

Dean Rusk Oral History Collection
Rusk QQQQ: Part 2 of 2
Dean Rusk interviewed by Richard Rusk and Thomas J. Schoenbaum
circa 1985

The complete interview also includes Rusk PPPP: Part 1.

DEAN RUSK: --to require a balanced federal budget. We were treated to a curious irony a few months ago that very few people noticed. On a Monday of a certain week, President Reagan called for a constitutional amendment to require a balanced federal budget. On the Wednesday of that same week he sent a budget to the Congress with a two hundred billion dollar deficit in it. Now; what would he have done on the Wednesday if his proposal of Monday had been in effect? Now this whole thing is a phony. The Congress and the President now have the constitutional power to balance the budget if they wish to do it. They would not dare put a constitutional amendment in on that point without having in it an emergency clause. And then if the Congress and the President are not willing to balance the budget, they would simply invoke the emergency clause and we would live under the emergency clause for a time without end. So it's really a phony issue. I don't like to see that. Some people have found very attractive the idea of a single six-year term for a President. Well, President Johnson seemed to think well of that after he left office, and one or two others. But I agree with former President Gerald [Rudolph] Ford [Jr.] in opposing such an amendment. To me, I think it is too dangerous for a President, and particularly people around him, to think that he can be there for six years without having to worry too much about what the American people are thinking about the issue. I think a President must always have in his mind, "What would the American people think of this if they knew about it tomorrow morning at nine o'clock?" And so I don't like to see a man in that office for six years without any further reference to the people. I think I would be willing to see terms of the members of the House of Representatives extended to four years rather than two years because that two-year cycle of election is a very difficult thing for these fellows to live through.

RICHARD RUSK: And you initially supported the ERA [Equal Rights Amendment] but later changed your mind to some degree in response to some of the tactics that they developed?

DEAN RUSK: Well, I supported the ERA Amendment because of my general attitude toward civil rights, and I even talked to some of the members of the State Legislature here in Georgia about it when I first came down here.

RICHARD RUSK: What did Georgia do with the ERA?

DEAN RUSK: They did not adopt it. But then I dropped away from that kind of support when many of the supporters of the ERA started organizing boycotts against states which had not approved ERA, because I was opposed as a constitutional matter to that kind of pressure on state legislatures. I think we have to be very careful about reserving or preserving the right of state legislatures to vote constitutional amendments up or down without that kind of pressure. Now, another reason that I lost some enthusiasm for the amendment itself is that the objectives of the

ERA can easily be achieved by legislation. All the Congress has to do is to enact a very brief law stating that the equal protection of the Fourteenth Amendment applies to all citizens regardless of nationality, race, sex, whatever else they want to put in there. And it's clear that the Congress has that power. But the ERA Amendment has gotten to be a kind of symbol and we're spilling a lot of blood over something that could be achieved in another way, at least on an interim basis until such time as the ERA might be adopted as an amendment. But even if the ERA is adopted as an amendment, it would then be up to the courts and perhaps to legislatures to deal with the difficult problem of reasonable classifications, which you find in regard to any of these constitutional rights. And if it were decided that women, even with an ERA Amendment, should not be members of combat forces, the courts would hold, I think, that that would be a reasonable classification under the circumstances.

RICHARD RUSK: There's been some talk about convening a constitutional convention to consider possible amendments to the Constitution.

DEAN RUSK: There is a possibility that sufficient action by state conventions will require the calling of a general convention on the balanced budget issue. And the interesting question is whether there is any way that the Congress, in calling for such a national convention, could limit its agenda. You see, when our founding fathers met in 1787, they were there to make some changes in the Articles of Confederation. But before they got through they swept the whole thing aside and built an entirely new system of government. So I think--

RICHARD RUSK: So in that sense that constitutional convention could be sort of a scary thing?

DEAN RUSK: It could become a runaway convention if it were held that there was no way to impose any limits upon its agenda.

RICHARD RUSK: And that idea sort of alarms you?

DEAN RUSK: It does to a degree because all sorts of bits and pieces would be thrown into the Constitution.

RICHARD RUSK: You think so?

DEAN RUSK: Yeah: Abortion, prayer in the schools, and all sorts of things might find their way there.

RICHARD RUSK: So you make the point that the Constitution has only been amended about--

DEAN RUSK: Fourteen times.

