

INTERVIEWEE: LARRY TEMPLE (TAPE #5)

INTERVIEWER: JOE B. FRANTZ

August 11, 1970

F: Interview number four with Larry Temple on August 7 turned out to be a faulty interview because of machine difficulties. A good hour-and-a-half interview produced only a little more than two-and-one-half pages of transcript before its contents became indistinct. Today's interview by Joe B. Frantz in Mr. Temple's office on August 11, 1970, will necessarily cover some of that same material.

Larry, let's get back to talking Scoop Jackson visit with the President on his boy's birthday.

T: All right. I don't know what I may have recounted so this may be a little bit repetitive, but--

F: That's what we want.

T: All right.

F: It's what we don't have that worries us. It's not what we have twice.

T: As you indicated, the occasion for the meeting was because it was Scoop Jackson's son's birthday. On that day Senator Jackson and Mrs. Jackson and the birthday boy and another child which I recall as being a daughter, but I'm not sure about that, came to pay a visit on the President.

One of the things I think we may have discussed before, Joe, that might not be in here was, you inquired whether presents were readily available. I indicated that when the President was about to go over to the Oval Room he suddenly realized that it was an occasion of a birthday and wanted to get some presents together for the boy. You'd inquired

at that time whether there was sort of a storehouse of presents, or whether they had to send out to the market place to pick up the presents. What the President did is he kept some items handy that he wanted to give to people. By and large those items in some way related either directly to Lyndon Johnson, or directly to the Presidency, or both. For example, he had some ball point pens that had both the Presidential Seal and Lyndon B. Johnson written on them. He had some, by the way, felt-tip pens that he used in proclamation signings or bill signings. I think he was fairly well noted--all the Presidents did it, but he may have done it with a greater degree of passing out the pens at the signing--the pens that were used for significant signings of some form or another. The President had things like cuff links with the Presidential seal that I've got on; and he had tie clasps. For women, he had little Presidential Seals that would go on charm bracelets, or a perfume atomizer with a Presidential Seal.

There wasn't a great store of things. They were fairly well limited, but the President recognized full well the great respect and awe that people had for the Office of the Presidency, as well as for the man who held that position. He knew very well that when he gave things that had his name on them, or gave things that had a Presidential Seal on them, or both, that he was giving an item that had great significance to the people that received it. He did that in full knowledge. He wanted his friends and those that he had affection or fondness for to have these items.

It wouldn't always be an occasion of a birthday. It might be, as in the case of a little party that Louanne and I were at the White House on

T5

3

he just invited us up for a drink afterward. We were sitting in the living room, and he said, "Oh, by the way, Louanne, have I ever given you one of the busts of the President?" She said, "No," and he proceeded to give her one of the busts. I don't even remember what all else-- maybe an atomizer or something. So it didn't always have to be a particular occasion. It might just be that you were there. I think a lot of times he might thing, "Well, I've got a staff member who has been working awfully hard, and he has been away from home and maybe this will help soothe the conscience of the wife if I do this." I think he did it, recognizing what he was doing.

F: Everyone wants to have his picture taken with the President, and the President was inordinately patient, and maybe even enjoyed, having his picture taken with people. Did he sign all of those pictures personally?

T: Yes. It was one of the sources of great surprise to me when I went to Washington. I had been to Washington in June of '67 on the occasion of the retirement of Justice Tom Clark, and George Christian had taken me to the White House. The President, I later found out, was wanting to take a look at me to see if he wanted to bring me to the White House, and he invited Louanne and me to lunch. Our picture was made with him, and two weeks later I got the picture--autographed to us, signed by the President; and I was delighted to get it.

But I had been around political figures enough to think that perhaps that was not an authentic signature; that perhaps somebody had signed his name on it, because I didn't think I was important enough for him to take the time from his other duties to sign it. But I found out when I got to Washington that Lyndon Johnson had an unbelievable amount of

75

4

patience in doing menial signings. That's not really a very fair phrase, but just literally signing his name or inscribing something on pictures as well as signing the great multitude of documents that require a Presidential signature. On many occasions at night I recall that from maybe from nine o'clock at night until eleven o'clock at night, or nine to ten or ten-thirty, he would sit at what we called the signing table which was the table immediately behind his desk and as the name indicates, was the depository of things that needed to have his signature on them. He would sit at the signing table and just sign his name, maybe without stopping for an hour or an hour-and-a-half on the many letters, the many Presidential documents, commissions--

F: Meanwhile carrying on a conversation with you?

T: Right. While carrying on a conversation. I'm reminded of the fellow that couldn't walk and chew gum at the same time. That sort of characterizes my coordination of being able to do two things at once. But he knew what he was signing and could put an inscription on a picture and sign his name while carrying on a conversation. He did that just hours on end and never once did I hear him complain about the time it took him to sign his name and autograph the picture.

F: This was part of the office and part of the--?

T: This was a part of the office and a part of the duty. He knew that he could cut off the pictures. He had that power. Nobody made him sign those pictures. There are those who said he did it out of vanity, wanting to have his picture around. My judgment about that is that he could have had his picture around by having them made and sent out without signing them, if it was a sheer vanity sort of proposition. But he knew that a

T5

5

recipient of a picture would put greater store and greater value in it, of having their picture made with a President and signed by that President, or maybe just a picture of the President himself that's autographed. So he was quite willing to do it and, as I say, never complained; and spent a great, great amount of time. I would say during the course of a day, a regular day in his office, that he would average an hour to an hour-and-a-half each day doing some form of signing. That so-called signing table might be full in the morning, and when he had a few moments between other activities he might turn around and do a lot of signing. Then by the time he went over for lunch in the afternoon, more things would have come in and been stacked on it.

F: We're getting away from Scoop Jackson, but I want to ask one other question. Everybody is protective of any President, and I think Lyndon Johnson invites that sort of attention more than most, but do you have any safeguard other than your own vigilance to see that something does not get overlooked that needs to be signed, that needs to be handled. Do things just sort of ever get lost?

T: I guess maybe they do. I can't think of anything offhand that got lost. For example, there's a man named Bill Hopkins at the White House that almost nobody knew except, as you and I both know, the people that have been there. Bill Hopkins has been the fellow who has kept the White House moving. I think he came over under Hoover.

F: He's about as apolitical as you can get.

T: Exactly. He has served with every President since Hoover. The key things like legislation, or like some Presidential commission of some kind, came through Bill Hopkins' office. Bill kept track of them--among

a great, great multitude of other duties. I'd say there was no one single individual, other than the President, in the White House during the time I was there that was more valuable than Bill Hopkins because he knew the precedence. He knew the people. He knew the dead bodies--the trite phrase is. He knew where everything was, and he knew what had to be done--what the form, what the procedure, as well as what the law--. He wasn't a lawyer, but he was a better lawyer than I was with regard to the White House operations or anybody else that was there. But things didn't get lost because of his super-efficiency.

0 You know, there was a great deal of legislation that came through. Well, when the legislation came through, the President had a period of time to sign it, and--as I'm sure some of your other interviews will reflect--when a piece of legislation passed Congress and came to the White House, it was immediately taken to the Bureau of the Budget. The Bureau of the Budget passed its comments on even though it may not have involved money. But they may not go out to the various federal agencies. If the Department of Interior were affected, then Interior gave its judgment and its recommendation on legislation. If it had some foreign trade aspect, [the] Department of Commerce.

