson to Senator Tom Connally, (Feb. 7, 1939), Allred Papers, Container 458, File 2, "Federal Judgeship." He was referring, undoubtedly, to the political role of the blacks within the populist movement in Texas. See Bruce Palmer, Man Over Money (1980) and C.Vann Woodward, The Strange Career of Jim Crow (1966).
The opinion had an effect on the interpretation of the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution. It has been said that the Equal Protection clause has gone from "constitutional omission to constitutional nullity to constitutional prominence."\(^{14}\)

When the Fourteenth Amendment was first interpreted by the Court in the Slaughterhouse Cases, its clauses were described by Justice Fields as "vain and idle." Justice Miller said that he could not imagine much use for the clauses other than for Blacks. Later, however, the court refused to allow the provision to serve even the limited purpose that Justice Miller envisioned. Eventually, the clauses became a great tool, not just for Blacks, but for many other disadvantaged persons.

The question of Texas Blacks voting in the Democratic primary elections is only a part of the history of the Equal Protection clause, but it resulted in four U.S. Supreme Court decisions, which occurred in the following procession:\(^{15}\)

In 1923, the Texas legislature passed a law prohibiting all Blacks from voting in a Democratic primary. In *Nixon v. Hearndon*, Justice Holmes delivered the unanimous opinion of the Court that "it seems to us hard to imagine a more direct infringement of the Fourteenth [Amendment.]"\(^{16}\)

Nevertheless, Texas Democrats found a loophole in the ruling. If the Texas offensive law repealed and substituted one that left primary voting rules strictly to the


\(^{15}\) The four decisions were *Nixon v. Hearndon*, *Nixon v. Condon*, *Grovey v. Townsend*, and *Smith v. Allwright*.

\(^{16}\) 273 U.S. 536, 541.
Party itself, then the exclusion of Black would not be State action and therefore not in violation of the Fourteenth Amendment.\textsuperscript{17} Texas quickly followed that course of action, and, predictable, the Party immediately passed a resolution mandating an all-white primary election.

The national NAACP tested the new voting practice by arranging for the same voter, Dr. Nixon of the earlier case, to present himself at the polls. When the precinct judge, James Condon, refused to allow him to vote and gave him a written statement that the refusal was due to his color, El Paso attorney Fred Knollenberg filed a suit against the election judge.\textsuperscript{18}

After winding its way to the U.S. Supreme Court, Justice Cardozo delivered the 5-4 decision in \textit{Nixon v. Condon}. The Court once again found that the denial of the franchise was unconstitutional since the Committee was acting under authority expressly delegated by the State.\textsuperscript{19} The Court did not decide the larger question of whether the Party as a whole had the right to prohibit Blacks from voting in the Primaries, a question which turned on whether the Party was a private, voluntary association. NAACP lawyer, James Marshall, warned that something must be done to keep political parties from being "regarded as private lunch clubs which can govern the activities of their members."\textsuperscript{20}

\textsuperscript{17} Darlene Clark Hine, \textit{Black Victory} 80-81, 109 (1979).

\textsuperscript{18} \textit{Ibid} at 115-116.

\textsuperscript{19} 286 U.S. 73 (1932).

\textsuperscript{20} Hine, \textit{Black Victory} at 120.
The Condon decision left room for Texas Democrats to maneuver again. On May 24, 1932, just 22 days after the Opinion came down, the Democratic State Convention in Houston passed the following resolution:

Be it resolved that all white citizens of the State of Texas, ... shall be eligible to membership in the Democratic Party ... 21

As Attorney General, Allred was asked for an advisory opinion on the legality of the new white primary resolution. He wrote that the answer required a statutory interpretation since it was a crime for a person to vote in a primary where he was not entitled and also a crime for an election judge to deny voting rights to a person who is entitled to vote. Therefore, he found that the Attorney General's office did have a reason to give an advisory opinion.

Allred noted that the Party as a whole had passed the Resolution, not merely the Executive Committee, and that such action was in technical conformance with Nixon. He also cited a State decision made by the Court of Civil Appeals at San Antonio. 22 Allred concluded that the Texas court made a valid decision. He wrote that the "Democratic Party of Texas is not a governmental agency." 23 Allred's advisory opinion was approved by the Texas Supreme Court just eight days before the July primary elections. 24


That was not the end of the issue, and the Justice Department ordered two investigations into Texas election practices. Both investigations resulted in findings that the practices were constitutional until the U. S. Supreme Court said otherwise. When the high Court spoke, it upheld the practice, but finally reversed almost a decade later, rediscovering the Fifteenth Amendment.25

Allred’s opinion could be interpreted as a manipulative political maneuver designed to propel him into the Governor’s office.26 There is evidence to support and refute that interpretation. First, once Allred agreed to write the opinion, he could hardly have decided otherwise, in light of the State court ruling. He was not in the position to reverse such a ruling, only the Texas Supreme Court could do that. What he could have done, however, was refuse to issue an opinion at all. Second, there was no assurance that white voters would uniformly approved of the opinion, especially Allred’s constituency. One attorney called it "mighty poor law." Some newspapers blasted the opinion as well.27 Third, Allred was extremely popular and thought to be the frontrunner in the race from the beginning. He didn’t necessarily have to use an issue like the white primary for a campaign. He beat Democratic opponent tom Hunter in the Primary by 40,000 votes,28 a significant Primary victory.

26. Hine, Black Victory, interpreted Allred’s opinion in just such a manner.
27. Allred Papers, Container 195.
There is no way of knowing if his victory really may be attributed to his white primary opinion.

However, Allred was in the midst of what looked like a failure in the anti-trust suits. His efforts paid off later, but at the time of the race, he had lost an important round in the big oil suits. Most inconsistent with his reputation as a liberal and a progressive, though, were his actions immediately following the Texas Supreme court affirmation of his opinion. In a campaign speech in Longview, Texas, he asked a group of Blacks standing close to the stage to "move back and make room for white Democrats." After the Blacks moved to the edge of the courthouse lawn, he told the, "I have no objection to your listening to my speech, but I want you to know that this is strictly a gathering of Democrats." He went on to say the "All of you probably know by now that the [Court] Friday upheld my opinion that ours is a white man's party."29

If Allred took opportunistic advantage of the issue for that campaign, it later almost prevented him from becoming a judge. Some would say that it should have. It remains the most inexplicable contradiction to his reputation as a progressive and a liberal. There was indication of his personal growth in the area of race relations after World War II, and Texas had always had an extremely restrictive suffrage policy. The conclusion must e that Allred the liberal was also occasionally Allred the southern paternalist racist.

The Allred confirmation met with two more problems. Some labor unions opposed him because he did not support sit-down strikes, and doubts about his legal education and training surfaced.\(^{30}\) His supporters in Texas and Washington were able to diffuse those relatively minor issues. The debate that resulted from all these issues provoked a flood of letters from Texans to the judiciary committee in Washington. The letters should broad support for Allred, including from some Blacks, many from Hispanics, uneducated and educated, rural and urban. A Black women's group wrote in his support.\(^{31}\) The mayor of the little town of Hamilton, Texas wrote indignantly, "I wonder if there is more negroes in Mr. Dies district than there is white people."\(^{32}\) Marvin Hall, the state Insurance Commissioner, assured Allred that he had "never been able to see eye to eye with Dies and the niggers."\(^{33}\) Judge Charles D. Smith of Beaumont, Texas offered this: "I couldn't resist dripping into the fight on you in Washington, and hand you herewith copies of letters to Senators Norris, Sheppard and connally," he wrote. Judge Smith's letter to Norris read in part

\(^{30}\) Allred was puzzled about the labor unions who expressed doubts about his confirmation. He promptly went about obtaining a letter of commendation from the national ACLU to counteract the effect.

\(^{31}\) Letter from the Grand Worthy Counsellor, Grand Court Order of Calanthe of Texas to JVA, (Jan. 10, 1939), Allred Papers, Container 348, File 1, "Federal Judgship." See also, Letter from Lyndon Johnson to Ed Clark, supra, note 9.

\(^{32}\) Letter from Mayor William Lemmons to JVA, (Jan. 30, 1939), Allred Papers, Container 458, File 1, "Federal Judgement."

\(^{33}\) Letter from Commissioner Marvin Hall to JVA, (Feb. 8, 1938 [sic]), Allred Papers, Container 458, File 1, "Federal Judgship."
I frankly do not hold a brief for Governor Allred, have never asked for nor received any favors from him . . . . The fact is I opposed him in the beginning -- that is, in his first race for Attorney General -- because of his extreme youthfulness . . . . His public life and service since have proven him to be a good man . . . . And he has convictions.

. . . [H]e is a true and honest liberal in the sense of comprehending and fighting for the principle that government is for all the people . . . . [H]e has courageously . . . stood by this principle . . . and given a pretty fair account of himself. . . . Frankness requires me to say that I would not expect Gov. Allred to make a Cardozo, or a Stone, or Brandeis and so on . . . but he will make an upright, fearless and just judge. 34

Allred replied to Smith that he recognized his own limitations but hoped to "make good in this great responsibility." 35 Arthur Garfield Hayes, chief counsel of the national ACLU wrote a glowing letter of recommendation for Allred on behalf of the organization. 36

Finally, on February 2, 1939, the Senate subcommittee approved Allred's nomination. On February 6, the full committee approved. Telegrams flew back and forth keeping Allred apprised of the favorable developments. 37 On February 17, Lyndon B. Johnson, a young Representative from Texas, wrote Allred, addressing him

34. Letter from Judge Charles D. Smith to Senator Norris, (Jan. 28, 1939), Allred Papers, Container 458, File 1, "Federal Judgeship."

35. Letter from JVA to Judge Charles D. Smith, (Feb. 10, 1939), Allred Papers, Container 458, File 1, "Federal Judgeship."

36. Letter from Arthur Garfield Hays, Chief Counsel for the national ACLU, to JVA, (July 13, 1938), Allred Papers, Container 458, File 4, "Federal Judgeship." Hays was a well-known New York lawyer who handled important cases and was frequently mentioned in the New York Post. He was prominent enough for the recommendation to be meaningful. The letter was on official ACLU letterhead and purported to represent the organization as well.

as "My dear Judge Jimmy." He sent a copy of the Congressional Record including the final Alred vote and added, "Now that it is all over... I hope I'm never in your court except on a friendly personal visit."

Back in Houston, Alred celebrated his nomination and his fortieth birthday with relatives and friends. He wrote to a friend,

I had a very happy birthday. Sam Houston helped me blow out the candles four different time son the cake Mrs. Alred fixed for me ...
We are enjoying our residence in Houston very much, except for the traffic which is a problem. I like my work immensely.

Although surely pleased with himself, Alred was not pretentious. His letter to the friend was on stationery from his fellow judge, Thomas Kennerly with Kennerly's name crossed out and his own typed above it. He was not a man for ceremony or arrogance. Those who knew him remember his as a man who, throughout his career, never lost the essence of his appeal, a homely, personal touch.

A Period of Adjustment

The years 1939 and 1940 were a period of adjustment for Alred. Like all freshman judges, he was a stranger in a strange land. Traditionally, in the United

38. Letter from Lyndon B. Johnson to JVA, (Feb. 17, 1939), Alred Papers, Container 458, File 1, "Federal Judgeship."

39. There was, however, more delay before Alred could actually take the bench and hold court. As he explained to Judge Richard Critz, a Texas Supreme Court Justice, "The President left... the day I was confirmed... my commission [is] to be signed, but he is somewhere in the Caribbean Sea and I don't know just how long it will take to get it back... Judge Kennerly needs relief... Letter from JVA to Critz, (Feb. 22, 1939), Alred Papers, Container 458, File 2, "Federal Judgeship."

States, when a new judge takes the bench, he enters into a new and bewildering world with little, if any, formal training for that particular job. As a federal judge, Allred had to quickly become an expert in all aspects of federal law. He had to learn to conduct court, to ride circuit throughout his large district, to remove himself from politics, to assume the demeanor of a judge. To complicate matters, he had to do all of this in a time of impending world war.

The setting in which Judge Allred began his work on the bench was a shifting one. In 1939 and 1940, Europe was in chaos, Poland, Denmark, Norway, Belgium, the Netherlands, and France torn apart by the German forces. The Soviet Union successfully attacked Finland while Great Britain pleaded with Roosevelt to help the Allies. Jews tried every means to flee Europe, including writing unknown American judges like James Allred asking for help.

During the summer of 1939, two Jewish Austrian attorneys pled with Judge Allred by mail to intercede on their behalf and provide them with affidavits attesting to their moral character and future prospects in America. One man listed the many languages that he know, and sent references to be checked through American sources. Allred replied to him, seemingly puzzled, saying that although he found the letters interesting and the men seemed qualified enough, he didn’t know them at all
and couldn't attest to anything on their behalf. Subsequent letters went unanswered.\textsuperscript{41}

Like many Texans, Allred seemed far removed from the situation in Europe and Great Britain, especially in the early years before Pearl Harbor. An old acquaintance wrote Allred from London:

\begin{quote}
This isn't such a bad place, but they are just about 50 years behind the U.S. Looks like war will start most any day so I don't suppose it matter if they are very progressive or not.\textsuperscript{42}
\end{quote}

Judge Allred quickly responded with a letter filled with news about the University of Texas football and basketball teams, but no mention of war.\textsuperscript{43} One possible explanation could be that Judge Allred felt that his position prevented any comment on such matters, or that he was following the lead of President Roosevelt as to neutrality. At any rate, in 1939, he was more interested in Texas than in Europe.

Isolationism as a response to the war in Europe was evaporating in the United States, however, and President Roosevelt was continually adjusting, moving from isolationism to a stated neutrality to "nonbelligerance" and on to a military build-up.

\textsuperscript{41} Letter from Otto Barda to JVA, (May 22, 1939), Letter from JVA to Barda, (June 3, 1939), Letter from Barda to JVA, (July 15, 1939), assorted letters, (June-July, 1939), Allred Papers, Container 459, File A-Bel, 1939.

Allred may have been following Roosevelt's lead on this matter as he did in so many others. See Sheldon Neuringer, "Roosevelt and Refuge for Victims of Nazism" in Herbert Rosenbaum and Elizabeth Barthelme, \textit{Franklin D. Roosevelt} 85 - 100 (1987).

\textsuperscript{42} Letter from Buster Baebel to JVA, (Jan. 23, 1939), Allred Papers, Container 459, File A-Bel, 1939. Baebel was drilling test wells in England for Gulf Oil Co. With a stunning lack of foresight, he wrote Allred, "I am sure that England will never have an oil field in the British Isles."

\textsuperscript{43} Letter from JVA to Buster Baebel, (Feb. 10, 1939), Allred Papers, Container 459, File A-Bel, 1939.
Texas was a prime site for training those troops and pilots and for building war materials. By 1941, Randolph Field was completed near San Antonio, becoming one of the largest aviation centers in the world, and in the next two years, there were more than fifty air fields and stations in the state, in addition to several army and navy installations.⁴⁴

In spite of all the military build-up within their own state, Texans paid more attention to the exploits of their flamboyant new governor, William Lee (Pappy) O'Daniel. O'Daniel had promised a pension to every old person in the state, regardless of need or disability. He had promised "no new taxes." Nevertheless, during his first term, he immediately proposed additional taxes and sponsored only a very moderate pension plan. A breach quickly developed between the Texas legislature and the governor, resulting in increased spending without increased taxes. Oil production had peaked in about 1937, and so the budget deficit increased. In spite of that, O'Daniel remained popular with the people and was easily re-elected. O'Daniel was phenomenally popular with the rank and file of Texas, if not the political elite. He was a bluegrass and country music aficionado who gained fame as the master of ceremonies of Bob Wills and the Light Crust Doughboys show, a radio show that promoted flour sales and went on tour.⁴⁵ O'Daniel won the hearts of many by traveling the state holding political rallies at which he gave away free,

freshly-baked biscuits. Allred and others distrusted him, and watched closely to see what he would do with his powerful position. O'Daniel would later play an increasing role in Allred's life.

In this setting, Allred had to grapple with the Southern District court docket which had backed up during the long delay in the confirmation hearings. Allred knew what was happening and and expressed his impatience to assume the work load before it became unmanageable. Once he was finally able to begin, he had his hands full, indeed.

Allred's daily life was pressured in those early years on the court. The younger of the two Southern District Judges, he was chosen to travel extensively, "riding circuit" throughout the district. He held court in Brownsville, Corpus Christi and Laredo, as well as in Houston. His wife, Joe Betsy, was ill and hospitalized some of this time. He sometimes traveled to see her, and then hurried back to yet another court location. also, Allred found Houston a very different place from Austin. The city was "too big for a country boy," he said, and the traffic was terrible.