But at all times Bill Hopkins knew where that piece of legislation was, maybe copies of it went out, but Bill Hopkins knew. When there was time certain that the legislation had to be acted upon or it became law without the President's signature, Bill Hopkins saw to it that on that day the President knew about it. If the President were in an airplane headed to Australia, or if he were in Hawaii meeting President Thieu or President Park of Korea as he did, or if he were at the ranch, Bill Hopkins

TS

7

knew where he was and saw to it that if the President was not going to be at the White House on the day of a finalization for signing, that that legislation was with him. He did just a magnificent job. If he slipped up it either wasn't when I was there, or it wasn't something that I knew about. I'm sure there were little mistakes, but I'm not aware of any.

Then of course when it comes to "Thing alike" pictures, or "Like" letters, or like some Presidential commissions, it doesn't really make any difference. It may be that whoever initiated getting the picture or the commission on the President's desk wanted it signed on Monday, but by and large it didn't make any difference if it weren't signed until Friday. So there was an excellent control, and I attributed it almost solely to Bill Hopkins.

F: I used to be amazed with the promptness with which things like that got done. I've sent over pictures and they're back, you know, when you might expect a month's delay, but they're back in two or three days.

T: I think one of the reasons that the President was so prompt and was so efficient about signing of things, including pictures--. You can see when you look at the multitude of items that come on his desk, and I think that he recognized that if he ever delayed--if you let three or four or five or eight days go by--it's almost impossible to catch up. If I'm right in my recollection of an hour or an hour-and-a-half a day on signing, you can imagine if he let six days go by where you are. You're nine hours behind and you just can't catch up.

F: You just don't pick up that kind of time, right. Okay, let's get back to Scoop.

T: All right, back to Senator Jackson. I don't recall what the presents

were that the President got for the Jackson boy. I recall that as was the President's nature, he got a present for the birthday boy--got several presents, as I recall, for the other child, and for Senator Jackson and Mrs. Jackson. The President is not a fellow who would just give a present to the honoree. If there are several there, he'd want to give presents to all of them.

F: Let me ask you one other question as an intrusion. Now, Scoop Jackson had worked with the President as Senator. They had been very close and were first-name and so on, but I rather gather that no matter how close, that something come over the Office of the Presidency. That is, that invests the man when he becomes President so that even Senator Jackson no longer was quite the buddy he would have been in the Senate.

T: I think that's right.

F: It isn't any attempt of Lyndon Johnson's to put a distance. It just happens.

T: I think that's right. Part of it comes with the change of the name with which you refer to a man. It may be that during the Senate days they were Scoop and Lyndon to each other. At the time we're talking about, and any time during the Presidency, A Senator like Senator Jackson would treat the President with great deference. He was "Mr. President" to Scoop Jackson.

Only on one occasion, with one member of Congress, did I ever hear any member of Congress, or any official in Washington, refer to the President by his first name to his face. Now, you know when people are referring to a President, someone might say, "Well, Lyndon did so-and-so." But I'm talking about on a person-to-person face-to-face conversation. I

heard one member of Congress, who is a Texas Congressman by the way, call him Lyndon several times, and it was really offensive to me. It seemed completely out of place and completely out of character and didn't give a tone of informality or long-time friendship. It gave a--

F: It was a long-time friend?

T: It was a long-time friend. It gave a tone of sort of a young upstart trying to make an impression, and he wasn't. It didn't come across very well. I think there were people in Austin and people in Johnson City who grew up with the President that referred to him on a first-name basis to his face when they saw him down here. This was Jim Wright that I'm talking about, and Jim Wright is the only member of Congress or Washington official I ever heard refer to him by his first name. Even a fellow like Everett Dirksen or Senator Russell, or Senator Mansfield, and certainly all of the Cabinet people treated him with great deference. That was true of Scoop Jackson. On an occasion where it was kind of a happy time for Senator Jackson with the son's birthday, it was informal and kind of laughing, but still you could tell that one man was the President and one man was somebody else. And Senator Jackson did treat him with that deference.

I think I may have mentioned earlier that when the President was about to come over to the Oval Room and he thought about the present, he also remembered that Luci Johnson Nugent and young Patrick Lyndon Nugent--Lyn Nugent--were staying in the White House. They really had come up for the President's March 31 speech and had been there since that time. Pat, at this point, was over in Viet Nam. And the President, as everybody knew then and knows now, is just abidingly proud of his

grandson and liked to show him off and liked to have him around. He called Luci and told her to get Lyn ready, that he wanted to take Lyn over to meet a new friend.

So he took Lyn over to the White House that morning, and the early part of the fairly abbreviated meeting with Senator Jackson was with the children, "Lyn, shake hands with (whatever the little boy's name is)" and that sort of thing; and the President making efforts to get Okimoto, the photographer, to take pictures of the children. The President's picture was made with the little boy--with both children, as I recall. After this had taken place.

It really was about at the end of the informal meeting and the purpose for which the meeting had been set up--namely the picture taking--had already taken place, I recall George Christian came in and he had in his hand a wire service report that was from Reuter's. I think, as I indicated to you before, Reuter's is sort of an international AP or UPI. They're the counterpart of AP and UPI, but it's an international news service. Within five minutes prior to George's coming in, a story had come across the wire service of Reuter's indicating that Hanoi had accepted the President's March 31 initiative--at least at that point had tentatively agreed to peace talks.

F: The White House learned of this over the wire and not through diplomatic channels?

T: Right. I thought at the time how strange it was that we'd find out really through a news service and not through the diplomatic channels. George's attention had been focused on this by some newsman who just happened to be looking at the wire service reports, saw it, and told George about it.

75

11

George ripped it off the ticker tape and brought it in to the President.

The President obviously was elated. He had hoped and had said publicly, as well as many, many times privately, that he would feel like he had made a very, very significantly successful move in deciding not to seek reelection if it would bring about peace. I think he'd been a little bit frustrated from March 31 until this time because he had gotten no response. He had made a big initiative and had taken a very large step, but had gotten no response. He was obviously elated and obviously pleased at this point. I think it's significant that Senator Jackson was there because the first thing he did was to show it to Senator Jackson, who was pleased. Even at that time Senator Jackson--

F: Did he run off the kids at that point?

T: He showed it to Senator Jackson and when he talked to him just a moment. Then he looked up and saw that Lyn was still there, Mrs. Jackson was still there, and the two children. He asked that I take Lyn out of the room and get one of his secretaries to take him back over to the Mansion. I assume, although I have no vivid recollection of it, that Senator Jackson sort of gave the sign to his wife to remove their children which did take place. And after looking at it just a moment and talking to Senator Jackson about it--as I've said, Senator Jackson was a very respected member of the Senate who was knowledgeable and was very active in foreign affairs and, as we know from later accounts, was apparently offered the position of Secretary of Defense by President Nixon nine months later--the President then immediately decided that he wanted to get on the phone with, as I recall, Secretary Rusk and Walt Rostow.

When he called Walt Rostow, I think Walt told him that he was just

12

getting across through regular diplomatic sources of information this same report that was in Reuter's. My recollection is that, while this was mid-morning, ten or ten-thirty, the President told Walt to get all the information he could at hand and to assemble for later in the day, I think, at lunch, what we referred to as the Tuesday luncheon group.