Besides the adjustments in his daily life, there were new intellectual, administrative, and psychological demands. His political background helped him adjust quickly in some areas, but was a hindrance in others. For example he had few

46. Interview with P. R. Levee, March 15, 1989.

47. Letter from Dr. Wm. M. Dickens to James V. Allred (Feb. 17, 1939), Allred Papers, Container 458, File 3, "Federal Judgeship."


problems handling the bureaucracy of the federal court system. As a former district attorney, attorney general and governor, he was accustomed to administrative work, and proved quite competent as always in this area. He took some of his support team from Austin with him, including his secretary, Alma Albert, who was particularly helpful. (Alma sometimes travelled with him when he held court outside of Houston, and she soon earned the nickname of "Judge Alma.") He drew compliments early on for his efficient and professional handling of the backlog of cases which had weighted down the federal docket. Allred's previous positions of Attorney General and Governor of Texas were good training for the administrative demands presented by the new case docket. Both positions were powerful, but in a political rather than a hierarchical sense. On a practical, day-to-day basis, both positions were based on a "first among equals" arrangement. As a result, Allred was an experienced team player with excellent management skills.

On the other hand, his lack of extensive experience in a general law practice meant that he lacked expertise in some legal doctrines. A judicial specialist reports that the most common substantive legal problem for freshman judges seems to be an ignorance of criminal law. Criminal cases do not appear to have presented much of a legal challenge to Allred, however. His experience as a district attorney must

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50. Letter from Ken Harper to JVA, (July 23, 1940), Allred Papers, Container 462, File H.J.
51. Letter from H.B. "Babe" 2 to JVA, (July 12, 1940), Allred Papers, Container 462, File F.
have been of great use to him in his criminal caseload. Allred explained to a friend as he took the bench, "I really feel qualified to take over the criminal docket at once since I have been doing quite a bit of research work, and, as you know, have had considerable experience on both sides of that docket in the past." His Brownsville docket was almost exclusively criminal cases, as he explained to a friend:

Most of the cases I try here are Mexicans who have entered this country unlawfully. Most of them give the excuse that they are hungry and can't make a living on the other side. We have about 75 or 100 every two or three months who cross the river by wading, mostly at night. In addition to this, I have many cases of petty smuggling, even goat and fresh meats. It is all very interesting.

Allred had established a very good relationship with the Mexican government when he was Government of Texas, and he was generally sympathetic to the problems that existed in Mexico. Latin American groups in the United State had been some of his strongest supporters during the controversial confirmation hearings. He did not deal with the illegal immigrants harshly.

A substantive legal problem which was more difficult for Allred was civil procedure. Rules of civil procedure are the mechanics of civil litigation. By rules of procedure, the government prescribes the way people may bring their controversies before the courts and they way they must unfold and conduct those controversies

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54. Letter from JVA to Judge Richard Critz, supra, note 39.

55. Letter from JVA to Shirley Eastwood, (May 14, 1940), Allred Papers, Container 462, File D-E.

56. Ralph Yarborough wrote Allred shortly after the confirmation was completed, urging him to "learn trial procedure," encouraging Allred by saying that even though it was difficult, it could be done. Yarborough said that Allred was smart enough to do it, but that it would take a concentrated effort. (Feb. 17, 1939), Container 458, File 2, "Federal Judgeship."
once they are in courts. Procedural rules are meant to provide fair and efficient trials.

One substantial group of rules involve pre-trial proceedings. Pre-trial procedures have been a problem for new federal district court judges, due to many factors. Attorneys frequently attempt to "bury their opponents in paper," especially in that period preceding the ready availability of sanctions into which Allred's career fell. Overseeing pre-trial procedures could be, and frequently were, a judicial nightmare. The work requires a difficult combination of informal and formal functions by the federal judge. In a single hour, he may have to "change hats" several times, making rulings, giving advice, urging compromises, all while juggling dozens of cases simultaneously. In Allred's time, neither judge nor litigants demanded the extensive pre-trial conferences of modern litigation management. The result was a heavy burden on the freshmen judges until they developed their own personal system of case management.

The major components of pre-trial procedures are pleadings and motions. Pleadings state the complaints and the prayer of the plaintiff as well as the answer of the defendant, along with any counterclaims. At common law, pleadings were exceedingly strict. The tiniest mistake or variance was fatal to the erring party's case. The judge, of course, played a crucial role in deciding the sufficiency of those complicated pleadings.

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57. Ten years later, in Allred's second tenure as judge, he initiated extensive pretrial conferences in order to streamline litigation management.
The Federal Rules of Civil Procedure were adopted in 1938 and loosened and simplified the rules of civil pleading so that disputes could be decided more on the merits than on the intricate pleading skills of the respective attorneys. Federal Rules 1, 10 and 15 in particular illustrate the new flexibility in pleadings. Rule 1 reads in part: "These rules . . . shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 10 gives the simplified pleading form. Rule 15 is the hallmark of modern federal pleading; that is, it allows a party to correct pleading mistakes or amend a pleading on the basis of newly learned information. However, in 1940, the many appellate decisions which would expand and define the limits of that new flexibility had not yet been written. In 1939 and 1940, Allred struggled on the front line of the trial courts with the new doctrines in federal civil procedure.

An Allred opinion involving a dispute over civil procedure is Saldibar v. Heiland, 58 a problematical decision. He found that when the defendant did not meet the filing deadline to remove a case to federal court, he forfeited federal jurisdiction, even though the courthouse had been closed by local decision on December 25 and 26, the last two days of the statutory filing period. Allred reminded the party that he had 30 days in which to file his requests, and he did not have to wait until the day after Christmas to attempt it. 59


59. Federal Rules of Civil Procedure 6 (defining deadlines) and 77 (regarding the district courts) were amended in later years to eliminate this problem.
The Rules were intended to be more flexible than Allred interpreted them in *Saldibar*. Later amendments to the Rules helped clarify the matter of deadlines, but judges always had great power to allow extensions. Why Allred denied federal jurisdiction to the defendant in this case is puzzling. It could have been that sloppy lawyering angered Allred, or that some other factor influenced the decision. At any rate, it was not in line with Allred’s usual good-natured, common-sense approach. His explanation for the unusual sternness was simply, a deadline is a deadline.

In all fairness, the line of cases establishing the flexibility and liberality of the new rules did not appear until late, specifically, *Williams v. Robinson* in 1940, *Sibbach v. Wilson* in 1941, and *Blair v. Durham* in 1943. Also, Allred handled mostly criminal cases during these years, so he was even more inexperienced in civil procedure matters than in adjudication in general.

The array of legal subjects which arose must have been staggering to Allred, as it would be to most freshman judges. Law was more complex in the 1940s than it had been when he went to law school, and since he had not actually practiced law extensively, he carried a double burden. He wrote, "The field of law is hard, harder than ever before . . . ." 63

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60. 1 F.R.D. 211 (D.D.C. 1940).
61. 312 U.S. 1 (1941).
62. 134 F.2d 729 (6th Cir. 1943).
63. Letter from JVA to Rena Cox, (April 5, 1940), Allred Papers, Container 462, File Clay-Cu.
Allred struggled to master legal complexities. In *U. S. v. Main*, he surveyed the range of pleas and motions before him and decided that they could be grouped and discussed under subheadings. He then proceeded to list his decision under the titles "First Ground," "Second Ground," "Third Ground," and "Fourth Ground." A senior judge would probably not have used those subtitles in an effort to structure and answer every issue raised by the respective attorneys.

In *Maryland Casualty Co. v. Scharlack*, Allred was called upon to interpret specific words in an insurance policy. In making such a construction, judges usually rely on the legal maxim that the contract must be most strictly construed against its make, in this case the insurance company. When a difficult question of interpretation arises, a judge will usually decide it in favor of the insured rather than go to great lengths to attempt to decipher the insurance company’s deliberately ambiguous words. Young Judge Allred explained in his opinion that he consulted Webster’s dictionary, *Texas Jurisprudence* encyclopedia, and, finally,

\[\ldots\text{In an effort to clear the meaning, I have resorted to diagramming.}
\text{When the old rules of grammar are applied \ldots it [the meaning] clearly appears \ldots}\]

Such a resort illustrates Allred’s way of reasoning out a case, grappling and struggling to explain his decisions.

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64. 28 F. Supp. 550 (S.D. Tex. 1939).


66. 31 F. Supp. 931, 934. The case was appealed. The Fifth Circuit said that it was not necessary to go through all of that analysis in order to interpret the insurance policy. They held that Allred’s judgment was, nevertheless, correct. *Maryland Casualty Co. v. Scharlack*, 115 F.2d 719 (1940).
Altogether, Allred's decisions were adequate, but not scholarly. He could have obtained advice from senior Judge Kennerly, or made extensive use of his law clerk. He had many friends who were lawyers, and he could have discussed doctrines with them. But more likely, he simply went to the law books himself. He and Kennerly were frequently separated geographically, his former prestige as governor and attorney general likely made asking for advice a little difficult, and none of his early opinions have the ring of the law clerk about them. Indeed, there is no evidence that he took on a law clerk, or intern at all. It was the custom at that time for U.S. Supreme Court Justices to have law clerks or "briefing lawyers," but the custom did not yet extend to the lower federal courts. It seems that Allred probably took the responsibility for educating himself on any legal problems he may have had.

If such a surmise is correct, the availability of good law libraries becomes an important point. Allred held court in Corpus Christi, Laredo, Brownsville, and Victoria, as well as in Houston. Since he was the freshman judge, he spent more time at the non-Houston courts. Houston had more than one excellent law library at Judge Allred's disposal, but hit access to law books in the other cities was much more limited. The library for the federal court depended upon the local federal judge. He used his own personal books, the county library which the local bar

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67. Interview with Professor Newell Blakely, University of Houston Law School, September 18, 1989. Educating himself was certainly his habit when he served on the bench the second time. William Eckhardt was a U.S. Attorney at that time, who necessarily traveled with the judges to the sittings at the different cities throughout the district. He recalls seeing Allred alone in the libraries late at night, at sitting after sitting. Interview with Wm. Eckhardt, Vinson & Elkins, Houston office, Fall, 1990.

68. Ibid.
supplemented with law books, and if he chose, began or supplemented the federal court’s small law collection. As a rule, the courts did not have separate libraries just for the judges. (Interestingly, what books they collected were open to the U.S. Attorney’s staff, but not the defense bar.) Usually, each new judge inherited a small collection that remained with the bench. As new judges were appointed, they could ask for federal money to order supplementary books. If the judge could not find a book that he needed, he could have his marshals order it. The collection that went with the bench was however, not well developed and were not dealt with in any systematic fashion. In places like Victoria, which has never had a resident judge, the collections are still scanty. Allred, of course, was appointed before there was a resident judge in any of those cities outside Houston. It is likely that he had little or not law library to himself in those cities, and the ones available to the public were not extensive. He was not only responsible for educating himself from the law books, he was also responsible for finding the books.

The heavy burden of adjusting to a new career, the heavy case load, and the heavy reading increased the burden of psychological adjustment. Over and over, Judge Allred felt exhausted and impatient with the peculiar stresses of a federal judgeship. "I have been working pretty hard since I came on the bench," he wrote, and he was looking forward to a vacation to occur about a year after he ascended to

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the bench. The job was "a little more tedious than I had expected." As one young federal district court judge explains, being a freshman judge in a district court is like joining the emergency room team in a hospital. The time for precision and studied reflection is a luxury held by the surgeons of the appellate courts, not the trauma team of the district court.

One research team discovered that judges report psychological problems in five different areas. First, maintaining a judicial bearing both on and off the bench; second, the loneliness of the judicial office; third, sentencing criminals; fourth, leaving behind the adversary role; and last, local pressures. Allred also experienced these problems.

He had always been a man of great informality; many old friends expressed awkwardness about how to approach him as a judge. Either teasingly or seriously, they asked what to call him, and asked whether or not he was too busy or important for them since he was now a judge. Some relatives had to be urged not to stand on formalities. Many of his congratulatory letters (on his confirmation) included comments on "what to call you." Several agreed with Texas Supreme Court Justice

70. Letter from JVA to Rabbi Henry Cohen, (July 2, 1940), Allred Papers, Container 462, File Clay-Cu.


73. Supra, note 53.

74. See correspondence between JVA and Wilbur Cox, Allred Papers, Container 462, File Clay-Cu.
Richard Critz that "You'll always be Jimmie to me." As friends and acquaintances struggled with his new status, he was feted by the Houston Bar Association with an elaborate banquet, honoring their newest judge. It must have been a heady experience, even for one as politically experienced as Allred. Maintaining a judicial mien at all times must have been something of a trial, probably one that he finally resolved by not changing at all; that is, remaining informal.

He was greatly concerned with judicial propriety, however. There was increased correspondence from people all over the state who apparently felt that he now possessed both greater prestige and more time; therefore he would be more available to give out highly valuable letters of recommendation, dispense advice, and catch up on personal exchanges. He refused to write letters of recommendation, arguing that it was not appropriate. He would occasionally answer a questionnaire about a former employee or associate when pressed to do so, but he specified to the questioner that he was only answering because silence might be interpreted as a negative recommendation and would hurt the applicant.

But when John B. Connally wrote asking for a recommendation for the U.S. Naval Reserve, he received one. The request from Connally was written on Lyndon

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75. Letter from Justice Richard Critz to JVA, Allred Papers, Container 458, File 2. Also, newspaperman J.H. Allison of the Wichita Daily Times wrote Allred, saying that "You know I can't say 'Dear Judge' or 'Your Honor,' you are just my boy Jim." (Mar. 10, 1939), Allred Papers, Container 458, File 3, "Federal Judgeship."


77. Allred Papers, Container 462, passim.
Baines Johnson's stationery. Johnson was a young Congressman at the time, and Connally was his assistant. Perhaps it was politically expedient that Allred provide a letter. Once allred's protege, Johnson would soon advance to the U.S. Senate and then to the Presidency. At any rate, Allred broke his rule about letters of recommendation, writing to Connally,

'It will be a pleasure for me to write a letter for you but I wish you would give me a typed letter applied to yourself. I know about you in general, but cannot supply the details which you suggest . . . . Please don't hesitate to write it for me and send it on down.'

Connally received the promised letter shortly.

One can only speculate as to how Allred felt about telling some old friends that he could not, as a judge, make any job recommendations, and then writing one out for Connally who he admittedly did not know very well. He was not a mean man; rather, his actions represent a struggle to limit his political influence. Should he refuse everyone or no one? His answer seems to have been to refuse everyone he could. The key to the entire episode may lie in Allred's growing patterns of deference to great men. The limitations he imposed upon himself followed a pattern similar to those that historians find in Lyndon Johnson. Johnson managed to

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78. Letter from John Connally to JVA, (Oct. 10, 1940), Allred Papers, Container 462, File Clay-Cu.


overcome some of his feelings of inferior regionalism,\textsuperscript{81} but similar barriers blocked Allred's path to Washington, a path which tempted him.

The nature of a judgeship results in loneliness for many judges. Allred did not lose contact with lawyer friends and others; he did, however, seem to move into a more elite social circle. His new friends, like Supreme court Justice William Douglas, weren't the old country friends of his younger days. In any event, Douglas' friendship in particular was warm and helpful. Douglas and Allred became well-acquainted during a hunting trip in the summer of 1940. After that, they exchanged news, advice, and compliments by mail.\textsuperscript{82} Nevertheless, Douglas was far away in Washington, D.C. Allred was in a new city, his wife was sickly, and he must have had some lonely days. His letters were more reflective and less jolly.\textsuperscript{83}

Passing judgment on unfortunate defendants who appear before the court is another burden of a judge that sometimes causes psychological pain. Depriving someone of liberty is hard, and Allred had pardoned a number of criminals while he was governor. More frequently, he worked with parole boards to obtain freedom for

\textsuperscript{81} See, among others, Doris Kearns, \textit{Lyndon Johnson and the American Dream} (1976). Allred disliked refusing favors to friends so much that he developed a specific policy to avoid some of the awkwardness when he was Governor. He always made appointments immediately after a post was vacated so that he could tell the crush of applicants that he was so sorry, but the post had already been promised to so and so. Otherwise, of course, they would have been strongly considered. Written Interview with David Allred, April, 1991. Once on the bench, Allred didn't have the same opportunity to design political strategies for those kinds of problems.

\textsuperscript{82} Correspondence between Douglas and JVA, Allred Papers, Container 462, File D-E.

\textsuperscript{83} Supra, note 4; letter from JVA to H.C. Edge, (Mar. 23, 1940), Allred Papers, Container 462, File D-E.
those whom he thought deserving or whose parents wrote pleading letters.\textsuperscript{84} When he became Judge Allred, he must have experienced some discomfort in sentencing criminals. Allred expressed regret even in his written opinions when he had to rule against an unfortunate defendant.