The Tuesday luncheon group, as your records will reflect, were the Secretary of State and the Secretary of Defense; General Wheeler, chairman of the Joint Chiefs of Staff; Mr. Helms, the head of the CIA; Walt Rostow; and Tom Johnson and George Christian and the President. I believe that's about all. It got its name from the obvious source; that the President met with them almost religiously every Tuesday, even if there was no particular business to be discussed, to discuss what the overall foreign situation was. Very seldom were there any outside individuals at those meetings. When a General Westmoreland or a General Abrams would return from the field, they might sit in, but seldom were any other guests invited or seldom did anyone else attend. It was at that point that I sort of faded out of the picture. I just happened to be there when he got word just by coincidental circumstances. Once it became a matter of the real business of foreign affairs, that wasn't my cup of tea.

F: You moved into other realms, right.

T: I was out.

F: Let's switch topics and talk a little bit about--well, it's really two topics in one. One is the long attempt of Senator Russell to get Judge Alexander appointed to a federal judgeship, and the accompanying and intermingling there of the appointments of Justice Fortas to the Chief Justice and the attempt to name Homer Thornberry to the Associate

Justice--and sort of the aftermath of that, which among other things brought Barefoot Sanders along in its wake.

T: Right. Let me start in sort of the chronological order. I think I may have started in the prior tape. In the very early part of the year of 1968--it really may have been '67--there became a vacancy in the position of United States District Judge for one of the districts of Georgia. I think I indicated to you on a previous interview that the custom--procedure, I should say--was that when a vacancy did occur that the initiation of the investigation or the recommendation of individuals rested with the Attorney General. Now this wasn't peculiar to the Johnson Administration. My old dear friend Tom Clark tells me that he had the responsibility during the Truman Administration for handling the appointment of federal judges. I had had several conversations with him about how that works. So I do know that that was the custom and procedure during those days. I had understood that Herbert Brownell in the Eisenhower Administration, Attorney General Robert Kennedy during the Kennedy Administration--. So this was the procedure that was fairly well followed by all Presidents.

When this vacancy became due, the Attorney General contacted Senator Russell to get his recommendation of an appointee. I may not have mentioned this before, I have a vague recollection that the reason for Senator Russell is that although his colleague, Senator Talmadge, was a Democrat, also, and entitled--to I think the phrase is "patronage"--it has a kind of odious sound to me, and patronage doesn't connote the bad things to me that it does to others. In the patronage process I think that most Senators, where there were two Senators of the same party from a

T5

14

state and the same party as the President, they sort of swapped-out making recommendations. If there were two vacancies, one Senator would recommend one and one would recommend another. I think in this case Senator Talmadge and probably made the previous recommendation to a vacancy, and now it was Senator Russell's turn, so to speak. So for that reason it was Senator Russell that was contacted rather than both Senators.

While on most occasions when a Senator would be contacted for his recommendations for a judgeship, the Senator would probably make several recommendations, on this occasion he didn't. He recommended a man by the name of Alexander as being his choice, period. Wasn't first, wasn't preferential, it was his choice. The Attorney General did some checking and this, as I recall, first started in about January of '68.

The Attorney General did some checking and found Mr. Alexander to be by reputation the most able, the most talented, the most brilliant lawyer in all of Georgia. I think that was the characterization of him that came back initially, and later on as well. He had a distinguished record scholastically. He had a distinguished record at the bar from a career standpoint. Nobody at all ever raised any question about any moral integrity. No one ever raised any question about his ability. There may have been somebody in Georgia that thought that there was another lawyer that might be his peer and might be his equal, but nobody thought that there was a better trained, a better experienced, a more talented lawyer in all of Georgia than Mr. Alexander, and that was admitted by all.

There was one slight problem with him, and that slight problem became very major. In the late 1950's--and I think in my earlier interview

with you I said '57 or '58--it could have been '56--but in the 1950's he had made a speech. And the speech followed the 1954 Brown vs. Board of Education desegregation decision, and the decisions that succeeded the Brown decision. That speech that was made by Mr. Alexander, I think, was probably correctly characterized by a lot of people as a racist speech. It certainly was a segregation speech. In keeping with his brilliance, the speech was one that was very articulate, very eloquent even to read; and I'm sure it must have been when he gave it. I recall having read the speech several times, and the theme of it was a tracing of tyranny in the history of the world and primarily the history of the United States. In the speech Mr. Alexander said that throughout history, tyranny had come to this country in many forms and many guises and that now, today--today being '56,7, or 8, somewhere in there--today tyranny had come to the United States in the form of the black judicial robe; and that tyranny had come in the form of the Supreme Court and the decisions of the Supreme Court; and that that was the worst of all kinds of tyranny. He went on in great detail to, I guess you say, take on the Supreme Court about their decisions, and to denounce them for those decisions. That was about the only public utterance, the only public activity, that appeared to be in the record with regard to this gentleman, and it obviously was of such magnitude as to cause concern by many organizations and cause concern by the Attorney General and ultimately by the President.

The Attorney General came to the President in early spring of 1968. I might say as an aside--when the President and the Attorney General met in their office, at least during 1968, the President almost always had me in there--not that he was trying to check on anybody or have anybody

75

16

keep an agenda or notes--but since I was handling liaison with the Department of Justice he wanted me to know what was transpiring so he wouldn't have to tell me about it and re-educate me at a later time. So I was there on the occasion of his meetings with Ramsey at which Mr. Alexander's appointment was discussed; and I remember in the early conversations Ramsey said, "Mr. President, I know that this is important to Senator Russell, and I know that he wants this man appointed, but we're receiving a lot of opposition from minority groups." The NAACP had objected to the nomination. Word of it had got in out in Georgia, as you can understand. They and other organizations representing minority groups were objecting to it, saying that if this type of individual, reflecting a segregation attitude, were appointed to the federal court, it would set back all that the federal courts and all that the federal government had been able to attain since 1954.

F: Of course, there's a strong anti-court infelence here too.

T: Right.

F: For a man who's now going to be a part of it.

T: Going to be a part of the federal judiciary. Ramsey said that it was all the more important because it was a Southern position--that if we were talking about New Hampshire, it might be a horse of another color. But when you're talking about one of the Southern states, where the problem of implementation still existed, it was all the more important to get a man who recognized what the mandate of the federal courts had been and the federal government, and to follow it and implement it and put it through.

Ramsey commented to the President then, and by the way, at a later time, that there was a fairly close balance on the 5th Circuit. The 5th

T5

17

Circuit being the United States Court of Appeals for the 5th Circuit which covers the Southern area from Texas to Florida--and that while this was not an appellate judgeship, that the decisions went up through the 5th Circuit and he thought that there were some people on the 5th Circuit who weren't as enlightened as others. If the President were to name a man to a federal district judgeship, trial judgeship, that rendered a decision that had to go up for appeal--the federal government had to appeal it--it would complicate the thing even more. So he did object to the appointment, and suggested in the early meetings that there was just no way the President could make that appointment; that he, Ramsey, would not recommend it to the President; and that the President could not make that appointment.

Ramsey also suggested that because of the speech that Mr. Alexander had made, that Mr. Alexander probably would not be cleared by the ABA Committee- the American Bar Association Committee- which checked on all potential judgeship nominees and made a recommendation of either not--my recollection is they either made a recommendation of qualified, well-qualified, exceptionally well-qualified--which were the three favorable categories, or unqualified. Ramsey suggested that, in his judgment, the ABA Committee would probably not give a qualified recommendation to this man because of this speech.

The President told Ramsey at the very outset that Senator Russell had been his dear friend. I think I mentioned to you the other day that the President told me on a couple of occasions that Dick Russell was the dearest friend he had in the Senate. As a matter of fact, Dick Russell had nominated him to every honor and every position that he, Lyndon Johnson,

75

18

had ever attained. Obviously, Dick Russell didn't nominate him to be Vice President, didn't nominate him for President in '64.

F: This is an extension of that original nomination.

T: Dick Russell nominated Lyndon Johnson to be Minority Leader back in the early '50's and--more than nominated him--had been the one that arranged the situation for him to get that position. I think Dick Russell could have been it, or anybody Dick Russell wanted. Lyndon Johnson never forgot that, and he had a great, great deal of affection for Senator Russell. I think I indicated earlier--I'm not keeping this in much of a chronological order--but I know from about the time I got there--got to the White House--and started going on the bedroom detail, that quite frequently and by quite frequently I think maybe once every month or six weeks, Senator Russell would come by the White House on his way to the Capitol. He would come in and have breakfast with the President just privately, the two of them.

F: When the President had breakfast like that, did he go back down to the second floor dining room, or did he eat in his room?

T: When he had breakfast like that, he would have breakfast on the second floor dining room, yes. Ordinarily the President ate breakfast in his bedroom when he was eating by himself and reading the morning papers or the morning reports and calling people on the telephone. But when an individual like Senator Russell, or when he had the Congressional breakfast, it would be in the dining room on the second floor. Senator Russell would come in and out without ever being noticed. Maybe the only ones who would even know Senator Russell had been there would be the President and the guards and the people who had served them. And the

TS

19

President would 't make any to-do about Senator Russell being there.

F: He was never on the record.

T: No, not at all. You could almost tell that when there came a critical point with regard to foreign policy or foreign affairs, he valued and he wanted Senator Russell's counsel, and he would bring him in. Senator Russell was always very generous to come, even though he was in bad health then. I think whenever the President wanted him, he came--short notice or no notice.

F: Was he pretty forthright with the President?

T: I assume so from what the President told me. I never sat in on any of those breakfasts, and I never really was there during any of the exchanges. But I assume so from what the President said. That's just a little bit of a background.

But back where we were. The President told Ramsey that he, the President, didn't want to do anything to undermine or to hamper or to destroy or to cause any problem with the federal judiciary and the critical problems that they faced in the area of desegregation. You'll have to remember that--to put this in the context of the time--this was sort of during the early talking of Resurrection City. It was after the riots of the summer of 1967, and before people were anticipating the problems in 1968. The President said he didn't want to cause any problem; but he also valued the judgment and friendship of Senator Russell, recognized what a power Senator Russell was in the Senate, and didn't want to offend Senator Russell. He said, "If we come to the final conclusion that we can't appoint him, then we'll come to that conclusion. We'll cross that bridge. But if there's any way at all that we can postulate

this man in a way that he can be appointed without hampering the judiciary, without doing anything to undermine the judiciary, I want to do it. I want to appoint this man."

F: And Alexander has disclaimed his earlier statements? I'm anticipating.

T: The next step he did. Ramsey had said at the outset that he didn't think there was a way to rehabilitate this man, so to speak, and told the President of the problems.

The President talked to Senator Russell about them. Senator Russell in turn talked to Mr. Alexander, and reported back to the President that Mr. Alexander had said that the speech that was attributed to him was made by him. He did make that speech. Those were sincerely and validly held views at the time he made the speech. He wasn't going to retract what he said because that speech did reflect his view at the time he made the speech. Perhaps he had matured, perhaps the situation the country had changed, his attitude had changed; but he now recognized--he being Mr. Alexander--what the law of the land was. He recognized that the Supreme Court had made its decision--that that was the rule that was to be enforced by the local courts. He recognized what the other appellate courts had done as well as the district court, and that, if the President saw fit to nominate him to that position, that under no circumstances would he try to superimpose his own particular feelings or his old particular judgments to the cases and facts pending before him; that he could and would apply the law as it had been enunciated by the Supreme Court and the appellate courts, and would not give vent to any prejudice or preconceived notion of his own about a situation.

Senator Russell in recounting this to the President said that this

T5

21

assurance satisfied him, Senator Russell, about this man; and that he still wanted to recommend Mr. Alexander. He still wanted to tell the President that was his only recommendation.

The President relayed that to Ramsey. All this started in January and, without saying when the conversation took place, it transpired during the spring of '68. The President relayed that to Ramsey, and Ramsey said, "Well, he would do some more checking." The checking indicated that the opposing organizations, the opposing groups, thought that was not satisfactory for them. They thought that Mr. Alexander would, either directly or indirectly, consciously or subconsciously, apply his own prejudice as indicated in that speech, and that it would be a backward step for the judiciary. They wanted to continue to oppose him.

About this time the President had a meeting in the White House of the ABA Committee that checked on judges. I told you the man's name the other day from Chicago who was the chairman of that committee, and now it has deluded me again. I'll think of it in a minute. The President told me that as soon as he had his little social visit with these representatives of the ABA, that he wanted to meet with the chairman by himself, and asked me to pull the chairman aside and bring him in. So after the meeting, I brought him in, and the President talked to him about all the judge-ships; expressed to him individually, as he had expressed to the committee as a whole, his, the President's, appreciation for all the work they had done and the time and effort they had expended to help him in these selections of judges.

He went into detail to explain his problem to this man with regard to Senator Russell's recommendation, with regard to Mr. Alexander,

COPY LBJ LIBRARY

75

22

and what the Attorney General had turned up. He told him just what he had told the Attorney General, that he the President did not want to undermine or do anything that would cause a problem with the federal judiciary; and that he starting with that premise, he wanted to end with that premise. But in between there, he also wanted to say that if there was any way, in good conscience, that he could name this man--Mr. Alexander--to the federal judgeship, that he wanted to do so. At this point the President told the chairman of the committee that he recognized the ordinary procedure was for the committee to call a lawyer in the area of where the nominee was being considered lived, and to have that lawyer in the area check out the man and report back to the committee and have the committee then make its recommendations or decision.

The President said, "I don't want to do that in this case. This is of such importance that I'd like to ask you to go down to Georgia. I want you personally to conduct this investigation, and find out what the situation is, find out what all the facts are and make a recommendation to me. I'm not trying to get you to prejudge it here. I'm telling you I want to appoint this man, but by telling you that, I'm not trying to make the decision for you. But I want you to be fair, and I want you to be thorough." This man said that he would do that. He did undertake that investigation.

At this point Senator Russell was told that the President had specifically asked for a new thorough complete ABA investigation. I might say at this point I don't really think that there was ever a first report that turned this man down. It was just that the first investigation was still going on, and there was some question in people's minds about it.

F: He hadn't been rejected. He just hadn't been cleared?

T: That's correct. It was at about this time that the President he

COPY LBJ LIBRARY

75

23

Justice Warren wanted to retire, effective at the pleasure of the President--I believe was the term that got a whole lot of controversy and was the source of a whole lot of discussion. I'll come back to what went on into the Fortas-Thornberry nominations in a minute. But to keep this separate, he did decide to nominate Justice Fortas to be Chief Justice and Judge Thornberry to be Associate Justice of the Supreme Court.