For example, in a bankruptcy case, he wrote, "I regret finding that there is no reasonable hope of the debtor rehabilitating himself, especially since he has made every effort in that direction."\textsuperscript{85} In that case, all Allred was required to do was accept the findings of the Special Master who had proved beyond doubt that the bankrupt man was completely incapable of working his way back to solvency. Yet Allred wrote an opinion, commenting sympathetically on the efforts of the bankrupt man, preserving for him some dignity in his defeat.

Putting aside the adversarial role of the attorney was probably not as difficult for Allred since he had not been a trial advocate for a long time. There is some indication that he was sympathetic to one party or another in cases, as in the bankruptcy case above, but there is no indication that he had a significant problem with impartiality.

Community pressure plagued Judge Allred in a peculiar fashion. He had been for so long a citizen of the entire state; as a result, his "community" was really a group of political associates with whom he had worked and corresponded for a long

\textsuperscript{84} Ironically, Allred had been very skeptical of the numbers of criminals pardoned by the Fergusons while they and their followers were in the Governor's Mansion. When he was there, however, he also found it difficult to avoid pardoning those criminals who seemed unjustly punished.

time. The pressures of a political community on a judge can be weighty, especially when the judge is, at heart, a politician much concerned with public policy, as was Allred. Most Southern federal judges lived serenely before 1954 and were honored by the community as long as they did not offend local customs. They were expected to attend luncheons, testimonial dinners, and socialize with businessmen. One Southern judge explained that

lifetime tenure insulates judges from anxiety over worldly cares for body and home and family. But it does not protect them from the unconscious urge for the approbation of their fellow-man, and fellow-man most often means those of like interest and backgrounds, business and professional experiences and predilections, and even prejudices.  

And indeed, those associates probably exerted some pull toward a certain political ideology. One political scientist explains that the closer a judge was to politics in prejudicial days, the more his judicial decisions will be politically influenced. No one could have been closer to politics than Allred. Nevertheless, as a judge, he worked hard to avoid even the appearance of political partisanship, successfully building a reputation for fairness.

Allred served at a time when traditions were being shaken. The proper role of judges in relation to legislatures and presidents, the role of the United States in


88. For an example of the bolsterous political partisanship of Allred and his friends, see correspondence between JVA and L.J. Watts, Allred Papers, passim. In a tribute to Allred, shortly after he died, former Judge Ben Connally (appointed contemporaneously with Allred's second appointment) said: "In politics, no one was more partisan." He went on to say that Allred realized that partisanship had no place on the bench, and he accordingly laid it aside. News clipping, Corpus Christi Caller Times, Oct. 30, 1960, Page 6, Col. 4-6.
relation to the world, the role of women, the economy, racial and moral doctrines were all in flux during the period in which Allred lived and worked. In the midst of all this, there were decisions to make and opinions to write. Allred had to decide what values and standards to apply as he decided questions of legal interpretations.

Opinions of a Settled Judge

Judge Allred had plenty of writing to do in the form of opinions. His opinions for the court were workmanlike, demonstrating a great personal interest in the matters before him, and characterized by common sense reasoning. They show a concern for clarity and comprehensiveness. He tried to address each argument of the litigants before him. His frequent early use of italics to place emphasis on words, subheadings and outlines to separate issues within the opinion, too-heroic efforts at organization, and mixed formal and informal language gave way to a slightly more sophisticated style of opinion-writing by late 1940, although his predilection for dicta continued. Overall, Allred made a fairly accurate assessment of his opinion writing skills when he wrote to Judge Jackson, a state judge in Amarillo, Texas, in 1939, "I cannot pretend to possess any legal ability which this great office calls for..." Nevertheless, he attacked the task with diligence and hard work.

In *Troppy v. La Sara Farmers Gin Co., Inc.*, 90 a Rio Grande Valley cotton farmer challenged the Agricultural Adjustment act, (AAA), a major New Deal

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90. 28 F. Supp. 830 (1939).
legislative Act which laid the foundation for American farm policy for the next half-century. The object of the AAA was to limit agricultural production so as to increase agricultural prices. The AAA was problematic, both in implementation and justification since it was passed at a time when many were needy and hungry. Nonetheless, it was successful in raising prices of wheat, corn, and cotton.91

Troppy was a farmer who was penalized $.02 per pound for cotton sold to the gin companies in excess of his farm marketing quota fixed by the USDA. He sued the gin companies for $356.26, asserting that the AAA sections applying to cotton were unconstitutional because it was not a regulation of marketing, but of production, in violation of the Tenth amendment (rights not given to the federal government are reserved to the states). He also claimed that the Act provided for penalties to be collected on cotton that was not part of interstate commerce, but was purely local in character.92

The AAA had been challenged successfully in the past, on its powers to tax.93 Congress subsequently amended the Act to overcome that challenge. Troppy was attacking the revised, 1938 version of the Act. Just five months before Allred decided

91. Texans had, at the time, some ideological problems with New Deal agricultural reforms. See Louis Hacker, A Short History of the New Deal (1934); Anthony Badger, "Huey Long and the New Deal" in Stephen Baskerville and Ralph Willett, eds, Nothing Else to Fear 65-103 (1985)(In 1931, Long proposed a solution to the Southern cotton farming problems that intensified the AAA program of production control and government intervention. Texas was the crucial state in the implementation of the plan, but Texas would not do more than agree to call for reduced acreage for cotton and only if one-third of the other states agreed first. Texas was no great leader of New Deal agricultural reforms.).

92. Troppy, supra, note 90, at 831.

the Troppy case, a similar challenge had been defeated in the United States Supreme Court. In Mulford v. Smith,94 a tobacco farmer had challenged the marketing quotas on tobacco and lost. Troppy contended that Mulford did not apply to him because the law was different as applied to cotton, and because his cotton was not involved in any interstate sale. Since Troppy was attacking the constitutionality of the amended version of the AAA and the government wanted to defend it, the U.S. intervened in the suit and became another defendant.

Allred ruled in favor of the government, upholding the Act. In a long opinion filled with data on the nature of cotton farming, Allred decided that Mulford did control; that the Act did not regulate production because the farmer was free to grow as much as he liked (he just could not sell it); and that since most Texas cotton ultimately travelled outside the state, the cotton was indeed in interstate commerce. Allred quoted at length from the government brief, demonstrating his acceptance of their arguments, reminding the parties (and other would-be challengers?) that here always existed a presumption of validity of an Act of Congress. "This court has no right to substitute its judgment for that of congress," wrote Allred. He justified the Act by saying that "Congress made very thorough and deliberate investigation of the business, holding many hearings about it. The Act was not hastily passed, but represents the considered and mature judgment of the Legislature."95

95. Troppy, supra, note 90, at 838, 835.
Allred's opinion is a peculiar mix of constitutional adjudication. He wrote that he had no right to substitute his judgment for that of Congress. However, did "right" mean "power" or something altogether different? Because he undertook to evaluate the Act, researching cotton production, justifying the results, approving the sober method by which Congress framed it, he implied that if he thought the Act incorrectly included cotton, or if Congress had passed it hastily, then he might have struck it down. It is not at all clear that he indeed presumed every Act of Congress to be valid. Allred did not discuss his theories of Constitutional interpretation. He was not a man to devise constitutional theories only to be bound by them; he was more influenced by the felt political necessities of the day. He believed in Roosevelt's New Deal, and he sustained new Deal legislation in his court. Allred did not feel that this was an improper use of his judicial office. Indeed, he felt that he was properly evaluating the cases before him and deciding what was best. Allred's judicial philosophy was basically to do one's best, to follow one's instincts.96 One of his favorite poems was entitled "If I Were a Judge." It reads in part

If I were a judge, I'd remember, too,
That when life is over -- my labors through,
I, too, must stand at the judgment seat,
And the God of Justice be forced to meet,
And I'd want to feel on that great day,
That none of us know, is so far away,
That the Lord of Heaven could say to me:
"Your work was done in sincerity,
Tho' you've made mistakes, yet I know you've tried,
To be always and ever, on justice side,

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96. Letter from Judge D.S. Meredith, Jr. to JVA, (Mar. 4, 1939), Allred Papers, Container 458, File 3, "Federal Judgeship." "I shall never forget that when you appointed me, you said that the only request you had . . . was that I do right as I saw it without regard to anything else."
And because of that, all else is forgiven, 
And we welcome you to the Court of Heaven.97

The questions remain: One should do ones best, but for whom? the parties? the state? the country? Allred did not wish to be an obstructionist, and apparently saw no conflict between that desire and his desire not to be partisan. The label of "Roosevelt man" would later hurt him,98 but in reality, he had simply agreed with Roosevelt most of the time and followed his own conscience.

In 1940, Allred confronted another troubling issue that needed resolution: gun control. the evolution of the firearms case is a microcosm of the era. In the early 1930s, a series of sensational crimes created public hysteria that resulted in increased federal police powers. The Lindbergh kidnapping, John Dillinger, Bonnie and Clyde, and Ma Barker were figures who generated a great deal of publicity. The Great Depression further heightened public fears about a breakdown of law and order. The times seemed to invite desperate acts. Congress and President Roosevelt acted quickly to calm public fears, making kidnapping a federal offense, enacting the Fugitive Felon Law (making it a federal crime to cross state lines to avoid prosecution), expanding federal jurisdiction over interstate transportation of stolen merchandise, creating the Marijuana Tax Act, and passing the National Firearms Act, a tentative step toward federal gun control.99

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97. Hugh R. Porter, "If I Were a Judge!"

98. See supra, Part II.

As the FBI expanded in power and size during the 1930s, radio and the movies began to reflect its emphasis on firearms. The National Police Academy trained its officers to firm machine guns from moving police cars, the handgun became the symbol of the American police officer, and gangster/cop shows became popular for the first time. The "cult of the gun" in the 1930s resulted in a general upswing of violence.\(^{100}\) In 1938, Congress passed another gun control measure, the Federal Firearms Act (FFA).

The earlier National Firearms Act regulated the industry and placed a tax on firearms dealers. It was challenged as a crime control measure masquerading as a tax, but the U. S. Supreme Court in Sonzinsky v. U.S.\(^{101}\) and U.S. v. Miller\(^{102}\) held that it was a legitimate tax because it produced revenue rather than substituting for criminal sanctions. The general principle is that the government does not have the power to tax out of existence or regulate those activities which it does not have the power to ban.\(^{103}\) The principle, however, has never greatly limited the federal government, and the later FDA provided for increased gun control by shoehorning the regulation into "interstate commerce" like so much of the New Deal social legislation.

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100. Ibid., at 182-183, 188.
102. 59 S.Ct. 816 (1939).
The FFA was challenged in a New Jersey Federal District Court in 1939 on the grounds that it was violation of the Second Amendment right to bear arms. The New Jersey Distinct Court said that the Second amendment right to bear arms was not an individual right, but that of the militia. Therefore, the Act was not unconstitutional in its prohibition of criminals receiving guns in interstate commerce.\textsuperscript{104}

In 1940, Allred heard the case of \textit{U.S. v. Platt}\textsuperscript{105} in which the Act was challenged on grounds other than the Second Amendment. Platt had been convicted of a crime in 1933. In 1938, the Act was passed making it illegal for him to receive a gun. In 1939, Platt was arrested for being in possession of a gun in violation of the Act. Platt argued that the Act was an ex post facto (retroactive) law as it applied to him. That is, it was passed after his original conviction, removing his right to bear arms and, in effect, punishing him for a second time for the original crime. Additionally, he reasoned that if he had known in 1933 that Congress would pass such a law in 1938, he would have been deterred from committing the first offense. Allred did not buy the ex post facto theory, saying that if there was anything wrong with the Act, it had nothing to do with ex post facto doctrine.

In 1941, the New Jersey Federal District case mentioned above went back to the District Court for rehearing. The issue on the second hearing was whether or not the Act was unconstitutional as a violation of the Due Process clause of the Fifth


\textsuperscript{105} 31 F. Supp. 788 (1940).
Amendment. The Act provided that mere possession of a firearm by a convicted criminal created a presumption that the firearm was purchased or received after the effective date of the Act. Therefore, it ruled out the possibility that the criminal in question already possessed the gun before his original conviction or before the Act went into effect. The District Court rejected the new challenge also.106

In 1943, the U.S. Supreme Court heard an appeal of U.S. v. Tot.107 The Court overruled the District Court on one important point. The presumption clause of the Act was unconstitutional because it was irrational. Henceforth, the government prosecutors must prove that the defendant bought or received the gun after the effective date of the Act. However, the bigger problem of using the commerce clause to expand criminal jurisdiction continues; many judges and commentators have misgivings.108

Resignation from the Bench

Allred's career as a federal district court judge in the 1940s was cut short.

In 1940 - early 1942, Allred seemed happy and pleased with his life. He claimed to enjoy his work, and he had more time with his family than he had ever had. He insisted that his health was much better since he left politics, and he was making more money than he ever had before. Then he resigned his lifetime position

as a federal judge and ran for the U.S. Senate. There is no simple explanation. A complex, intertwined set of circumstances worked to change Allred and to propel him into actions that would dramatically change his life.

It could have been that Allred was really dissatisfied with his personal and professional life. He was a man used to excitement and public attention. His new life was very different from the old life in the Governor's Mansion; different, indeed from anything he had experienced from his difficult childhood through his young adulthood in school and in the military to his remarkably successful and fast-paced political career.

Judge Allred and his family moved into a house in the Montrose area near Rice University in Houston. His work was based in Houston, in the offices of the Federal Court located in the Post Office Building. He traveled through the southern district, regularly, usually making appearances at several cities before returning to Houston. These trips usually lasted a few days.

Allred entered the judiciary under financial pressure. He had left the Governor's mansion in debt, with very little money, not unlike most people at the end of the Depression, and then his confirmation to the court had been delayed. The shortness of time and possible conflicts of interest prevented him from expanding his private law practice much in the interim. He was also in the difficult position of being a respected public figure, a man not expected to be poor who was a little embarrassed when he had to refuse money to friends who asked for loans or to charities. He wrote to one hotel manager in 1940, asking for a government rate,
saying, "I hate to ask for a rate, but the Government only allows $5.00 per day, which includes the cost of meals, calls, and hotels." However, he soon began to pay all of his debts and save some money.

Allred and Joe Betsy wanted to settle down in Houston and build a house. They shopped for land in the Bellaire area of Houston where several friends lived. The Allred's wanted a place large enough for Grandpa Allred to live with them, for the children to have a big yard, for chickens and horses, and for guests to spend the night. They bought a couple of acres in just the area that they wanted, what is now just "outside the Loop" in Southwest Houston. They lived near Abe Zindler, the mayor of Bellaire, and his son Marvin Zindler, who later became a Houston journalist of some notoriety. When the news got out that Judge Allred was building a house, he was besieged by letters and calls from construction contractors of all specialties. He and Joe Betsy delighted in discussing their options, and usually chose those that seemed best in the long run, using the best materials that they could afford. As Allred wrote to a friend

For the past year, we have enjoyed the first real home life we have known in more than ten years. In addition to this, I have just about managed to get out of debt and we have been planning to make a down payment on a home by the first of the year.\textsuperscript{110}

\textsuperscript{109.} Letter from JVA to Manager, Austin Hotel, (Feb. 10, 1940), Allred Papers, Container 462, File B.

\textsuperscript{110.} Letter from JVA to S. Raymond Brooks, (May 29, 1940), Allred Papers, Container 462, File B. Allred's house-building plans indicated that at that point, he had no intentions of moving to Washington in the near future.
Besides job stability and financial security, Allred’s health and social life were apparently quite good. He told friends and family repeatedly how much he liked the new job because it was better on his health than being in politics. Social activities at the Masonic lodge and the local church as well as domino tournaments and hunting trips absorbed Allred’s attention. He made speeches to assorted organizations, took Joe Betsy to balls and banquets, entertained guests, including the entire William O. Douglas family, in his home. Allred spoke of the pleasant relief from ringing phones in the middle of the night, a standard in the Governor’s mansion. Allred wrote letters filled with news and benevolent advice to his friends and relatives.\textsuperscript{111} In short, all appeared to be well with his world.

Professionally, Allred earned a good reputation among practicing attorneys.\textsuperscript{112} He served quietly and efficiently, with only one of his decisions reversed by an appellate court after three years of work on a loaded case docket.\textsuperscript{113} His professional life was relatively quiet. Even though several major legal projects were in progress during his tenure, like the replacement of Corpus Juris with Corpus

\textsuperscript{111} Letter from Pat Shipley Anderson to JVA, (Jan. 17, 1940); Letter from JVA to Pat Shipley Anderson, (Jan. 24, 1940), Allred Papers, Container 462, File A.

Dave Allred remembers that his father was very involved with his children during this time. Allred built a baseball backstop for his sons out of creosoted 4 x 4s in the back yard. There were always either baseball games in the yard or football games in the front yard going on. Allred liked having the neighborhood children around.