The President thought that at the time the two keys in the Senate to the confirmation of those two individuals were Senator Russell and Senator Dirksen, for the fairly obvious reasons that he anticipated some Southern Senator opposition, most of whom were Democrats, to at least Justice Fortas. He thought that if Senator Russell supported Justice Fortas, that if that didn't eliminate Southern opposition, it would at least cut into it to the point that he could still get Justice Fortas confirmed. By the same token he knew that Everett Dirksen was not only the leader of the Republicans in name, he was the leader of the Republicans in fact, and if he supported the nomination, there was a likelihood of its approval.

So the President contacted both Senator Russell and Senator Dirksen and talked to them about the nominations prior to the time that he made them. He obtained from both of them what he took to be a commitment that they would support the nomination of Justice Fortas to be Chief Justice and Judge Thornberry to be Associate Justice of the Supreme Court. When the nomination was made, shortly thereafter, you'll recall that Senator Dirksen made several speeches endorsing the nominations on the floor of the Senate. While no speech was ever made by Senator Russell, as I recall, it was fairly common knowledge that he was supporting the nominations.

T5

24

We started working on the nominations and trying to get confirmation of Fortas-Thornberry during the same time this reinvestigation was going on with regard to Mr. Alexander. I recall that after the nominations of Fortas and Thornberry that the President had another conversation with Ramsey. It related among other things to the Alexander appointment; and he asked Ramsey the status. Ramsey told him they had just not gotten the information. It was still Ramsey's judgment that the nomination should not be made, that there was no way that Alexander should be nominated.

The President said to Ramsey, "I told my friend Dick Russell that if there is a way to appoint that man, I want to do it. Now I know you don't want to appoint him. I know you're opposed to it, and I'm not telling you that I definitely am going to appoint him. I'm just telling you that I want to if there's any way that I can. I don't think you want to appoint him." I think that was true. I think Ramsey would bear that out. "I don't think you want to nominate him, but I do; and if there's a way to posture him where we can nominate him, I want to do that. Now go get after it, and see if there's a way to do that"--with that kind of a mandate and instruction.

F: The President never would have, though, just completely overridden his Attorney General and taken someone who had been turned down by the Attorney General?

T: I don't think so. That was a matter that I think Senator Russell never understood. The President told Senator Russell, on at least one occasion, that one of the problems he had was that Ramsey had told him that he, the Attorney General, would not recommend Alexander. The President said that he had never nominated anyone that had not been recommended by the

T5

25

Attorney General, and didn't think that he could or would. People who don't understand Lyndon Johnson, or Ramsey Clark, or maybe a President and an Attorney General, probably wouldn't understand that. I think people generally think that a President is a President--

F: He's the boss.

T: Yes, he's the boss and if he wants to nominate somebody, he can. If he wants a recommendation, all he has got to say is, "Now, you're my Attorney General. You make that recommendation to me." That may have happened in other Administrations with other Presidents and other Attorneys General, but I can say it didn't happen here. I think maybe Senator Russell didn't understand that.

He sent Ramsey back and told him to hurry up with the processing and get the name back to him. I think it's accurate to say--and this is only my analysis--that Ramsey was intentionally dragging his feet. Ramsey didn't want to nominate Mr. Alexander. He knew that if they had to expedite the processing and expedite a decision, that decision would be in favor of a nomination. I think Ramsey was sort of playing for another day in hope that something would happen that would help him to persuade the President not to nominate this man. He felt very keenly about it.

Ramsey had great admiration and respect for Senator Russell. He understood Senator's Russell position of power, and understood Senator Russell's long great friendship for the President and with the President. But he still did not think the right decision was to nominate this man. So I'm satisfied in my own mind that Ramsey was dragging his feet on the nomination. In any event, it did take some while longer.

During the course of working on the Fortas Thornberry nominations,

the President asked one day that I go up and talk to Senator Russell. He had asked me to talk to several Senators, and really sort of supply them with information from which they could support Justice Fortas and Judge Thornberry. I might say, as an aside here, that very early in the game, so to speak, Homer Thornberry got out of the picture because his nomination obviously was contingent on Fortas. He never really came up to bat. He was in the dugout waiting his turn, and his turn never came. The spotlight that started on Justice Fortas and Judge Thornberry fairly soon shifted over only to Justice Fortas, and Judge Thornberry got out of the picture.

F: If Fortas got a safe hit then Thornberry would get to bat, but not before that.

T: That's right. As a matter of fact as it turned out, I guess you'd say the game was called with Fortas at bat. He never got a chance to hit or miss. But we had compiled some information with regard to Justice Fortas. We did with Judge Thornberry but I'm going to put that aside because we never had to use it very much.

There was a lot of objection to Justice Fortas on the ground that he was too liberal. He was soft on crime. He was a part of that band of people on the Supreme Court who helped render these decisions that had given rise to a great crime rate in the country, and that sort of thing. We had compiled information about his decisions and about his views that indicated that, in truth and in fact, he wasn't soft on crime as Sam Ervin had said he was and as other Senators had said he was. The Department of Justice did a fine job of researching his decisions and put together a little memorandum of his decisions, and how he had voted. Obviously

75

27

that was done from an advocate standpoint. I wouldn't suggest that every decision he ever made was put in there, but Sam Ervin and the other Southern Senators were able to dig up the decisions they thought to be unfavorable. We didn't try to help them by giving them decisions we thought they might not like. But we put together a memorandum of the decisions that showed he'd expressed views, that these positions he had taken with the Supreme Court were not designed to help the criminal, but were in fact designed to protect the freedoms of the innocent and really to help the law enforcement officials.

You'll recall that it was at about that time that Justice Fortas wrote a little book--I call it a pamphlet because I got it in pamphlet form--"Civil Disobedience and Dissent," I believe or, "Dissent and Civil Disobedience"--in which he expressed his views about both of them. I remember when we were working on this, I told the President about eleven o'clock one night that I thought it would be good to go through this little pamphlet and extract those statements that showed him to be maybe hard line on law enforcement, or hard line against criminals, and use that in addition to his decisions. The President said he thought that was an excellent idea and why didn't I do that, and we could use it the following morning when he had a Congressional breakfast.

F: That's a good time to start reading, isn't it?

T: Well, as a matter of fact, that's exactly what I did. I went through and extracted those things that night, and we had an all-night typing pool. I got a secretary over at one o'clock and had her start typing and I left there at two while she was still typing. I didn't know when she finished. But that's the sort of thing we put together in any event.

75

28

That's the sort of thing I took to Senator Russell.

I remember the President said to me, "You go up and see Senator Russell, and take Harry McPherson with you. Harry won't know anything about what you've put together, and I'll look to you to make the pitch so to speak. But Dick Russell is as fond of Harry as a son, and that'll help be your entree up there. You take Harry with you and get Harry to make the appointment for you." I said, "Fine," and we did. I thought at the time it was a sort of interesting sidelight of the way the President knew people and knew how to handle them. He knew that Senator Russell had met me only when he had seen me there in the mornings when he'd come over for the early breakfast, and had no rapport with me, and didn't really know who I was.

F: You were just a face.