\textsuperscript{112} Interview with Randall Jamail (March, 1989), Interview with Newell Blakely (September, 1989), Interview with Jim Gough (September, 1989), Interview with John Niebel (September, 1989), Interview with Wm. Eckhardt (Fall, 1990), Interview with Judge John Brown (Fall, 1990).

\textsuperscript{113} Newspaper clipping, \textit{Dallas Morning News}, Allred Papers, Container 533, File 1941.
Juris Secundum and the ALI Restatement of Property, Allred was not involved in any professional projects. He kept a low profile, and dedicated his energies to begin the best judge and family man that he could be. He felt that such a course was the only proper one.

In 1942, an article appeared in the American Bar Association Journal which listed and described the "characteristics of a good judge." Allred fit into the description perfectly, consciously or not molding himself to the prevailing wisdom of the day. He was "healthy, energetic, and industrious." He had "good moral habits" and was "industrious." Allred was "businesslike" and "considerate in his dealing with counsel, not given to sarcastic remarks." He "respected the law as it was, administering it as he found it, leaving changes to the legislature and the executive." By those standards, Allred was practically a perfect judge. Of course, the "characteristics of a good judge" were probably no more agreed upon then than now, but Allred appeared to have taken the safest most conservative route to success, something of a departure from his usual style.

There were, however, disturbances in the pastoral picture painted above. Life was not to allow Allred the luxury of settling into middle age graciously. From small to large, there were many events to disturb the peace. The work was simply harder than Allred anticipated. Even after the initial shock wore off, Allred was still telling

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his friends, "This job is turning out to have a gol dern sight more hard work to it than I had anticipated."116

But hard work was probably the least of Allred's problems. In 1940, Joe Betsy's brother, Thomas Miles, killed himself, reportedly over his inability to work out a problem with a Texas licensing board. He was an optician who wished to move to Texas and had asked Allred for help. Allred made some attempts to help him but was unsuccessful. A short time later, Miles committed suicide.117

Two of Allred's brothers were indicted for conspiracy to commit perjury in regards to a legal case in which they were involved. Allegedly, when they could not find a witness, in order to serve him, one of them disguised himself as the missing witness, planted himself in the appropriate place, and accepted service in the false name. One was acquitted at trial; the other had charges against him dropped because the state couldn't make its case.118

Another disturbing influence on Allred during the period was the political climate leading to repeated calls for Allred's return to politics. As the rumors increased that he was about to run for office, his protestations to the contrary were difficult to make and difficult to believe. He was not lying about his intentions, he was simply struggling with his appropriate role in government. He found it difficult to

116. Letter to Dolph Briscoe, (Dec. 6, 1940), Allred Papers, Container 462, File B.

117. Newspaper clipping, Houston Post, (Mar. 10, 1940), Allred Papers, Container 533, File 1940. Joe Betsey herself was hospitalized for mental illness on several occasions. It was not until decades later that her condition was properly diagnosed. All during the period of time covered by this thesis, her illnesses required a great deal of attention and understanding from Allred which, by all accounts, she received.

118. Interview with Yarborough, Austin, Texas, (Fall, 1989).
silence himself on political matters that were closest to his heart. The following two exchanges were typical of Allred's tight-rope walk during late 1940 on the issue of politics. First, a newspaper friend from Austin wrote Allred about the upcoming elections for an unexpired seat in the U.S. Senate. He pled with Allred,

I have heard many comments here that are in line with my own belief. They are that there are two men in Texas who could take command of the situation and rescue their state. This job would be considerably harder for Governor Moody than for you. I have not heard anyone discuss it who does not believe you could dominate the campaign and receive a tremendous first-primary vote, then win surely in August... I am sure what I am talking about has been brought to you by others... I wish I could say something to help persuade you to a decision.

Allred replied that he had talked it over with Mrs. Allred, that he was deeply appreciative of the compliment, and indeed, the letter had made "quite an appeal to me from the standpoint of service." On the other hand, things were going so well for his family since he was out of politics. Even though he was "disgusted with our State leadership, and... cannot deny that I have felt the urge at times," he did not feel that plunging into a race was a good idea. Allred ended with a caution that his letter was confidential, that as a judge, he did not want to leave the impression that he was dabbling in politics.119

The Dallas Daily News reported that even though Allred had no friendly feelings toward O'Daniel,

Political observers are not inclined to take seriously the boom for Federal Judge James V. Allred as a candidate for the Senate next year.

119. Letter from S. Raymond Brooks to JVA, (May 24, 1940); Letter from JVA to S. Raymond Brooks, (May 29, 1940), Allred Papers, Container 462, File B.
They doubt if Allred would step down from his lifetime $10,000 a year job to take the risk of a Senate contest. Suggestions have been made that Allred resign, with an understanding that he would be reappointed if he lost. . . [T]his maneuver wouldn't work; Allred would have to burn his bridges if he expected to win the election. . .

In addition to the letters asking him to run for the Senate, there were letters from old friends who were passing him by and moving into national politics. One of Allred's closest friends was Ed Clark, an Austin lawyer. In late 1940, just before the elections, Clark wrote Allred from Washington, offering political news and gossip. He sent affectionate greetings from Lyndon Johnson who he characterized as in "high favor with the Chief as well as all departments." The correspondence continued fairly regularly between Clark and Allred. After the elections, Allred wrote him,

Naturally, as a citizen, I couldn't keep from tuning in on WOAI on election night to get the returns. You know how I felt about many of them -- as a citizen, of course.

And then later, in the same facetious tone,

I certainly would be hating to make some of those trips to Washington with you. Give my love to Lyndon and any others of my friends you may run into up there.121

From the day Allred left politics, there had been those who predicted his return. Among his hundreds of congratulatory letters on the judicial nomination and confirmation are significant numbers of expressions of regret and warnings with

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121. Letter from JVA to Ed Clark, (Aug. 21, 1940); Letter from JVA to Ed Clark, (Sept. 19, 1940), Allred Papers, Container 462, File Ca-Clar.
regard to his departure from politics.\textsuperscript{122} Many thought that he was making a mistake in joining the judiciary. Allred had been such a vibrant and even flashy politician that it was hard for some to imagine him as a judge.\textsuperscript{123}

At the end of 1940, Allred was anything but content with his current position. He truly felt like a has-been, like there were many things left for him to accomplish in politics, but he was forced to sit quietly by, watching his friends forge careers in the nation's capital. Most of all, Allred was furious at the new administration in Austin both for the leadership decisions being made and for the things being said about him.\textsuperscript{124}

These events certainly played a role in Allred's ultimate decision to resign his federal judgeship, but there were even greater forces at work that would soon compel Judge Allred to try to become Senator Allred. As the fighting in Europe escalated into a world war, Allred watched his friends and colleagues join in the war effort. His friend, Ed Clark, wrote him just before Christmas, 1940, relating his experiences in training camp and explaining how he obtained a waiver to get into the military in spite of his "20 extra pounds" and poor eyesight. Clark explained how he felt about the events surrounding him:

\textsuperscript{122} Letter from W.W. Edwards, a newspaper publisher, to JVA, (Jan. 26, 1939), Allred Papers, Container 458, File 1, "Federal Judgeship." Assorted letters in the same container also express regret and warnings that Allred was cut out for politics, not the judiciary.


\textsuperscript{124} Letter from JVA to D. B. Hardeman, (Dec. 23, 1940), Allred Papers, Container 462, File H.
I was tremendously happy to hear your good voice the other night... The whole thing rather had me down until you called... have not been over-enthusiastic about this year of service... I have never been one to get out the flag and go to waving... I realize the drudgery hardships, and lack of money that goes with it all -- however, since I had gotten in... I was determined to go on to the end. I think we are soon going to be actively in this war... send[ing] men into combat... I am in favor... I have always thought this country of ours to be more than a place to eat and sleep and if I can do anything, I don't see how I should think of myself since undoubtedly we are faced with the greatest organized challenge to Christianity and Civilization that this world has ever seen... Every individual... will have a chance to give... for principle something like our forbears of a little over a hundred years or so ago.125

Allred replied quickly, writing that he was worried about Clark and knew what a sacrifice he made to go into the service. And then a telling remark,

[While this may sound like idle talk, if I could get my job back I would like to have a year's training in the armed forces. I am awfully afraid you are right about us having to get into the thing actively later on. I just hope it won't be before we are ready. I have worried... over the thing... 126

The war continued to influence Allred in his thoughts and attitudes. More than one Italian appeared before him on criminal trials. One he found guilty and while informing him of his right to appeal, told him that he had gotten a fairer trial in America than an American could get in Italy. Another Italian criminal begged Allred to sentence him to an American prison instead of deporting him back to Italy. Allred graciously complied.

In 1941, Allred gave a statement to the press, asking Houstonians to open their homes to shelter or entertain army boys. He said there were more than 30,000

125. Letter from Ed Clark to JVA, (Dec. 5, 1940), Allred Papers, Container 462, File Ca-Clar.
126. Letter from JVA to Ed Clark, (Dec. 6, 1940), Allred Papers, Container 462, File Ca-Clar.
in training in the Houston area and that they were in need of Texas hospitality because of their low pay and low morale. He saw an opportunity to "sell them on Texas," he said.\textsuperscript{127}

Meanwhile, events around Allred were spiralling into frenzied activity. Lyndon Johnson, not Allred, ran for the U.S. Senate and lost to O'Daniel by the narrowest of margins. Pearl Harbor was bombed. A young lawyer was killed at Pearl Harbor, and the American Bar Journal printed a tribute to him. The day after Pearl Harbor, Johnson joined the navy. War declarations flew so fast that one American lawyer visiting in London reported that "even the ticker got mixed up and printed out a bulletin reading "Bulgaria declares war on Bulgaria."\textsuperscript{128} Allred was only 42 years old, and he was not truly involved in world events.

Speculation grew that since Johnson was in the navy, Allred would oppose O'Daniel in the 1942 election. (O'Daniel had only won an unexpired seat the previous year. The 1942 election would be for a full term.) Late in 1941, the Dallas Morning News ran this story:

[A] bitter political enemy of O'Daniel, Allred . . . declined last summer even to have his name mentioned as a possible candidate. . . . But he made it plain to friends that if O'Daniel won the 1941 . . . election he would consider seriously running against him in 1942. . . . With Johnson now serving in the U.S. Navy, . . . the long looked-for duel between O'Daniel and Allred may be in the making. . . .

\textsuperscript{127} Newspaper clipping, \textit{Houston Press}, (Sept. 18, 1941), Allred Papers, File 1941.

The report went on to remind the readers that Allred had once said that his goal was the U.S. Senate before he was given the judgeship.

O'Daniels victory . . . stirred the old desire and he was emphatic in stating that he would like a crack at the onetime flour salesman, poet, composer, and radio orator. 129

Not only was Allred being tempted to run for the Senate because of his distaste for and disapproval of O'Daniel, but the war was a continual reminder of his estrangement from mainstream politics. The theme of the bar at that time was to assist the war effort in every way. Law journals suggested that city lawyers donate their tire ration coupons to country lawyers and that law schools hold places for students who went off to war. Before long, Allred, too was looking for ways to help his country.

To Allred, President Roosevelt was the country. Allred was somewhat sensitive to criticisms of the President. He considered such criticisms unpatriotic, explaining to Dolph Briscoe that he was skipping the annual hunting trip because he couldn’t stand to hear the other men "cuss the President for a whole weekend." 130 That determination to support the President played a major role in Allred’s decision to run for the U.S. Senate because Allred felt that incumbent O’Daniel was an obstructionist who focused on criticizing the President.

Roosevelt’s proposed legislation kept Congress busy. By comparison, the courts in Texas were not very exciting. It must have been obvious to Allred that he

130. Letter from JVA to Dolph Briscoe, (Dec. 3, 1940), Allred Papers, Container 462, File B.
had to choose between a life of southern geniality and real action. Being a small-town person, possessing a genial disposition, raising three young sons with a semi-invalid wife must have made the decision a difficult one. Nevertheless, as Allred wryly commented later, "If a man really wants to run, two postcards and a phone call is a mandate from the people."

The Resignation

In early 1942, Allred announced that he would resign his position as federal judge and run for the U.S. Senate. The response was fast and furious. While many supported his decision, some wrote head-shaking letters to him, with comments ranging from "It would break your dear old Mother's heart if she found out about this deal" to "I've never voted against you before but I will if you run against Senator O'Daniel." Others sought to reassure him (and themselves?) that he should indeed be Senator and that it was ethically permissible to engage in politics once again: "I know that you are not supposed to be in politics and I know you are not, and I respect your position and you," wrote one supporter. Those in the latter group must have understood that Jimmie Allred was a hopelessly political animal. Asking him to ignore politics was equally hopeless.

131. Written Interview with David Allred (April, 1991).


In 1941, Allred had refused to seek the U.S. Senate seat in a special election required by the death of Senator Morris Sheppard. In what was reported to be a tormentingly difficult decision, Allred firmly removed himself from contention, stating that his wife "had just absolutely laid down the law to him", saying 'For the first time in your life, you're about to get out of debt. You cannot run again.'\textsuperscript{135} That decision left the field open for a run-off between young Lyndon B. Johnson and Governor O'Daniel. Of course, Allred supported Johnson. As the election returns came in and were subsequently sharply amended by "late returns," Allred reportedly called one of Johnson's campaigners from New Mexico where Allred was working as a visiting judge, shouting, "I'm listening to the radio. They're stealing this election in East Texas!"\textsuperscript{136}

When Allred decided to run against the victorious O'Daniel for the full six-year term in the following year's election, his wife, was forced to support her husband's decision and explain her apparent change of heart:

There has been so much discussion about this matter that I feel it my duty to answer this question, since the final decision was left to me . . .

I appreciated the permanence that the Federal District Judgeship gave to us. When he first suggested giving it up and offering for Senator, an office with a limited term, which involved constant political turmoil, I was strongly opposed to the idea. Naturally, I asked him why we should sacrifice this life of security for one of uncertainty. He replied that we had no right to avail ourselves of the security of a lifetime post, when

\textsuperscript{135} Robert Caro, \textit{The Path to Power} 682-683 (1982). Telephone interview with David Allred, (March 4, 1991) ("Mother threatened to divorce him").

\textsuperscript{136} Caro, \textit{The Path to Power} at 739. That election is still referred to as "the one O'Daniel stole." Yarborough interview (Fall 1989).
the very foundation of our democracy was imperiled. . . . I realized that the best way . . . was to serve in that place for which his past experience best qualified him.  

Joe Betsy obviously recognized that keeping Allred out of politics was a battle she could not win.

The idea that the court must keep itself above political furor was an especially abstract and difficult one for judges during the years of President Roosevelt's administration. Judges struggled with the practical, tug-of-war ideology built into the separation of powers doctrine. Chief Justice Hughes, back on the U.S. Supreme Court, insisted that Roosevelt's court-packing plan "had not the slightest effect on our decision[s]." Allred took a slightly different position; he attempted to join the other side.

The Lost Bid for the Senate

Allred's reappearance on the federal bench in 1949 illustrated the effect of high political visibility, political debt, personal obligations and family problems on goals and ambitions. Allred lost the 1942 primary election to his old nemesis, Wm.

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139. The federal judiciary was in an uproar during the 1930s. Richard Maidment, "The Federal Judiciary" in Stephen Baskerville and Ralph Willett, Nothing Else to Fear 36-60 (1985). Allred had found Roosevelt's court plans particularly troubling, and he was even more silenced when he became a judge. See Patenaude, Politics and New Deal at 155-159.
Lee, "Pappy" O'Daniel who kept the seat he had won against Lyndon Johnson the previous year.

O'Daniel launched a wild campaign. It was a race between three ex-Texas Governors. O'Daniel called his opponents, Allred and Moody, the "Gold Dust Twins." O'Daniel further explained that most Washington politicians were lunatics, and that Allred was aligned with them. Finally, he offered his explanation for Allred's entrance into the race. Communists and labor leaders, he said, paid Allred to quit his job and run, promising him more money if he was successful. It was all a part of the big communist conspiracy.

The press was, according to O'Daniel, a terrible influence on political decision-making. Press-bashing was popular with rural people so O'Daniel emphasized it. He even started publishing his own newspaper to point out that there were none others fit to read. His newspaper was called "The William Lee O'Daniel News," and it prominently featured the accomplishments of one Wm. Lee O'Daniel. In that newspaper, World War II was a minor skirmish that would soon be over. In fact, if President Roosevelt would just let "Pappy" O'Daniel round up some Texas militiamen to take to Europe, the trouble would be over.

Allred traveled, made speeches, and handed out fliers. He ran on a platform of support for the President and the war effort.

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140. W.R. Poage, Politics -- Texas Style at 117.

141. Newspaper clipping, Dallas News, (July 18, 1942), Allred Papers, Container 533, File "1942."

142. O'Danniels "newspaper" ultimately caused him legal trouble with the post office, as did some of his fundraising activities. See George Green, The Establishment In Texas Politics 51-52 (1979).
In the first primary, Allred came in second to O'Daniel, but forced him into a run-off, the first of the popular O'Daniels career. In that run-off, O'Daniel received 451,359 votes to Allred's 433,203 votes. Allred carried the cities and O'Daniel took the rural vote. In addition, O'Daniel took the oil vote.

How could the ever-popular, jovial, and experienced Allred lose to O'Daniel, who had never even voted until he ran for Governor of Texas and was characterized as "the most unpopular man in the Senate and the laughingstock of Washington"? Many factors enter into the explanation, and each merit discussion because they provide insight into the man, the times, and the state.

The 1942 campaign was an exercise in learning to recognize and assess multi-faceted costs and liabilities. Allred lost because he could not quite recognize and neutralize or capitalize on the following factors:

Political Style

Both O'Daniel and Allred were highly visible in Texas politics. However, O'Daniel had been in the arena for a much shorter time and accordingly carried with him much less baggage from past public acts. Allred had a problem with older, conservative people in Texas due to his personal flamboyance during his years as Governor. One correspondent warned him in early 1942 not to run because "the old

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143. Poage, Politics -- Texas Style at 117.

people are all for O'Daniel. They still think of your visit to Hollywood when you and Virginia Rogers were having so much fun, and the poor old people [were back in Texas] expecting you to get their pensions [for them].

Additionally, Allred was a religious man but not a member of a mainstream Southern denomination and not given to public displays of religious feeling. By contrast, O'Daniel freely used hymns and religious choruses and homilies to evangelize on the radio, professing great personal fervor for God. His children came and sang and testified with him. It was too late for Allred to create a more religious image, even if he had been so inclined.

Texans had known Allred for a long time; he could not just burst onto the scene through radio, as had O'Daniel. Allred could not regain the advantage of being the young man in ascendancy. Allred had been a "comer" in his first several races, but by this time, he was a mainstream politician.

After the election, Allred expressed his disgust with O'Daniels use of religion in the election, saying that "[t]he most tragic part of it all was that this fellow

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146. Allred was a practicing Christian who did not believe in "sitting in the amen corner," but in quietly helping people. Dave Allred recalls making fun of a Salvation Army Santa on the street and being quietly reproved by his father. Later, Dave found to his surprise that Allred had been a driving force in the Salvation Army in Texas. Another reason that Allred did not practice his religion so publicly was because Joe Betsy did, and nagged him to do so as well. Upon that issue, he did not give in.

147. Caro, The Path to Power at 675-740.
[O'Daniel] still has the country people fooled with his religious professions. . . . 148

With his populist roots, Allred must have been painfully aware that those country people had once been his devotees.

Letters poured in to Allred, asking him how he could say unkind things about O'Daniel. 149 The bad blood between the two candidates was visible, 150 and O'Daniel had cultivated such a Will Rogers-type public persona that a well-known personal distaste for him hurt Allred.

Political Identification

Allred's identity as a Roosevelt man may not have been the political asset that it once was. For many years, but particularly since the 1937 Court plan, Roosevelt's Vice-President from Texas had supported the President only nominally. 151


149. Allred Papers, Container 136, passim. It was Allred's general policy not to engage in intensive mud-slinging. He thought that there was too much danger of then proving yourself to have been beaten by a scoundrel. Written Interview with David Allred (April, 1991). He may have been particularly aware of that phenomenon after O'Daniel beat him.

150. Letter from Raymond Allred to James Allred. April 27, 1942. Allred Papers, Container 136, File "Pol. Corresp. A-B." This letter alluded to a public incident between Allred and O'Daniel at O'Daniel's inauguration as Governor. A terse, undated letter in the same file was sent from Allred to O'Daniel in the middle of the 1942 campaign urging O'Daniel to go back to D.C. and attend to important war time Senate business. The letter is so stiff that the syntax is unrecognizable as Allred's. There is no question regarding Allred's dislike of the man.

Allred made up a song about the election that was not for public consumption. His son, David, remembered one of the verses: "Slap-Happy Pappy makes Texas look sappy, for he is the king of hot air. Oh, Slap-Happy Pappy, he makes Hitler happy; Ain't he and Burt Wheeler a pair?" Written Interview with David Allred (April, 1991).

Conservative Texas Democrat Jesse Jones also commanded considerable political support. Roosevelt tried for years to keep him pacified. By 1944, Texas defections were a matter of serious concern to Roosevelt.\footnote{152} Allred's Senate race in 1942 occurred during that Texas retreat from Roosevelt.

Similarly, Allred's occasional populist tendencies had lost all support. Although the Populist Party was dead by 1900,\footnote{153} the complete collapse of populist ideas took much longer. One historian wrote that "The collapse of Southern Populism witnessed the defeat of the last mainstream effort by Southerners to overcome their sectional history and habits and join other American reformers in the creation of a truly national identity." If that is true, it is possible that Allred's history of encouraging similar efforts hurt him in 1942. Additionally, the Populist Party in Texas clung to an anti-monopoly platform longer than any other state. Allred, of course, came to prominence in Texas on antitrust suits against the oil companies.\footnote{154} What political philosophy Allred ever had was falling into disfavor.

Allred had made political friends and political enemies throughout his years as District Attorney, Attorney General, Governor, and federal judge. The Senate election campaign highlighted the cost and value of those political relationships.

\footnote{152} Id. at 121, 353, 517, and 531. Allred did not follow the Texas trend toward abandoning Roosevelt. When Roosevelt died in 1945, Allred was visiting the Texas state capitol. He watched the news wire with others for verification of Roosevelt's death. When it came, he began to cry inconsolably and was accompanied into the hall. Richard Morehead, 50 Years of Texas Politics 28 (1982).

\footnote{153} Donna Barnes, Farmers in Rebellion 198 (1984).

\footnote{154} Palmer, Man Over Money at 198 and 182.
The labor unions supported Allred as they had always done, but their support in 1942 came at a time when many in Texas saw the sit-down strikes as violent, unpatriotic, and even communist. Military personnel stationed in Texas supported Allred because his campaign slogan was to win the war and enforce the peace, preventing a return of the Axis/Allied conflict. However, soldiers were largely non-voters. Newspapermen and Austin insiders also supported Allred, excepting those who wanted O'Daniel to win so that he would be out of the State.

Allred's position on the Texas Permanent School Fund while he was Attorney General had won him the enmity of one hundred and twenty-eight counties in West Texas. He continued to pay that political debt. His famous antitrust lawsuits as Attorney General against the oil companies cost him campaign financing from big business interests - possibly the most significant fact of the campaign. The support of government insiders and city newspapers could not make up for the loss of the oil vote.

Generally, Allred had cultivated a group of people who were not powerful or rich or conservative enough, although he lost the primary by only a narrow margin, in a run-off. His reputation as a liberal and a Roosevelt man caused Republicans to cross over and vote for O'Daniel. He had not cultivated enough of the powerful older

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155. See Leon Green, "The Case for the Sit-Down Strike," 90 The New Republic 199 (1937). As late as 1989, the late Dean Green’s son was reluctant to have the above-referenced article re-published because it had brought down such grief and misunderstanding upon his father’s head.

156. Letter from Allred to Captain Teller, supra note 148.

men in the state the way, for example, that Lyndon Johnson had. Allred had
always been a jaunty, intelligent young man with an instinct for the poor and a
dedication to President Roosevelt. These characteristics came at a cost.

Personal Obligations

Allred had three young sons at home. His wife and children were frequently
sick. His personal finances were always in a strain because of his many statewide
elections for which he had borrowed heavily. He did not capitalize on his political
career in such a way as to become personally rich. He knew how strongly Joe
Betsy opposed a Senate race in 1941, partly because they were about to get out of
debt for the first time. One year later, she was persuaded that they had a civic duty
higher than a financial duty; nevertheless, these personal obligations weakened his
campaign considerably.

Family Background

158. See Robert Caro’s detailing of Lyndon Johnson and the courting of the Brown & Root
elite. The Path to Power (1982) and Means of Ascent (1990). David Allred recalls that during those
"middle years" of Johnson’s career when he was most involved with the Browns, he distanced himself
from Allred.

159. Allred reportedly turned down opportunity after opportunity to join the legal elite of the
State throughout his career. He refused to buy real estate when he was given information that an oil
well would soon be drilled upon it. He refused to continue working for one oil company when they
asked him to tone down his politics. He rarely had the money to invest in big ventures, even if he
were so inclined. Interview with David Allred (March 4, 1991); Interview with David Allred (March
16, 1991); Interview with Ralph Yarborough (Fall, 1989); Green, The Establishment at 49 (citing
Superior Oil company as the company who asked Allred to tone down his politics while on retainer
to them in 1944.).
The family was very poor when Allred grew up. The rigors and tragedies and challenges of his early years have never been completely explored, but they exacted a toll over the years, as they did in 1942. His early fears and observations on the poorhouse system had prompted him to undertake poorhouse reform as Governor. The sometimes rough treatment by his father had caused him some reflective heartache and had given him a strong desire to do better with his own sons. It is impossible to know how much this influenced his political career, but it is possible to trace a growing pattern of personal deference that tempered what had once been a solid inner block of ambition.

Allred could delegate work well. He could hand over a project and say "You're the expert on this; you handle it." His confidence and encouragement inspired great loyalty in those who worked for him. Nonetheless, his ability to hand over a project rather than drawing others into it while making the proprietary rights clear was one manifestation of a certain modesty. He did not think that he was the only one who could accomplish things. Correspondingly, his ability to seek favors was tempered by a certain hesitancy. His inability in 1942 to mobilize Roosevelt's and other political friend's effective support despite his longstanding devotion to them is a mystery. This hesitancy was not a lack of leadership but a personality trait that did not provide a strong enough grasping and holding of power, particularly outside the State.

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160. See supra, Prolegomena.
Allred Loses Control of the Campaign

Two important factors in the 1942 election which were out of Allred’s control were the desire of certain influential groups to promote O’Daniells Senate victory simply to get him out of the State capitol and the State’s domestic business and the actions of Lyndon Johnson which could have seriously hampered Allred’s support.

The business establishment in Texas supported O’Daniel, some believe, largely out of a desire to eject him from the state without publicly challenging him. 161 Additionally, Allred is said to have appealed to Roosevelt during the late, intense days of the 1942 campaign to throw some heavy support toward him to push the momentum of his campaign forward just before the election. Roosevelt allegedly asked Lyndon Johnson, who was a great favorite of his and a Texan who was well-acquainted with Allred to look into it and make some recommendations as to appropriate action. Johnson is said to have buried the Allred request letter and made no recommendations on the appropriate aid. However, there is also some indication that Allred didn’t want too much visible support from Washington. 162 These are not necessarily irreconcilable positions; Allred could have been asking for federal support that would be effective, not too visible or heavy-handed as to frighten away federal-shy voters. At any rate, the messages from Washington could well have figured in Allred’s loss. He was later to remark that if he had just had two more


weeks to campaign before the election day, he would have been able to mobilize
enough support. The timing and concern and support, however, was not there in
Washington when he needed it.

The Failed Nomination

Allred soon suffered additional humiliation when Roosevelt appointed him to the
Fifth Circuit Court of Appeals, but withdrew the nomination in the face of protest.
There are two major explanations for this failed nomination, neither definitive. The
first was that O'Daniel blocked his nomination from his powerful position as the
Senator from Texas. An alternative explanation was that it was the State of
Louisiana's turn to have a judge on the bench, and that they refused to take the
perceived insult silently.¹⁶³

Immediately after the election, Allred repeatedly insisted that he was glad he
had run the race, probably as a matter of pride. But he would never again be a
player in national politics. His eventual ascension to the federal bench again was both
a new beginning and a sad end. Only in that context can his actions there be
understood.

¹⁶³ Morehead, 50 Years at 29; David Allred interview, March 4, 1991 (Sam Houston and David
Allred ran into Senator Ellender of Louisiana one day in Washington. Ellender said that he blocked
Allred's Fifth Circuit nomination. He reportedly said, "It was Louisiana's turn - I had nothing against
your father."); In an issue of the Texas Bar Journal dedicated to Allred, shortly after his death, the
authors credit O'Daniel with blocking Allred's appointment. 22 Tex. B.J. 66 (1959); Letter from Judge
Joseph Ingraham to Judge Howard Markey, August 18, 1976, Allred Papers, Container 560, stated that
Allred's nomination was withdrawn due to opposition from Louisiana.
Texas was to change rapidly for the rest of Allred’s life. He was in a position, as a judge, to watch unfolding events, in an Olympian way. The new wealth, new immigrants, and new developments in the law would go on, but he would not be a reformer, a schemer, a participant as he once was. As a judge, he would struggle to reconcile his personality with his position, his ideals with the realities of politics in Texas, and his family with his work. After the lost election and failed nomination, he continued to work, but as a changed man. He became a noted trial lawyer in private practice, and later said regretfully that deciding to run in 1942 was the biggest mistake he had ever made.¹⁶⁴

Later, he would become a well-respected and admired judge. He would infuse energy and efficiency into an overworked District Court. He would take his place in history quietly. But he would not join the Senate of the United States of America.

¹⁶⁴. Interview with Wm. Eckhardt (Fall, 1990).
Part Two

Allred's Second Tenure on the Federal Bench

1949 - 1959
Allred's second appointment to a federal bench is an unusual, but not unprecedented story. The circumstances of a federal judge resigning his bench to run for political office and having failed, returning to the security of the bench inevitably give rise to questions of separation of powers, judicial propriety, and how much attention a judge should give to political headlines.

Allred was preceded by U.S. Chief Justice Charles Evans Hughes who, like Allred, was appointed to a federal court while serving as a state governor only to resign the judgeship later to run for national political office. After losing the elections, both men waited for a period of years to be returned to the bench and both were eventually rewarded. Both episodes produced some hostile attention. Nevertheless, Chief Justice Hughes is remembered as one of the most esteemed justices in the history of the U.S. Supreme Court. Hughes presiding over the Supreme Court was compared to Toscanini leading an orchestra. The question remains: how much political interest is a conflict of interest for a judge?¹

¹ Laurence Tribe, God Save This Honorable Court 103 (1985); Bernard Schwartz, A Basic History of the U.S. Supreme Court 71 (1968); The 1990 Senate confirmation hearings for U.S. Supreme Court nominee Souter included an exchange in which Senator Thurmond quoted Justice Powell's famous statement that "A judge must do his work with no thought of tomorrow's headlines." When asked to comment on the quotation, Souter replied, "I hope there is no judge in the Republic who would disagree with that statement." He is not alone in his strong opinion on that matter, but some believe the doctrine to be naive. Allred, perhaps along with many others, was never altogether capable of holding himself so aloof. Transcript of Souter Hearings.
Plans and Ambitions

On October 12, 1949, Allred received a telegram from U.S. Senator Tom Connally of Texas, confirming his appointment to the federal bench in the Southern District of Texas. Allred welcomed this "new" job, for he had helped create it, privately encouraging the plan for a new judicial residence in the southern half of the Southern District. He corresponded with at least one Congressman, explaining how to gather factual information regarding the need for a resident judge in Corpus Christi and who to ask for persuasive letters demonstrating support from bench and bar. Once the need for a new judicial residence was established and Allred's name was proposed by President Truman, it was a matter of Senate confirmation and swearing-in before Allred was back on the federal bench in his chosen location.

Confirmation worried Allred. Although he was careful not to comment on personal attacks, Allred knew that many people considered his judicial appointment nothing more than a political reward. Critics considered it disgraceful; supporters considered it appropriate and long overdue; Allred kept quiet about it.

Allred had ambitions that the federal bench helped satisfy. Generally, he was

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drawn to the bench because it was a good place in society, because it was a position of dignity and power, and mostly because it was consistent with the public service role he had designed for himself. His law clerk reports that during Allred's childhood, lawyers in rural Texas were often respectfully addressed as "Judge," a general term of honor and respect for the profession. To become a "real" judge was still a satisfying thing. More specifically, Allred hoped to accomplish goals he had set during his first tenure on the bench. He had begun a reputation for expediting cases and clearing a docket. Finally, Allred was anxious to use what he had learned in the ensuing seven years since he had resigned, during which he practiced as a litigation attorney in Houston. He wrote a friend:

I want to make a better judge than I did before, and I think I can. It is good for a Judge to get down in the "bull pen" and get his head bloody... to get to know the problems of a trial lawyer again as I have been doing for the past several years.