T: But he was exceedingly fond of Harry, and when we went up there the early part of our meeting related to a lot of discussion about, "How's your family, Harry? What are your kids doing now?" and a very paternal interest. The President was exactly correct in his analysis of the situation.

The one thing that I remember, that I told the President, is when I saw Senator Russell--I had not known Senator Russell and I had just seen him either at a distance as I did in 1959 when I was in Washington, by pictures on TV, or on the brief occasions I saw him when he came in to see the President for those breakfasts. But this was not a morning time as the times I had seen him were when he I'm sure was relatively fresh. This was late in the afternoon. He had just gotten up from resting on his couch. I remember how shocked I was at how sick this man looked. He even at that time, had emphysema and didn't have a lot of strength. It

was almost as if I was seeing a man who was just right at death's doorstep, as he very clearly to me looked to be. Even Harry, who had known him a long time and had seen him far more frequently than I had, told me afterward that he was shocked. A man that clearly was not well and clearly didn't have much strength. He was carrying on sort of a wheezing conversation.

The significance of this is that after we talked about Fortas, at the conclusion of the meeting he said, "Do you know anything about my federal judgeship,"--which I did, but I recognized immediately that it was not my place to carry on any detailed conversation with him about the merits. I said, "Senator, as a matter of fact, I do know the President has had a conversation with the Attorney General just this week about it," as he had, "and they're still working on it." He said, "Well, you tell the President that I said that I'm still very, very interested. I hope he'll make that nomination, and I sure would like for it to be done pretty soon."

I reported that to the President when we got back to the White House after telling him about the conversations relative to Justice Fortas. He asked that I call Ramsey again and tell Ramsey to get on it, and to work on it, and get that nomination over to him. Ramsey said that he had not yet gotten the ABA final report. This is going to be an unfair statement, but I'll make it--I'll give the characterization of unfairness to it--I've always sort of had the suspicion that in addition to his other foot-dragging activities that Ramsey held up that ABA report; that he knew that that would be the catalyst for doing something, and I think Ramsey was--

F: He just wasn't pushing anything.

T: It took a little longer to carry on that ABA report than usual. By the way, the man's name that was doing the ABA report was Bert Jenner-- Albert Jenner of Chicago, who was a long-time chairman of that committee. So the President told me again to tell Ramsey to get after that.

It was shortly thereafter--I think maybe the following week--just out of the blue, without any prior announcement, without any prior indication, the President received a long letter from Senator Russell. Senator Russell first recounted the long years of their friendship, the great respect that he had for the President, not only in his office as President but for the President personally, and their friendship personally. And he said that he had thought throughout the years they had dealt with each other very honestly, very forthrightly, very openly, and very candidly. Certainly he, Senator Russell, had always tried to deal with Lyndon Johnson in just that way. At least until now he had thought that Lyndon Johnson had dealt with him in just that way.

But he said that he now had come to the conclusion that the President was no longer dealing with him that way. He had come to the conclusion that the President was using the Alexander nomination as sort of a club over Senator Russell's head with regard to Fortas. He said that he had now come to the conclusion that the President was intentionally holding up the nomination of Mr. Alexander, awaiting the action by Senator Russell on the Fortas nomination. He knew if he voted right on Fortas, that immediately following that would be forthcoming the Alexander nomination.

Senator Russell said this was a source of great disappointment to him.

75

31

When he had told the President that he would support Justice Fortas, he meant that he would support Justice Fortas. He had not dealt with the President on a quid pro quo basis of Fortas for Alexander. While the President had not told the Senator that that was the way the President was dealing, the Senator had come to the conclusion that's exactly what was happening. He just wanted the President to know that he had finally realized that that was what was happening.

He resented it, and he wanted the President to know that he, Senator Russell, didn't care if the President made the nomination of Mr. Alexander. While the President had told him earlier that he, the President, wanted to make the nomination and would make the nomination of Mr. Alexander, that the Senator no longer recognized that as being any kind of obligation on the President's part, and if it was an obligation, he, the Senator, was relieving the President of that obligation. He didn't care whether the President made that nomination or not. He was no longer interested in it. First.

And secondly, while he had made a commitment on Justice Fortas and said that he would support Justice Fortas, he no longer felt any obligation to support Justice Fortas because he thought that he had made that commitment really under unfair circumstances, under a false premise-- the false premise being that he thought that the President was dealing with him openly and directly. Now that he had come to the conclusion about what the President was doing, of using one to try to get support on the other, that he didn't think that fairness dictated that he'd have to abide by that commitment. He wanted the President to know that he no longer was going to abide by his commitment to support Justice Fortas.

He just wanted the President to know that he no longer thought he had any commitment to support him under the circumstances.

F: Was the President hurt or enraged or both?

T: I'd say probably a combination of both--probably more hurt because of their friendship than he was angry. But I think probably that hurt turned to anger fairly quickly. Angry because he recognized that, at the very minimum, his friendship with Senator Russell was undermined. At the maximum, I think that the President was quick enough to know that once you undermine that relationship, not only do you impair the likelihood of getting Justice Fortas confirmed but you also have the problem of foreign affairs and the counsel of this man who had been his friend.

F: Let's go back just a moment, and then we'll come back to this. You never had at the outset any doubts of the confirmation of Justice Fortas? You were fairly confident when the name went up.

T: That's right. I was going to come in a minute to the fact of our tally. He had hard and fast commitments of some seventy-three people--

F: And Dirksen and Russell.

T: And Dirksen and Russell. This was a blow, a serious blow to the confirmation. But I think the President's first thought didn't really quite go to the confirmation, although that was sort of paramount on the minds of the rest of us because that was the key thing we were all working on. I don't think the President immediately thought about it. I think he probably thought in broader terms of the relationship with this very key influential important man--and foreign affairs, as well as the domestic situation.

The President called Ramsey, I remember, immediately in my presence;

read the letter to him, and just was outraged. [He] Said, "Ramsey, I'm very unhappy. I think your foot-dragging on this has destroyed one of the great friendships I've had with one of the great men that has ever served this country. I'm unhappy about it." He said it much stronger than that, as a matter of fact.

Then he went on to sort of think out loud with Ramsey about what had happened, what gave rise to this letter. First of all, the President said that the Premise that was contained in the letter--that he was using the Alexander nomination to help get Fortas through was just false. It was just a lie. Let me say as an aside, I'm convinced that Senator Russell was just 'way off base. He was wrong. He was completely wrong.

F: These two things were really independent--

T: They really were very independent.

F: Just coincided in time.

T: There was some suggestion by some of the people--I can't remember who it was--that the President had known of Chief Justice Warren's retirement for some time; that Chief Justice Warren had told him some months back that he was going to retire, and that the President had asked him to hold it up until he could decide who he was going to nominate. Then when he finally, in May or June, decided that he was going to nominate Justice Fortas, then he told Chief Justice Warren to come ahead with the letter of retirement, and proceeded then. But that really just isn't true because I remember when he got Chief Justice Warren's letter how surprised he was to get it. It just wasn't true that he knew in January or February or March that Chief Justice Warren was going to retire. I heard him say later that he had heard rumors that Chief Justice Warren was going to

retire, but he'd been hearing those rumors for a year or two. And he had seen Chief Justice Warren on several occasions with ample opportunity for the Chief Justice to confide in him of impending retirement, but he had never done so. So I think the President was right about this and Senator Russell was just exactly wrong.