Allred took the oath of office the morning of October 29, 1949. He moved to Corpus Christi in one month and was soon absorbed in accomplishing his most

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5. Interview with Vince Tarleton, Allred's former law clerk, (May 15, 1990). (Tarleton agrees that Allred's background and early disappointments could easily have accounted for his need for respect and honor); Interview with Yarborough, Fall, 1989. (Yarborough remembers that JVA was "so ambitious... but he never spilled it out; he didn't go around wearing that on his sleeve.").

6. It was important to clear the docket. If cases take years to decide, justice delayed becomes no justice at all. Some cases sit in judge's chambers for years. Clearing the docket is the central business of the court.


pressing task: clearing the docket.

Bench Trials and Opinion Writing - The First Two Years

Allred's first full two years back on the bench were filled with civil, criminal, and citizenship cases. He was no longer shielded from the bulk of the civil cases, as he was during his "breaking in" period of his first tenure. His civil cases included the usual: tax, insurance, personal injury, and contract disputes. Allred enjoyed the citizenship cases perhaps more than anything else, not because they were intellectually stimulating, but because they brought him satisfaction on a human level.

The character and direction of the man and the court are partially revealed in a sampling of eight civil trials conducted by Allred and published or memorialized. First, most were bench trials, without the benefit of jury findings, a trend that continued and expanded up to the present time.

Second, a total of five of the seven cases between litigants of unequal bargaining power resulted in a finding for the less powerful party, usually the plaintiff. The first exception was McCamy v. General Electric Supply Co., unpublished at the district court level, but affirmed at 185 F.2d 944 (5th Cir.), where Allred enforced a written employment contract which favored the employer rather than an alleged oral agreement urged by the employee. The alleged oral agreement was in direct contradiction to the written one, leaving little room for creative interpretation of the contract, especially in those early years of neoclassic contract doctrine. The second
case was *Abe Katz Co. v. U.S.*, 97 F. Supp. 234 (S.D.Tex. 1950), where the taxpayer defendant was forced to pay the interest he owed the federal government on his late taxes. On appeal, the Katz case was also upheld, with practically no discussion, 193 F.2d 510 (5th Cir. 1951).

One of the eight civil cases decided by Allred involved parties of roughly equal power: *Sun Oil Co. v. Humble Oil and Refining*, 88 F. Supp. 658 (S.D.Tex. 1949), in which Allred found for Sun against locally-owned Humble in a bench trial. The case was upheld on appeal, although the opinion was modified by the Fifth Circuit.\(^9\) (Allred had incorrectly allowed the State of Texas to intervene.) Allred ruled that Sun Oil could keep its coastline oil leases from the State. Humble had insisted that they should be turned over to Humble Oil due to landform shifts along the coast. These shifts had allegedly moved some property out of the State-owned coastal lands and into the adjacent privately-owned properties. However, Allred said, "The line of demarcation between the Laguna and the mainland is still patent for all to see. The area in controversy, as well as the entire bed of the lagoon, is not fast land. Nothing grows or can be grown upon it." It seemed to Allred that it could not have become part of the mainland if it was still marshy and nothing could grow on it. His response to the scientific evidence to the contrary presented by Humble seemed a little simplistic or insufficient, especially to Humble.

On appeal, the higher court indicated that the suit to quiet title could have gone either way, but since the parties could not produce any questions of fact for the

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\(^9\) 190 F.2d 191 (5th Cir. 1951).
jury, they would not overturn Allred's bench decision on the preferred grounds that the plaintiff company was denied a jury trial.

Allred may have been impressed by Texas Attorney General Price Daniel's opinion on the dispute. At any rate, Allred was not convinced by Humble's evidence that the geographic status of the area had changed sufficiently to warrant quieting title in Humble. The use of high technology, sophisticated expert opinion or demonstrative evidence did not impress him very much.

Allred was still the same judge as he was during his first tenure on the bench, fond of peppering his opinions with italics, making them read like campaign speeches or closing statements to a jury. But more importantly, Allred had learned civil procedure well since his first tenure. Only one of the eight recorded civil cases was reversed, and that on a matter of substantive law, not procedure. The appellate court alluded to Allred's too-hasty conclusions during the bench trial, 188 F.2d 427, 429 (5th Cir. 1951). Allred was, perhaps truly moving the docket along during that trial. (See text and note at 23.)

The remaining civil cases involved personal injury and contract disputes. In *U.S. v. Belt*, 88 F. Supp 510 (S.D. Tex. 1950), Allred held that a widow did not have to repay bank loans which she consigned with her deceased husband. The law in Texas (which, of course, controlled a civil contract dispute) held that a married woman's contract was voidable under certain circumstances. Unless the contract was for "necessaries" for herself and her children, she lacked capacity to contract. The

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definition of "necessary," according to Allred, was unknown. He stated that each case must turn on its own facts. In Belt, the loans were for home improvements like painting, wallpapering, and structural repairs. Allred held that these were not necessaries and that she was released from her contractual promise.

In Gomez v. U.S., 95 F. Supp. 656 (S.D. Tex. 1951), a veteran applied for life insurance during World War II, under the National Service Life Ins. Act of 1940. At the time of his application, he was in active service, but was in a hospital suffering from gonorrhea. He recovered, went on to serve in several battles, and finally died from leukemia. The insurance company denied his claim due to irregularities in the application process. (He did not have the proper documentation and health exam.) Allred wrote that Congress certainly intended this sort of situation to be covered under the Life Insurance Act and awarded the insurance proceeds to the parents of the deceased soldier.

Two other insurance cases involved Workman’s Compensation insurance and a private marine insurance company. In both, Allred ruled that the insured (or his survivor) must recover for loss of life and loss of property. It was not clear that either was covered by the insurance policies in question. In Thibodeaux v. Western Casualty & Surety Co., (unpublished), Allred found that a truck driver who hauled shrimp from company to company was not an independent contractor, but an employee of the association of fishermen. As an employee, his family was entitled to workman’s compensation benefits because he was crushed by a freight elevator on one of the docks. The evidence was sufficient; said the appellate court, to support Allred’s bench
trial decision. They quoted Allred's favored maxim: every case is to be determined on its own facts.\textsuperscript{11}

In \textit{Great American Ins. Co. of New York v. Maxey}, 193 F.2d 151 (5th Cir. 1951), Fifth Circuit Chief Judge Joseph Hutcheson honored Allred by reprinting his entire bench memoranda as a footnote to his own opinion upholding the lower court decision. Hutcheson wrote:

\begin{quote}
The memorandum [by Allred] sets out the issues and . . . the law briefly precisely, and, we think, correctly, and we find ourselves in full agreement with the views there expressed . . . [F]or the reasons stated in the district judge's memorandum, the judgment is affirmed.\textsuperscript{12}
\end{quote}

Allred's memorandum opinion found that the oral insurance binder provided an expansive range of coverage, allowing the jury to consider the full range of contextual information in the form of parol evidence. Taking the jury's findings, Allred held that the insurance company must pay the $6,000 worth of damage incurred by the insured tugboat which ran upon some hidden object while operating in waters outside its usual routes.

Allred's opinions seem to reflect a certain sympathy for the underdog, resolving as they do in these sample cases all areas of flexibility in favor of the weaker parties. During Allred's seven years of practice between his tenure's on the court, he represented several victims of the great Texas City explosion, He also worked as defense counsel on many cases, it cannot be concluded that he was simply

\textsuperscript{11} 190 F.2d 730, 732 (5th Cir. 1951).

\textsuperscript{12} 193 F.2d 151, 154 (5th Cir. 1951).
a plaintiff's lawyer who ascended to the bench; he just paid attention to the respective positions of the parties before him. Those who knew him remember that he had difficulty identifying with people of great wealth and was disturbed by the changes brought by new wealth in Texas, especially in the career choices of lawyers. As the law firms grew in size and influence, Allred grew concerned and disappointed with the new attitudes among lawyers toward public service. Most lawyers were just "not on the front lines" of public service anymore. He contemplated the effect of the big oil companies on this trend.\textsuperscript{13} Part of his discomfort with the new rich undoubtedly arose from his paradoxical deference to and amusement at those who were truly in the power elite. In some ways, Allred would always be an exception, and sometimes being an exception meant being an outsider. The essential paradoxical nature of his character tilted in those later years toward benevolent paternalism.\textsuperscript{14}

Allred's inclination toward paternalism was reinforced by his South Texas concentration on criminal cases. His criminal docket in South Texas focused on illegal aliens, fugitives from justice (who still fled West, as in the days of the Texas Republic) and drug trafficking. In \textit{Johnson v. Scarborough}, 88 F. Supp. 523 (S.D. Tex. 1949), Allred ruled that a Florida criminal had been treated legally in Texas and that Texas had handed him over to Florida officials using appropriate procedures. The

\textsuperscript{13} Interview with Tarleton (May 15, 1990). See also Donn Kurtz, "Who Runs Louisiana?: Institutions and Leaders at the State Level" in G. Wm. Domhoff and Thomas Dye, Power Elites and Organizations 126 (1987).

\textsuperscript{14} Widows never seemed to lose in Allred's court. This may have been an unconscious reflection of Allred's Christian beliefs. Widows' rights have always been significant in Judeo-Christian belief and in Anglo-Saxon law. Theodore Rivers, "Widows Rights in Anglo-Saxon Law" in D. Kelly Weisberg, ed., Women and the Law 35, 39 (1982).
case U.S. v. Scotti, 102 F. Supp. 747 (S.D. Tex. 1950) was more challenging. In Scotti, the defendant alleged an improper pattern of arrests where Texas law enforcement officials, on behalf of federal officers, arrested drug traffickers under the relatively loose State search and seizure laws and then turned over the evidence and the suspect to the federal government for prosecution and sentencing under harsher federal law. Under this scheme, even evidence seized illegally under Texas laws could be used in the federal case.

Allred had to pick through the existing case law on admissibility of evidence illegally obtained. Scotti’s house had been searched without his permission and with a warrant obtained without sufficient cause. Allred traced the case law on 4th and 5th Amendment search and seizure protection for the accused. He turned the case on Lustig v. U.S., 338 U.S. 74, 69 S.Ct. 1372, 93 L.Ed. 1819 (1949), a five-four judgment of the court in which only four justices joined the opinion. Allred found, in a bench trial, that the illegally seized drugs were admissible evidence and the pattern of turning cases over to the federal officials did not infringe on the defendant’s constitutional rights because the federal officials were not actually a part of the search and arrest and because the Texas officials were not acting solely on the behalf of the Federal officials. Scotti was one of Allred’s most sophisticated opinions and drew praise from the appellate court as it affirmed without citing a case, stating that "the pertinent authorities, with an able analysis of them, are contained in the opinion of the learned district judge. [cite omitted] Affirmed." Scotti v. U.S., 193 F.2d 644 (5th Cir. 1952).
Although Allred was hard on the defendants in the above cases, one of his special interests was prison, parole and probation reform. Just before taking the oath of office for the second tenure on the bench, he gave a speech on reforming the criminal justice system. The burden of sentencing criminals was no lighter than it had been during his first tenure.\textsuperscript{15} His basic compassion made sentencing a difficult procedure.\textsuperscript{16} One parole officer reportedly said to Senator Yarborough that Allred worried about youthful offenders "day and night." Yarborough remembers that Allred's religious beliefs made him especially sensitive to the needs of young people who ran afoul of the law.\textsuperscript{17} All in all, the criminal docket, though not intellectually challenging, was a weighty part of the job, on several levels. For example, Allred had to travel to Laredo and Brownsville, as well as Corpus Christi, once a month, to hold "jail deliveries," special sessions for the illegal Mexican aliens who crossed the river and were held for deportation. Allred wrote in late 1949 that these ran into the hundreds each month.\textsuperscript{18}

Another portion of Allred's case load was declaratory judgments regarding citizenship of Mexicans who claimed to be U.S. citizens by virtue of being born in the U.S. In \textit{Nieto v. McGrath}, 108 F. Supp. 150 (S.D. Tex. 1951) and \textit{Martinez v. McGrath}, 108 F. Supp. 155 (S.D. Tex. 1951) Allred published telling examples of

\begin{footnotesize}
\begin{enumerate}
\item See Part One of this thesis.
\item Interview with Tarleton (May 15, 1990).
\item Interview with Yarborough (May 28, 1990).
\item Letter from JVA to Russell Adams, \textit{supra}, note 8.
\end{enumerate}
\end{footnotesize}
these declaratory judgments. The following excerpt from Nieto is classic Allred. The plaintiff was indisputedly born in the U.S. but was determined by immigration authorities to have lost his U.S. citizenship by voting in a Mexican election Allred expressed his basic skepticism about the competence of the immigration boards:

Especially do I doubt their force when the parties are poor, illiterate Mexicans on the one hand and experienced Government officers on the other; the one unrepresented and untrained; the other well represented . . . .

Allred also knew that questioning people through translators led to problems:

. . . . often, on crucial points, there is a disagreement between interpreters as to what a witness said or as to the meaning of the answers he gave. I have also noted that seldom are answers given by a Mexican peon in the detailed and apparently voluntary manner in which plaintiff is reported to have answered.

Allred said that in his experience, to get detailed information, the questions had to be leading, and even then, there was usually considerable jabbering back and forth . . . to get a simple answer to a simple question.

Finally, Allred pointed out with great emphasis that in a prior hearing before a Board, the immigrant was not allowed to testify as to whether or not he was allowed an interpreter and understood everything that went on in the first Board hearing. Allred worked himself into righteous indignation, and then delivered his holding:

I hold that the evidence does not . . . show that the plaintiff voted in Mexico. Citizenship is so precious that it cannot be taken away, even for fraud, except by clear, certain, and "indeed, overwhelming" evidence. . . . How much more . . . one's citizenship in the greatest
country earth?... Judgment will be for the plaintiff.\textsuperscript{19}

Allred certainly demonstrated patriarchal and patronizing beliefs in the Nieto opinion. His characterization of the Spanish exchanges in the courtroom as "jabbering" would be offensive in current society. His emphasis on the perceived Mexican trait of deference to authority and unwillingness to speak up for their own interests is, of course, his interpretation of the problem and includes none of the ideas presented in modern scholarship. Nevertheless, he delighted in helping people claim U.S. citizenship, through naturalization as well as through the sort of declaratory judgments presented above.\textsuperscript{20}

Allred's opinions were not literary, but he always admitted his educational shortcomings.\textsuperscript{21} His citation form was irregular. However, he attended law school in the early 1920s, before the first Uniform System of Citation was published by Harvard Law Review in 1927. It is not uncommon for lawyers to form drafting habits early in their careers. Additionally, he did not allow his law clerk, once he got one, to write many opinions for him.\textsuperscript{22}

Style and Substance: Allred's Method of Judging

Allred's method of judging was professional yet unintimidating. He might cut short a lawyer's presentation, but usually without offending or creating personal

\textsuperscript{19} 108 F. Supp. 150 (passim).

\textsuperscript{20} Interview with Tarleton (May 15, 1990).

\textsuperscript{21} Letter from JVA to Rep. Wright Patman, November 26, 1948. Allred Papers, Container 422, File "M-T 1948". ("Frankly, I do not feel qualified for the [U.S.] Supreme Court... I just do not have the background, especially the educational background" wrote Allred.)

\textsuperscript{22} Interview with Tarleton (May 15, 1990).
animosity.\textsuperscript{23}

The quality of the law libraries had improved by the 1950s. The federal library in Corpus Christi was complete; Brownsville had a good collection. In Laredo, Horace Hall made his law library available for the federal judges if they found their collection lacking.\textsuperscript{24}

In order to get the docket whittled down to a manageable size, Allred instituted a rigorous system of pretrial conferences. He would hold these conferences all day, sometimes as many as twelve a day. These conferences were used to refine the issues, encourage settlement, and educate the judge. Allred paid great attention to the specific factual details of the litigation at hand.\textsuperscript{25} For an example of Allred using the expertise of the litigants to help educate himself on the issues involved, in the pretrial proceedings of the Humble Oil Co. v. Sun Oil Co. litigation,\textsuperscript{26} Allred wrote into the record:

The Court then requested counsel for the parties to be back Monday morning to work out any jury issues, stating that the court was going to need a lot of help in submitting the case; that while there might be some Judges who would know how to submit it that quick, the Court

\textsuperscript{23} Interview with Ralph Kerrigan (June, 1990). ("You could be right in the middle of your case and Allred would say, 'I think the jury has heard enough. Let's move along.' He was also known for saying that no workman's comp case deserved more than half a day in court.")

\textsuperscript{24} Interview with Tarleton (May 15, 1990).

\textsuperscript{25} Ibid.