The President said out loud that he thought that some of the opposition to Justice Fortas had planted this thought in Senator Russell's mind-- had thought this story up. You know, it's obvious that several people could have known about the delay in the Alexander nomination. That wasn't so secretive that the people might not have known about it.

F: Probably everybody in Georgia who was politically minded.

T: Right. The President just thought that some other Southern Senator or somebody else that was opposed to Fortas had concocted this story and had been able to sell it to Senator Russell. He just said it wasn't true. It was a lie, but there wasn't anything he could do about it.

F: Your interpretation of this though would be that it was Russell's pique over the delay in the Alexander nomination--because this precedes the revelations of the American University and so on--that really finished off Fortas.

T: Right.

F: So it's not anti-Fortas so much as it's just irritation--

T: Well, some of the things started coming out about Fortas, but this was prior to the time--

F: You still had your count?

T: That's right. The President was very unhappy and very irritated. He told Ramsey that one of the things he wanted to do was proceed with the

75

35

nomination of Mr. Alexander. I think it's interesting that he said, "I don't think Dick Russell has any commitment to me on this, and if he really believes what he has put in that letter, and I know he does believe it, then I don't fault him for saying he has got no commitment to me. But I still think I've got a commitment to him because I told him I was going to appoint his man if there was any way I could, and I think there's a way I can. I think there's a way that he can be postured to where he can be appointed, and it won't undermine the judiciary, and it won't tear down everything I've done with the judiciary." And he said, "Ramsey, I want to go ahead and nominate him." And I can't remember what the delay was. It was very shortly thereafter he did go ahead and nominate Alexander.

F: Did Ramsey ever back down on this?

T: No. First of all, Bert Jenner came in with his report for the ABA committee. My recollection is that the ABA committee concluded that that was a statement made by a younger man who had matured, and a man who said he could, and that the committee thought would, abide by the decisions of the higher appellate court, and could be and would be a good judge.

F: So he got his ABA bill of health.

T: He got his ABA bill of health, either "Well-qualified," or "exceptionally well-qualified," as a matter of fact. Ramsey finally did come in with a recommendation, but voiced to the President great doubts about it. The President went ahead and appointed him. But I will say that Ramsey was on record with the recommendation. The President didn't make the nomination without it.

F: The President never took it out of his hands?

T: No, sir! Ramsey, with an instance I'll show you later--if Ramsey

didn't want to be for something, he wasn't for it. The President didn't browbeat him into doing something that he didn't want to do. The thing that a lot of people never realized is that Ramsey was just as tough-minded and as obstinate a guy, in a non-derogatory sense, as the President was or as anybody else. And if he didn't want to do anything, if he didn't want to make a recommendation, the President couldn't force him to do it.

F: There wasn't any of this, "Damn it all, Ramsey, get it in or else!"

T: No. And let me say this, if the President ever said, "Now, Ramsey, you either make a recommendation or I want another Attorney General," and Ramsey didn't want to make a recommendation, he'd have sent his letter of resignation over. So anyway, this was done.

The President started sending emissaries to Senator Russell. I think it's another interesting sidelight--. I think it's really typical of the President that when a circumstance like this would come about, at least at the outset--as I told you about the Wirtz resignation for example--he wouldn't have any direct conversations with the man that he sort of was dealing with. He'd send other people. As he sent Warren Christopher to talk to Wirtz and as he sent other people to talk to Wirtz, he was sending people to talk to Senator Russell or talk to Senator Russell's people.

The first one he sent was Tom Johnson, who now is his executive assistant down here. Tom was Assistant Press Secretary or Deputy Press Secretary, and was from Georgia, and was a man that Senator Russell knew and liked and was extremely fond of, and sort of looked upon as one of his state proteges. So he sent Tom to talk to some of Senator Russell's

staff people, and they did have that conversation. Tom reported back that the staff people told him that Senator Russell very strongly and very firmly believed what he had put in the letter: that the additional source of irritation that Senator Russell had was his belief that he was kind of ignorant not to realize this sooner--that he was kind of late in realizing what was happening, what the big picture was.

F: He'd been gulled.

T: Right. And that he was unhappy about it. The President sort of sent people around to see if there was anything he could do to persuade Senator Russell that this just wasn't true; that Senator Russell just was wrong; that somebody had fed him a story that just was totally incorrect--which the President very strongly believed and as I very strongly believed. He didn't make much headway.

And finally--less than a week, maybe five or six days after he got this letter--he called Senator Russell. I remember that I was there when he called him. He said, "Dick, I have your letter here in my hand. I don't think this letter reflects creditably upon you as a statesman. I don't think it reflects very well upon me as your President. I don't think it reflects very well on our long friendship. I just don't think that it is the kind of letter that I want to have in my file for historians to see. Now, I don't want it in my file. I just want you to know that I don't think that it reflects this kind of credit. I'm going to send it back to you. I'm not going to make a copy of it. I'm not going to keep it in my file. I'm not going to keep a copy in my file. I'm going to send the letter back to you. I hope you'll destroy it. Whatever you do with it is your decision, because it's your letter. It's not mine.

I don't want it, and I don't want to have it in my file.

I'm going to tell you (it must have just been about that time) that I don't look upon you as having any sort of commitment to me with regard to Justice Fortas or Homer Thornberry. I know that you will do as you've done ever since I've known you, and that is make the decision your conscience and judgment dictates at the time that is right for that decision. I'm not going to ask you what that decision is. I'm not going to send anybody to you. I'm not going to have anybody else ask you. I'll know what your decision is when I see the vote tallied. That's as soon as I want to know. You do whatever you think the circumstances are, but do it in light--you say you don't feel like you have a commitment to me. Let me tell you, I don't feel like you've got a commitment to me.

I'm going to nominate your recommendation to be federal judge for the United States District Court in Georgia, but it's not a quid pro quo. It wasn't when I first told you I was going to. It isn't now, and it isn't going to be. I never thought of the two together until you put them together in your letter. So I just want you to know I'm going to nominate your man, and I don't think you've got any commitment to me on Fortas. You do whatever you want to on that, and I know it'll be the right decision"

I might say, as an aside, that when we got to the vote, the vote never was on the merits. It was on the cloture, try to cut off the filibuster. Senator Russell never voted for cloture, I believe, and he didn't vote for it this time. So that was the vote he ultimately made.

But the President said: "I do want to send this letter back, and I'm going to send it back, and you do with it as you want to, but I don't want it in my file."

Apparently Senator Russell said, "Fine, send it to me." I don't know what he said. I know from having been there that it was a--I don't mean this derogatory--it was a typical Lyndon Johnson conversation, which was pretty much one way. There was one talked and one listener. I think I overheard most of the conversation without listening in on the telephone by just being present.

He handed me the letter and asked that it be delivered back up there. I can't remember how it got back up there. Tom Johnson may have--. It was hand-delivered, I do know that. I later thought that I may have made a mistake. I heard the President tell Senator Russell that he wasn't going to make a copy of it, and he never told me not to make a copy. I thought at the time very briefly and momentarily that what I should do was make a xerox copy of that letter, not thinking it was mine and not with any plans of keeping it because I never thought that anything that touched my hands when I was at the White House belonged to me. I must say I think there are those people that thought that if they ever touched anything, they had some proprietary interest in it. But I thought that I might should make a copy of that with the idea of giving it to the President at a later time if he changed his mind about wanting to have a copy of it. But I didn't do that. I didn't make a copy. I'm satisfied that the President never made a copy. I had the letter most of the time. His secretary might have had an opportunity to do it, but she didn't. He did return the original to Senator Russell without maintaining a copy in his files.