\textsuperscript{26} On petition for rehearing, \textit{Humble Oil & Refining Co. v. Sun Oil Co.}, 191 F.2d 705 (5th Cir. 1951).
didn't know.\textsuperscript{27}

One interpretation of Allred's detail-oriented, "every case must stand on its own facts" approach is that he was more concerned with juristic acts than with the development of doctrine. Black's Law Dictionary defines "juristic act" as "an act of a private individual directed to the origin, termination, or alteration of a right. One designed to have a legal effect, and capable thereof." (Fifth Edition). A doctrinaire approach is one that focuses on the development of a rule, a principle, or a theory. Because the District Court decisions were rarely published and then only in the Federal Supplement reporter, where they are thought to be of low precedential value, it was rather sensible of Allred to develop a juristic, rather than a doctrinaire approach. It was not an approach designed to earn him promotions to higher courts, perhaps, but it was one which seems to have gotten the job done, and admirably. Allred had only a 20% reversal rate during the ten years of his second tenure on the court.\textsuperscript{28} For a trial court dealing with the type and number of cases that the southern part of the Southern District of Texas did, that was a very respectable reversal rate. That figure does not indicate that 20% of all Allred decisions were reversed, but 20% of the total number of cases taken up on appeal; itself a fraction of the whole. The juristic approach practiced by Allred was rather like Allred:

\textsuperscript{27} 191 F.2d at 715. Designing a good jury charge is a difficult skill. When the case has been fully presented by the lawyers, the judge must submit a "charge" to the jury. Sometimes the charge only asks one or two questions. Sometimes, in a complicated case, the charge will run on for pages. If the charge is submitted incorrectly, by misstating the law or leaving out crucial definitions or questions, the case may be overturned on appeal. Judges traditionally ask the parties to submit a jury charge so that he or she can use it for a guide, especially in a complex or technical case.

\textsuperscript{28} Handwritten record of appealed cases, prepared by Allred. Allred Papers, Container 523, with the handmade citation digest.
plain-spoken, conscientious, unvarnished, inquisitive and agreeable.

Allred was self-confident about his ability, after the seven years in a prestigious practice, to distinguish good judging from bad. He wrote to a fellow judge with respect to the famous Lyndon B. Johnson election contest case, which he tried before returning to the bench: "I am quite proud of the results attained in Lyndon's case... I have never before been before a Judge who acted more like a Justice of the Peace." Allred reiterated his assessment of the trial judge's decision to a Senator, "It is the silliest thing I ever read. I have never been before a Justice of the Peace who displayed more abysmal ignorance; if this be contempt, I guess I am guilty."²⁹ In Texas, a justice of the Peace is a very low level judge who is elected and is frequently not even trained as a lawyer. His function is mostly to hear small claims and eviction suits. The judge Allred was speaking of was federal district court Judge T. Whitfield Davidson, of the Northern District of Texas, and former Lieutenant Governor of Texas.³⁰

Allred developed a tool for self-education and efficiency in his courtroom. He made a hand-lettered mini-digest. This binder is in alphabetical order, by topics like Aliens, Bankruptcy, Diversity, Evidence, etc. and contains Allred's favorite citations on that subject. It is like a personal digest of leading law. However, instead of containing the multitude of cases in a real digest, it frequently has only one case per


topic, presumably the leading case, according to Allred. (What a bonanza it would have been for a litigator to see the homemade digest and discover upon what one case Allred placed great importance.) There is no way of knowing how frequently Allred used his homemade digest, but his hand-lettered, updated chronological reversal record, as well as other papers, were kept inside the digest so it was an item he also used as an informal filing system.\textsuperscript{31}

The Business of Judging, 1952 - 1953

There are no "how-to" books on being a federal judge. There are, however, musings in legal literature about the methods and approaches to judging, much of it available to Allred, and some of which he was almost certainly aware. For example, Judge Joseph Hutcheson, one of Allred's few living predecessors on the Southern District Court and one of his reviewers on the Fifth Circuit Court of Appeals, wrote eloquently on the subject of judging. Allred would have certainly read some of Hutcheson's articles and opinions.

Allred, like all judges, went through the usual adjustment period upon assuming the bench.\textsuperscript{32} However, there is a deeper, more fundamental level of analyzing the business of judging and, in particular, Allred's method of judging. This analysis concerns the act of judging, the juristic act. When parties come before the

\textsuperscript{31} See, supra, note 28. Many judges have such a homemade digest. Judge John Brown of the Fifth Circuit has a similar notebook which he calls his 'home-baked digest.' Interview with Catherine Jobe, Brown's law clerk, (October 20, 1990). Interview with David Crump (October 20, 1990).

\textsuperscript{32} See \textit{supra} Part One.
court as adversaries and present their evidence, precedent, statutes, constitutionalism, logic, and policy pleas, the judge must make a decision with respect to his conclusions of law and frequently his finding of the facts.\(^\text{33}\)

The judge must then arrive at a decision. Only rarely does only one party have the "law" on his side. Only rarely are the facts so one-sided that the decision is obvious with the first telling of the story. That there is a dispute which has been carried to a federal judge indicates that some complexity is involved. Every such dispute does not require the level of discernment displayed by Solomon in the famous parental rights case;\(^\text{34}\) nevertheless, the federal district judge is daily concerned with the rules of law as they affect the activities of the real people who stand before him. His power over their lives is staggering and yet must be exercised with dispatch and regularity. He does not have the luxury of leisurely investigations into every aspect of the matter or the assurance of Divine revelation of the truth of it. Instead, he may develop a judicial instinct. Some believe that indeed, he must develop a judicial instinct and that more often than not that instinct will determine the decision. Joseph Bingham of Stanford University wrote that:

> Judges may follow precedent, tradition, legislation, custom, public opinion, their ideas of justice... but as long as courts are invested with the power to determine... cases... I we cannot hope to devise a system of rules and principles which will make [the judge's] reasoning perfunctory and mechanical.\(^\text{35}\)

\(^{33}\) If a jury is employed, the judge traditionally takes their findings of fact and applies it to his rulings on the law which produces a verdict and a remedy.

\(^{34}\) I. Kings 3:16-28.

\(^{35}\) J. Bingham, "What is the Law?" 11 Mich. L. Rev. 109, 112-113 (1912).
Judge Hutcheson called this personal reasoning process "the judgment intuitive" and, more plainly, "the hunch."  

The Judicial Instinct

The judicial instinct or judicial hunch, has been discussed by ancient and modern commentators. Aristotle explained that law is a general statement and there are cases which cannot be adequately covered in a general statement. Accordingly, a ruling based on equity, he asserted, embodies the highest justice because it is flexible and gives priority to the actual situation of the petitioner. Assuredly, the doctrine of equity is not synonymous with the judicial hunch, but it is closely related. The concept of equity is rooted in the notion of the chancellor voting his conscience, or, in earlier days, the king's conscience. The conscience of the chancellor is, in turn, rooted in the instinct, the intuitive reasoning, the attention to the real people behind the sterile presentation of facts. A good judge, then, may be that judge who, at some level, functions as a chancellor.

Hutcheson said that the good judges feel their way to a just conclusion and then write the opinion, working backwards through the law. The intuitive flash that pushes them to the decision may or may not stay with them as they work their opinion out on paper, but the important thing is that instinct which allows them to


initially see past the recitation of facts to discern the truth or the soul of the facts.\textsuperscript{38}

Hutcheson quoted Benjamin Cardozo, who wrote in 1928

\begin{quote}
[L]earning is the springboard by which imagination leaps to truth. The law has its piercing intuitions, its tense, apocalyptic moments. We gather together our principles, and precedents and analogies, even at times our fictions, and summon them to yield the best . . . jural end.\textsuperscript{39}
\end{quote}

Not surprisingly, Cardozo is also quoted in a history of the doctrine of equity for the proposition that the rules and principles of case law are not the final truth, but are working hypotheses where every new case is an experiment. If the applicable rules seem to yield a result that is felt to be unjust, the rule is reconsidered. The reasons and motives that have guided courts have often been vaguely felt or intuitively apprehended. Cardozo even went so far as to chide his fellow judges for concealing the reality that their personal vision of social justice played a major role in their view of the proper function of the law. He concluded, in a passage similar to that above,

\begin{quote}
All their [judges] lives, forces which they do not recognize and cannot name have been tugging at them . . . and the result is an outlook on life, a conception of social needs . . . which, when [legal] reasons are nicely balance must determine where choice shall fall.\textsuperscript{40}
\end{quote}

Chief Justice Earl Warren of the U.S. Supreme Court sat throughout the majority of Allred's second tenure on the federal bench. Warren centered the judicial instinct on fairness. He believed that fairness was

"expansive and realistic, adjusting disputes and redressing hardships so

\begin{footnotes}
\item[38.] Hutcheson, "The Judgment Intuitive," at 279.
\item[39.] ibid., at 281.
\item[40.] Hoffer, Law's Conscience, at 158.
\end{footnotes}
all parties can live with each other . . . it addresses real harms; it is mutual, multilateral, and reflexive, making the world whole-again.41

Judge John R. Brown of the Fifth Circuit was a closer contemporary of Allred’s. Brown also had a cogent notion of the judicial instinct. He instructed his law clerks to stand back from the cases and legal arguments and scrutinize the proposed result. If the result could only be justified with years of specialized legal training and would not make sense to the man on the street, then either the analysis or the proposed legal conclusion was wrong and must be adjusted.42 Brown’s man-on-the-street approach again focuses on fairness and common sense.

Modern commentators use the simplest and the most sophisticated ways to express this idea of desirable decision-making. One law professor teaches a rule to his students, the "do-right rule." Citing Hutcheson as an example, the professor says that courts and lawyers should act in such a way as to "do right." When pressed, he refuses to elaborate, believing that when philosophers utilize the do-right rule to indulge in complicated agonizing over "discoverable right answers", they have just killed the very instinct that would otherwise enable them to do right.43 Another professor discusses the value of "good judgment," explaining that judgment involves the effort to see and feel, from within, what each choice would be like if it were chosen over the other choices. Good judgment requires a certain measure of

41. Ibid. at 7.


43. Interview with Professor John Mixon, University of Houston, (Nov. 14, 1990).
compassion, in the literal sense of the ability to empathize with someone else. A third academic commentator concludes that the effort of empathetic imagining of alternatives may well be the definition of exercising judgment.\textsuperscript{44} In his book on equity, Peter Hoffer suggests that Kenneth Karst and Ronald Dworkin have developed very sophisticated modern theories of fairness and equitable legal decision-making.\textsuperscript{45}

With this as background, Allred visibly employed this judicial instinct. An close examination of five selected civil cases from the two years under consideration from Allred's second tenure reveal a strong, reflexive, instinctive method of decision-making. Three of the decisions favor the party with the weaker position, one favors neither, and one favors the more powerful party. All reflect common sense searching for a just resolution.

Two of the decisions are employment cases. In \textit{Tobin v. Laredo Manufacturing Co.},\textsuperscript{46} Allred was called upon to construe the Fair Labor Standards Act. Tobin, the Secretary of Labor, sued Laredo Manufacturing on behalf of a group of Hispanic, female employees who claimed they were not being paid minimum wage. They testified to Allred that the supervisor forced them to "clock out" long before they quit work so as to avoid paying minimum wage for all the hours they worked. The

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{44} D. Dow, "Advocacy, Truth, Fairness and Law," 39 J. Legal Ed. 444, 449 (1989). I am indebted to Professor Dow's article for his summary of Anthony Kronman's article and his reference to Professor Mixon's work.
\item \textsuperscript{45} Hoffer, \textit{Law's Conscience} at Chapter 7.
\item \textsuperscript{46} 130 F. Supp. 732 (S.D. Tex. 1953).
\end{itemize}
\end{footnotesize}
supervisor testified that this never happened. Allred had to decide who to believe and what remedy was necessary, if any. He considered comparison tables of actual hours and paid hours of each complaining employee, along with company records, and other documents. Allred frankly admitted that he took into consideration that the witnesses were uneducated and testified through interpreters most of the time. This, he said, accounted for their inability or unwillingness to give estimates on hours worked without pay for any given week, a possibly fatal flaw since it made determining a remedy so difficult.

The more important decision, however, was the determination of who was telling the truth. Allred stated that if the company’s records were true, they would resolve the issue. He wrote:

I do not believe they are true for the following, among other reasons: (1) I believe plaintiff’s witnesses rather than [the company’s]; (2) defendant [pled nolo contendere on a similar case two years before]; and (3) the fact that immediately after a visit to defendant’s plant . . . by a representative of the International Garment Worker’s Union, defendant’s records show far more full 8 hour days worked by most of the employees than immediately before the visit, or later after the representative departed. 47

Allred’s first stated reason for his holding is completely intuitive, the second and third an example of looking behind the facts to see the larger situation, an equitable method.

In a final act of equity, Allred rejected both the government’s tables of missed pay and the manufacturer’s records and awarded a sum to the workers that he

47. Id. at 734.
created by taking into account weekends, holidays, and other practical realities. "This, I think, fairly approximates the hours and periods worked by each witness for which she was not paid," he wrote. With a touch of humor, Allred responded to the defendant's argument that he should throw out the married women's claims because their husband's didn't join the suit with the reminder that this was federal court, not a Texas court and that Congress probably inserted the requirement for reimbursement directly to the affected employee "for the very purpose . . . of preventing husbands from getting their hands on the wife's hard-earned minimum wages." 48

In the second employment case, Allred held for an elderly train conductor who insisted he could still work, even though the company doctors had pronounced him disabled and he had been placed on the retirement board's annuity list. Allred acknowledged that it was a strange situation indeed where an employee was challenging the Board's determination that he should receive an award rather than the usual cases contesting rejected award applications. In another strange twist, the employee kept taking the money while insisting he was not entitled to it. The man admittedly did not have many years left to work, and Allred said it was a close case, but he denied all the railroad's motions for dismissal and summary judgment, even though it had strong legal arguments, sending the case to the jury, who found for the feisty, arthritic old man. The railroad appealed on questions of administrative law.

48. Id. at 736.
procedure, and the Fifth Circuit affirmed Allred's decision.\textsuperscript{49}

The final three cases in the sampling of five "judicial instinct" decisions involve two tort claims and a bankruptcy appeal. The bankruptcy appeal is noteworthy for Allred's sympathy for the small businessman\textsuperscript{50} and for its common sense reasoning amounting to a judicial assessment of "I don't see why not." The plaintiff was a small manufacturer whose two sons-in-law worked with him. The bankruptcy referee had decided that while Texas law allowed each of the three families to keep one exempt automobile, it only allowed the company as a whole to keep one of the seven trucks owned by the company. The plaintiff argued that the old Texas law regarding "wagons" which had been subsequently construed by caselaw as covering trucks should properly be construed to allow each family to keep one truck, not just one for the whole company. Allred's response was that although no Texas case held that each partner in a bankruptcy would be entitled to a truck, he reasoned that if the trucks were parcels of land, each family could claim one homestead. The homestead analogy was fairly distant, and Allred wisely did not extend it very far. He relied on his own judgment and said "I hold that each bankrupt, as the head of a family, was entitled to the exemption of one truck.\textsuperscript{51}

In the one case where Allred holds for the stronger party, he finds for the U.S.

\textsuperscript{49} Moore v. Thompson, 131 F. Supp. 658 (S.D. Tex. 1953); Thompson v. Moore, 223 F.2d 91 (5th Cir. 1955).

\textsuperscript{50} In Re Thompson, 103 F. Supp. 942 (S.D. Tex. 1952).

\textsuperscript{51} 103 F. Supp. at 944.
government under the Federal Tort Claims Act. A shrimper lost his boat when the U.S. engineers and the Coast Guard did not replace broken guidance lights in a channel near Port Isabel and Port Brownsville. In a bench trial, Allred thought that the shrimper was lying or incompetent or both. The opinion goes into great detail and concludes that the shrimper’s own negligence was the sole proximate cause of the loss of the vessel. Allred also demonstrated that he was thinking about possible reversal on appeal, holding in the alternative, and finding, "for the record" that the value of the boat and the plaintiff’s damages were $20,000.

The final tort case was another boating accident. A tanker and its tug boats got tangled up with subsequent loss of life and property. Allred divided the liability and the damages. He acknowledged that the accident happened quickly, that the captains of both vessels could have acted to prevent or minimize the damage, and dismissed an indemnification clause and the many cases cited by the parties. In a typical Allred fashion, he stated "I find it unnecessary to discuss the many cases cited. . ." Allred placed great weight on the testimony of the pilot of the tanker who knew the passage and knew that the method of tugging that he chose was going to be "tricky." The pilot testified that he had experienced the same problem in that very place in the past. Again, Allred looked to the real life situation as much as possible, rather than the doctrines of law. His holdings, like this one, frequently reflect a


54. Allred frequently wrote "I find it unnecessary to discuss the cases" or "The cases are distinguishable" without going on to distinguish them.
common sense method of reasoning. Allred shared a certain impatience with some other federal judges that sometimes applying the legal precedents seemed to reach an unjust result.\textsuperscript{55}

Contract and Judicial Reasoning

Two of Allred's 1952-53 decisions involve principles of contract law which Allred barely seems to recognize. Contract law can be troubling to the judicial instinct struggling for a just outcome, and Allred was no exception. Both of the cases require a reconciliation between two classic contract doctrines: Statute of Frauds and Promissory Estoppel. Allred, however, struggled to a conclusion with no indication that he was aware of, understood, or could use the tools and doctrines available to him. By 1952 contract law on Statute of Frauds and Promissory Estoppel had developed as follows.

In the early part of the twentieth century, prominent lawyers and law professors created the American Law Institute (ALI) to study the legal system and offer proposals for reform. ALI's biggest achievement has been the preparation of the "Restatements" of the common law. Begun in the 1920s, the Restatements are black-letter pronouncements, in statute-like form, of the rules of the major common law subjects like contracts, property, tort, and agency. Professor Samuel Williston of Harvard Law School, the best-known contracts scholar of his day, was appointed Chief Reporter for the first Restatement of Contracts. That Restatement was

\textsuperscript{55} Thurman Arnold, on why he resigned the federal bench, quoted in Hoffer, \textit{supra} note 37, at 171.
adopted in 1932 and was greeted by mixed response. Courts, for the most part, were the first to cite the Restatement to support their decisions. The first Restatement remained in effect until 1979 when the Restatement (Second) was adopted.\footnote{Charles Knapp and Nathan Crystal, Rules of Contract Law, 117 (1987).}

The inclusion of section 90 (on Promissory Estoppel or Reliance) in the first Restatement has been hailed as the most important event in twentieth century American contract law.\footnote{Peter Linzer, A Contracts Anthology 221 (1989).} Allred was seemingly unaware of it, as he never cited it in his promissory estoppel cases, nor did he cite the Restatement at all. Admittedly, section 90 was thought to be almost anomalous in the first Restatement\footnote{Grant Gilmore, The Death of Contract, 59-64 (1974).} with Grant Gilmore typically overstating that "no one had any idea what the damn thing meant." The ALI debate on the section in 1926 says differently. Everyone had a concept of promissory estoppel, as it was an old notion of fairness in the law. Williston himself, thought of as a great traditionalist and formalist, defended the section vigorously with a sense of the importance of doing justice.\footnote{Debate on Section 88 (Later Section 90) of the Restatement of Contracts, 4 American Law Institute Proceedings Appendix 85-114 (1926), reprinted in Linzer, Anthology, at 222.}

Section 90 of the first Restatement simply states that

A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

The Statute of Frauds is a legal formality for which the penalty for failing to
comply is an unenforceable contract. The original Statute of Frauds was passed by the English parliament in 1677 and remained a part of English law for nearly three centuries. The Statute of Frauds requires that certain transactions, especially regarding land and the deceased, be in writing, to avoid fraud and confusion. The land contract provision is the most universally adopted provision of the statute in the United States. Transactions in land are thought to be of such significance that they always warrant an evidentiary formality.

One can surely see where the two contract doctrines collide. The notion that people should be held to their promises if the recipient of those promises foreseeably relied upon them is the root of promissory estoppel. The notion that many promises will not be enforced if they are not in writing is the root of the Statute of Frauds. What happens when an oral promise is challenged; that is, which doctrine will win? In the 1950s, courts were starting to lean heavily toward the promissory estoppel doctrine. But for years before, ever since the publication of the first Restatement, a debate had raged over the legitimacy of the concept as a basis for contract liability and over whether it could be used in situations other than family gifts and pledges of charitable donations. Several cases emerged as signposts of the way of the future: James Baird Co. v. Gimbel Bros., in 1933, by Learned Hand, Drennan v.

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61. E. Allan Farnsworth, Contracts 397 (1982).
63. 64 F.2d 344 (2d Cir. 1933).
Star Paving,\textsuperscript{64} in 1958, by Roger Traynor, Monarcho v. Lo Greco,\textsuperscript{65} in 1950, also by Traynor, and even a 1909 case where equitable estoppel overruled the statute of frauds.\textsuperscript{66}

Obviously, in spite of whatever utility the Statute of Frauds still had in 1952, it was being limited by judicial construction in order to mitigate the harshness of a mechanically applied rule. One judicial circumvention of the Statute of Frauds was the exercise of equity power. When courts have enforced an oral contract in spite of the Statute, they have sometimes used the labels of part performance or equitable estoppel in granting relief.\textsuperscript{67} Indeed the first Restatement envisioned enforcement based on estoppel even in the face of the Statute of Frauds in Comment F to section 178, especially if there is parol evidence supporting the oral promise or agreement.

This legal development paralleled Allred’s search for just, sensible decisions and outcomes. However, in Allred’s contract cases, there is no hint of his recognition of that doctrinal development. In Pirkle v. Cassity,\textsuperscript{68} a Texas rancher leased a large ranch for 10 years from an out of state land owner. After a period of time, the two men allegedly agreed that Cassity, the Texan, could change the lease to a lease/purchase agreement and could start building improvements on it. Cassity built

\textsuperscript{64} 333 P.2d 757 (Cal. 1958).
\textsuperscript{65} 220 P.2d 737 (Cal. 1950).
\textsuperscript{66} Seymour v. Oelrichs, 106 P. 88 (Cal. 1909).
\textsuperscript{67} McIntosh v. Murphy, 469 P.2d 177 (Haw. 1970), on the history of the conflict of the Statute of Frauds with Reliance.
\textsuperscript{68} 104 F. Supp. 318 (S.D. Tex. 1952).
in excess of $10,000 of permanent improvements on the ranch. Pirkle died, his widow sued for unpaid rents, and the dispute ended up in Allred’s court. Cassity said he did not ask for specific performance (forcing the widow to honor the oral option deal) but only asked for rent credit for the improvements made in reliance on the oral option agreement. Allred said none of that mattered, that the Statute of Frauds prevented such a notion, even as a defense. The "weight of the authority," said Allred, demanded it, but he cited only one Corpus Juris Secundum section on Statute of Frauds.

In Arnold v. Wilson, Allred ruled on an oral agreement to pay a real estate broker the usual commission for handling a complicated, multistate transaction. The agreement was not in writing, though there was some parol evidence to memorialize the agreement. Allred could find no way to compensate the real estate broker who did the work and dismissed the case by summary judgment. He indicated that the Statute of Frauds was enlarged by the Texas Real Estate Broker’s Licensing Act of 1939. Further, even though the agreement was enforceable in Missouri where it was allegedly made, it was not enforceable in Texas. He struggled to explain that the broker had a legal right to the commission, but no legal remedy in Texas because of the evidentiary rule. This reasoning is not in line with Allred’s other opinions, but it is further evidence that he did not have a grasp of the contract doctrines at his disposal.

Allred’s unsophisticated reasoning was the very thing that prevented the use

of equity in these cases. In other opinions, his instincts allowed him to be flexible and find the just outcome. Both of the losing parties above argued their estoppel claims, as did the railroad retirement board in Moore v. Thompson, above, but Allred never really addressed or discussed estoppel. He was hindered by his education, both formal and continuing. We must keep in mind that Allred was placed in the Corpus Christi division of the Southern District partly because he was more qualified for and interested in handling criminal and immigration matters than business litigation. Nevertheless, he did practice business litigation for seven years in Houston, a booming business city. Texas was never and is not now, a leader in the development of Contract doctrine and it is no shame that Allred did not use the doctrines available. It is just a missed opportunity, like some other aspects of his professional life.

Allred's Last Opinions 1954 - 1959

Allred published forty-seven opinions in the years 1954 through 1959. Fifteen were criminal cases, leaving thirty-two civil opinions. Of those thirty-two civil opinions, five were uncomplicated "no jurisdiction" cases, three were interim judgments that did not decide the merits, and five were between parties whose relative power cannot determined. Of the nineteen remaining civil cases, Allred found for the least powerful party in fifteen of them. The parties who prevailed even though they were the most powerful were a railroad company, a telegraph company, and the United States. These statistics are somewhat striking in their indication that Allred matured in his
judicial instinct method, possibly demonstrating that even though he left politics behind, he did not leave behind his personal values as well.  

Allred's Final Years

From the complex to the simple, Allred was ever the pragmatist. During a period of time when conscientious objectors refusing the draft appeared before him regularly, his policy was pure Allred: inform them that they could take a five year sentence or they could reconsider their decision. Most of them changed their minds. If they stuck to their original beliefs, then Allred heard the case and made an individual decision. Also characteristic was Allred's decision to start trials at 7:00 P.M. at the out of town sittings. Litigants remember that trials progressed quickly at the that hour.

Allred sat on a court that was characterized by a focus on private functions rather than public issues, yet then, as ever, Allred was the exception, the one who didn't quite fit in. Allred had always been more interested in public issues, and his final years on the court were no exception. His criminal, immigration, and international border cases occupied a primary and even favored position in his court.

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70. In one case involving parties of undetermined relative power, Allred clearly revealed his reliance on the judicial instinct. In the final paragraph of his opinion, Allred wrote "Somehow, as libelant developed its case, it left me with the feeling that . . . . Halliburton Oil Well Cementing Co. v. Stellman Transportation Co., 123 F. Supp. 568 (S.D.Tex. 1954).

71. Interview with Wm. Eckhardt (Fall, 1990).

He was more comfortable in the company of the government men - the assistant U.S. Attorneys who brought those public issue cases before him - than he was with the private practice lawyers who "bothered" him with personal injury cases. He was more comfortable with public issues than most of the other judges on the Court because he had been more thoroughly involved with public issues throughout his life. He never lost his New Deal legacy.
Epilogue

James Allred was a man of his time and place; a paradox. He was born in Bowie, Texas in 1899, and died in 1959 in another Texas outpost, Laredo. He was a Texan. He lived in a time and place where the traditions and influences of the South and the West collided.

The student of Southwestern literature is familiar with this dichotomy and collision between the Deep South and the Frontier West. The deep, bizarre, lush, and sometimes evil human dramas which characterize the South are replayed in Allred's life, courtroom, and even in his death. Allred's game hunting and fishing and riding, even the Westerns of his recreational reading were all his escape into the relative freedom of the fading pioneer Western culture.¹

The poverty and humiliation of his early years combined with a family tradition for public service molded Allred into a man filled with both pride and humility. As his career steadily rose to great heights in a State itself a rising influence on the national political scene, he was constantly reminded of the unaccountable human dynamics around him. His wife, Joe Betsy, was manic depressive and fanatically religious. His oldest son suffered through three troubled marriages to the same young

¹. Lest this seem fanciful, I refer the reader to C. Vann Woodward, The Future of the Past vii, 201-234 (1989) where he calls for more cross-disciplinary work on Southern history and Southern literature. See also Don Graham, South by Southwest xv (1986) where he discusses Lyndon Johnson's similar retreat to Western myth-making. Finally, Norman Brown in "Texas's Southern Roots," a paper he delivered in 1983 and published in Graham, Lee, and Pilkington, eds, The Texas Literary Tradition, defines the Dixie Demagogue "as a folksy southern politician like Texas governors James Ferguson and Wm. Lee O'Daniel."
flight attendant he met as a youth. His middle son seemed diffident and directionless. His youngest son announced that he was a homosexual.

In the courtroom, a parade of con artist, misfits, and cranks appeared before him on a daily basis. A Jehovah’s witness claimed exemption from the draft and brought his entire church to court one day. A man with no medical degree was found to have been teaching medicine at the University of Texas - Galveston medical school. He came to Allred’s court in leg irons. There were once ten witnesses ready to testify against a faith healer and con artist, but when he looked at them as they took the witness oath, they all changed their minds. Finally, Allred had to instruct a verdict of not guilty, upon which instruction a juror stood up and said "Judge, can we vote on it? We think he’s guilty!" Once a member of the Communist party in Texas was brought before Allred. When Allred found out that the man had run against him for Governor in both Gubernatorial elections, he quickly arranged to turn the case over to Judge Kennerly. The man said that he would rather have Allred, for he felt that Allred would give him a fair trial. Percy Foreman defended a man going blind and brought in the defendant’s wife and daughter to plead for him. A Houston vice officer was charged with stealing drugs from the evidence room and committed suicide right after Allred instructed the jurors to only consider the charge of fraudulent concealment.²

² Scrapbook of clippings and briefs kept by Assistant U.S. Attorney Wm. Eckhardt. For the weirdest legal arguments, see the illegal deer-hunting case about which Allred actually wrote an opinion, Texas v. W.E. Mayfield, 738 F. Supp. 738 (S.D. Tex 1958). These examples are offered not because they are unusual or funny, but because they represent the norm. Texas in the first half of the twentieth century was a place characterized by the same paradox, ambivalence, energy and individuality as Allred himself.
It has been demonstrated throughout this paper that Allred was a politician who eventually dressed in judge's robes. Texas politics were defined by three factors: talk, ideas, and the pursuit of power. Allred was a master of the first, paradoxical but frequently appealing on the second, and even more appealingly ambivalent on the third. He was a great communicator, a great orator, and those were qualities prized more in the days before visual mass media. He was a liberal, but he did not develop a very sophisticated liberal ideology. His liberalism was of the southern patrician's strain, mixed with an inherent acceptance of the notion of white superiority. And finally, Allred knew how to seek and acquire power, but as he matured, he seemed to lose heart for that pursuit. He became satisfied with being the master of his courtroom.

He was curious, a fixer, a problem-solver. He, like many lawyers, became addicted to the pleasures of becoming a mini-expert on many subjects. He liked to learn, and he was a teachable spirit. Therein lies the tragedy. Allred displayed growing reflection and personal growth on issues like race, in the years preceding his death. He began to be praised in Black newspapers, was invited to make speeches to Black organizations, and was thought of as "not one of the ones we had to worry

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3. See, for example, his opinion in the patent infringement case, *Sid W. Richardson, Inc. v. Bryan*, 144 F. Supp. 916 (S.D. Tex. 1956). In spite of his intelligence and curiosity, Allred was never thought of as a great scholar. His educational background did not prepare him for that role, and the lack of it contributed to his "outsider" status during the New Deal when Roosevelt surrounded himself with the Brain Trust. See Jordan Schwarz, *Liberal: Adolph A. Berle and the Vision of an American Era* 69-113 (1987).
about on that issue" by the judges on the Fifth Circuit.\textsuperscript{4} His early death prevents any
surety that he would have continued to grow and mature as an individual. It would
have been interesting to see what he would have done with school desegregation
cases, but his position in the southern half of the district did not offer him any such
cases before his death.

His death was an act of generosity. On the day he died, he was holding court
in Laredo, Texas, just across the border from Mexico. He felt sick, knew he had a
heart problem, and visited a doctor at lunch. The doctor said that he should go
immediately into the hospital because his heart was in bad condition. Allred told him,
If I do that, those poor people are going to be in jail for months before they'll be
able to get a judge free from Houston to come down here and clear the jails. I'll just
clear my docket this afternoon, and go to the hospital right after." He did just that,
spent the afternoon giving people their day in court so that they could either begin
serving their sentences, or be freed. His bailiff and Joe Betsy were standing by,
waiting to drive him to the hospital. As soon as they arrived at the hospital, as he was
putting on a gown, he died. It is hard to condemn that sort of benevolence.

Allred was never a racist in the sense of demonstrating a hatred for other
races. The combination in the South during that Age of Segregation of progressive
politics and racist demagoguery is "especially difficult for the modern historian to
understand, and one result has been the tendency to damn the opponents of the

\textsuperscript{4} Interview with Judge John Brown (Spring, 1991). Judge Brown was very candid about the
attitudes at the district court level during the 1950s. There were judges whose opinions would be
scrutinized carefully because the appellate court knew their personal biases and racial prejudices.
Allred, according to Brown, was simply not one of them.
'demagogues' [along with those with outright hatred] for their lack of progressivism and for quietly sharing the racist assumptions that the demagogues shouted out loud." By current standards, almost all white southern politicians were hopelessly racists, so it is hard to find any reason to distinguish between them. However, by not attempting to do so, we "overlook the only significant difference between white Southerners on the race issue if we do not distinguish between those segregationists who opposed violence and favored a degree of protection to blacks, totally inadequate to modern eyes, and those [who encouraged threats and violence]." It is sad that Allred did not realize his full potential as a reformer and a thinker and a progressive. However, his actions as Governor and his rulings as a judge helped thousands of individuals. It is regrettable that he did not have the education and literary skill to change jurisprudence in order to continue to assist oppressed litigants after he died, rather than "deciding every case on its own facts," but those individual lives that he did affect positively are not to be dismissed. When Allred died, Texas may have been a little farther down the road, even if it was not close to salvation.

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5. Robert Dean Pope, "Of the Man at the Center: Biographies of Southern Politicians from the Age of Segregation" 102-104 in Kousser and McPherson, Region, Race and Reconstruction 89 (1982).