I think the significant thing about that whole episode is that I don't believe the relationship between Senator Russell and Lyndon Johnson was

TS

40

ever the same again. I obviously never talked to Senator Russell about it, but I would guess that to this day Senator Russell believes still what he put in that letter. To this day I know almost for a fact in my own mind that he is totally wrong--couldn't have been more wrong. But I think he still believes it and I don't think the relationship was ever the same thereafter. Obviously there weren't more than about six months left in the Presidency and the counsel of Dick Russell was not as needed during the waning days as that counsel was needed earlier. But I think it's a great tragedy that the relationship--a fine relationship--between two great strong leaders seemed to have been undermined because of an illusion in a man's mind that just was wrong. I think that's a shame, but I think that is what happened. What happened with the letter, I don't know. You indicated to me that Senator Russell had not agreed to be interviewed, and I don't know if he kept it--if it will ever come to light. As I indicated to you earlier, I think at least for awhile this story that I've just told may be one I want to restrict.

F: To go back a little ways, let's talk about the summer-early fall of the nomination of Fortas. Let's say one other thing though to wrap up this; to do a little sequel to this story as a postscript. The President did go on and nominate Alexander and there was virtually no flap?

T: Exactly. I'll say on Ramsey's behalf, if that nomination had been premature--premature in the sense of prior to a fairly extensive examination and investigation and all--that there might have been more of a flap. My recollection is there was some little opposition to him; but he was nominated; he was confirmed.

F: This is guesswork, but if the nomination had come out around the first of

May, I think you'd have had a real problem with all that was building up for the summer.

T: I think that's probably right.

F: But ~~that~~ didn't take place. But on the Fortas nomination then--on your headcounts you had originally seventy-three. Did the President express concern over holding his firm count?

T: Yes. What happened, the President sort of looked to the Attorney General and to me to kind of keep the headcount and sort of be responsible for the nomination. There were a lot of people doing work. We had a substantial number of people contacting members of the Senate. For example, even though Marvin Watson was over at the Post Office Department then [as] Postmaster General, he was doing some nose-count, head-count with Senators. Mike Manatos, who was the legislative liaison with the Senate for the White House, was doing head-count. Barefoot Sanders, who did some work with the Senate--primarily responsible for the House as the legislative liaison from the White House--was doing some contacting. Ramsey was; Warren Christopher was; Harry McPherson did some. Jim Jones did some. Joe Califano did some. Paul Porter, who was the senior member of the law firm that Justice Fortas formerly practiced with, sat in on most of our meetings because he was helping to marshal some of the outside organizations. And we did a fairly good, and I think accurate, head-count. Those tallies are over in the President's files. You can take a look at them and see. But the first headcount we had indicated that we had--my recollection is--seventy-three. It might be seventy-two, but my recollection is seventy-three.

F: Which means you've got another dozen or more that--

75

42

T: Right. Those were firm. That didn't mean that we had twenty-seven that were firmly against us. There were some uncommitted ones. We even did some early counting as to cloture. While we needed a two-thirds vote for cloture, we had some sixty-six or sixty-seven--right at two-thirds of the Senate. You never really have a full group there. A fellow who might not want to vote for cloture but might want to help you could conveniently absent himself. So we did keep this count. I think most of us thought we were in fairly good shape, and we were working at it daily. I don't think we were overly optimistic about it, but we felt fairly good about it.

Not the President. From the very outset--maybe his whole mode of operation is one of crisis, but he said, "We're going to be in trouble on this. We're going to be in trouble on this." One of the things I do remember quite vividly is he said, "We've got to get this thing through, and we've got to get it through early, because if it drags out we're going to get beat. Dirksen will leave us."

We fed some information to Senator Dirksen, and he made several speeches. Somebody said, "He's committed on record. He has made a speech on the floor of the Senate several times--stated publicly to the press that He's for the nomination." He [LBJ] said, "Just take my word for it. I know him. I know that Senate. If they get this thing drug out very long, we're going to get beat." He said that from the very outset. And he said, "Ev Dirksen will leave us if we get this thing strung out very long."

I recall that the President would get bery, very irritated, and very, very frustrated at the fact that we couldn't get the hearings set

COPY LBJ LIBRARY

and concluded and the report out of the Senate Judiciary Committee as fast as we wanted to. Senator Eastland was some source of holding it up. Sam Ervin was some source of holding it up. The thing just got bottled up in committee. I recall, as I think I indicated to you the other day, that the President said, 'We're a bunch of dupes down here. They've got all the wisdom. All the sagacity is reposed up there. They're just smarter than we are. We're a bunch of ignorant, immature kids who don't know anything about this. They're up there. They're whipsawing us to death because they're dragging their feet. We've got to do something.' It really was more of a comment than it was a chastisement because he knew that they were the ones that had the ball in their hands. They were the ones that were controlling the ballgame. Since the ball had left our court and was over in theirs. They had it and they were doing with it as they wanted to. If Senator Eastland wanted to delay the hearings, he could delay the hearings. That was his prerogative. If he wanted to call a witness back, he could call a witness back. The President understood that. He knew that, but he was still irritated by the whole thing.

As the nomination proceeded, we did start getting defections. It was a very, very sordid spot of a thing-and I don't mean that relative to the members of the Senate that opposed it. But the American Nazi Party, for example, had just one of the most vituperative inexcusable recordings I ever heard, on sort of like you dial the weather. It was a telephone number in Arlington, Virginia, that you could dial and sort of get the part line from the American Nazi party in it. It generated a lot of not only suggestions of Communism, but the getting into the

T5

44

anti-Semitic thing with Justice Fortas. One of the recordings I know that we got, and had a copy of the recording as well as the transcript, referred to him as a red-leaning Jew. Just atrocious! Some of the things that got started during the nomination. It had nothing to do with the merits. I must say that that was one of the things that probably inured our--

72-23

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

Gift of Personal Statement

By Larry Temple

to the

Lyndon Baines Johnson Library

In accordance with Sec. 507 of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 397) and regulations issued thereunder (41 CFR 101-10), I, _____, hereinafter referred to as the donor, hereby give, donate, and convey to the United States of America for eventual deposit in the proposed Lyndon Baines Johnson Library, and for administration therein by the authorities thereof, a tape and transcript of a personal statement approved by me and prepared for the purpose of deposit in the Lyndon Baines Johnson Library. The gift of this material is made subject to the following terms and conditions:

1. Title to the material transferred hereunder, and all literary property rights, will pass to the United States as of the date of the delivery of this material into the physical custody of the Archivist of the United States.
2. It is the donor's wish to make the material donated to the United States of America by terms of this instrument available for research as soon as it has been deposited in the Lyndon Baines Johnson Library.
3. A revision of this stipulation governing access to the material for research may be entered into between the donor and the Archivist of the United States, or his designee, if it appears desirable.
4. The material donated to the United States pursuant to the foregoing shall be kept intact permanently in the Lyndon Baines Johnson Library.

Signed

Date

Accepted

Archivist of the United States

Date

Larry Temple
January 5, 1971
D. Harry S. Middleton for
DEC 9, 1971