RICHARD RUSK: Fourteen times, excluding the prohibition and it's repeal, and yet that's been two-hundred years and the world has changed a great deal.

DEAN RUSK: Yeah.

RICHARD RUSK: And if that's true, either the founding fathers are incredibly wise or, as critics of the Constitution say, we need another look. The problems of the world have changed to the point where we have structural problems as well as problems of leadership--

DEAN RUSK: Well, the Constitution is a flexible instrument. It's capable of growth. The courts have pointed that out over and over again. And when the Constitution was written nobody even dreamed of the possibility that man would enter outer space. That hasn't caused any problems from a constitutional point of view.

RICHARD RUSK: Do we need any constitutional amendment at this point? Is there anything at all that would be helpful?

DEAN RUSK: I mentioned extending the congressional term from two years to four years. I think that might be a very good idea. Perhaps have that congressional election coincide with Presidential election years. But I'm very wary of amendments to the Constitution which are not basically, in effect, procedural in character. I wouldn't like to see a lot of things dumped into the Constitution which can be done by legislation.

RICHARD RUSK: Tom, do you have any questions regarding the Supreme Court?

[break in recording]

DEAN RUSK: Some people think, particularly law students and some law faculty that the Constitution is what the Supreme Court says it is. Well that overlooks the fact that there are a great many constitutional questions which do not reach the Supreme Court and which the Supreme Court cannot deal with. The Supreme Court itself has worked out certain doctrines such as political questions and the doctrine of standing to limit its own role in many questions. But day by day constitutional questions arise which simply don't go to the Court. If the Congress doesn't give the President the full appropriation he's asking for for a particular purpose, there's no way the President can go to the Supreme Court and get an order from the Supreme Court to the Congress to appropriate the full amount. No way. So that every day they have constitutional issues arise which simply are not reachable by the Supreme Court.

RICHARD RUSK: Yeah. Do you think the Court has struck the proper balance between those issues it chooses to involve itself with and those that it ducks?

DEAN RUSK: In general I haven't too many complaints with it. Although it was rather curious when the Warren Court forced the states and the local governments to adopt the one man-one vote rule, that the Supreme Court didn't seem to be impressed with the fact that we do not have that rule in the federal government. The Court couldn't touch the federal government because that arrangement was written into the Constitution itself. But we don't have one man-one vote rule in the federal government. A citizen of New Mexico has a much heavier weight in choosing a senator than does a citizen of California and New York. So I was a little surprised that the Supreme Court told the states that they could not have arrangements that are comparable to the arrangements of the federal government.

RICHARD RUSK: What would be the other instances of cases where the Court has overstepped its authority or did not step in where it properly should have?

DEAN RUSK: Well, I'd have to think about that for a while.

SCHOENBAUM: I was going to ask a question related to the Court. In the Phinzy Lectures you had a number of comments, I think well taken, about the Court and foreign affairs and the relatively small role, if any, of the Court in foreign affairs. Now I'd like to reverse the question. I think that during the sixties and even as far back as [Franklin Delano] Roosevelt's time--I'm thinking of Felix Frankfurter--there are many instances of the individual members of the Court participating in the executive branch in an advisory capacity. What does that do?

DEAN RUSK: I think we ought to be rather careful about that. Actually, Dean [Gooderham] Acheson, when he was Secretary of State, and Felix Frankfurter walked to work together every morning. And clearly they talked about foreign policy matters, at least part of the time. Lyndon Johnson would call in Abe Fortas, when he was a Justice of the Court, to sit in on policy discussions. I had some misgivings about that. Now, I will tell a little story that--

RICHARD RUSK: That we can use!

DEAN RUSK: Justice [William Orville] Douglas, during my period as Secretary of State, would occasionally leave the bench and go off somewhere to make a speech about foreign policy. Indeed, in one occasion in talking to reporters I said that I would try not to decide Supreme Court cases if he would leave foreign policy alone. But that didn't make any difference to him. Well I was at a White House party one evening and Chief Justice Earl Warren came up alongside of me and he referred to Justice Douglas. And he said, "I just want you to know, Dean, that if you decided that you wanted to respond to my brother we would not consider that an offense at the Supreme Court." (laughter)

SCHOENBAUM: Did you ever meet Justice Douglas?

DEAN RUSK: Oh, I've met him on two or three occasions. But I think it was a little naughty of him to go off and make speeches on foreign policy that were not in line with the administration's policy.

RICHARD RUSK: Any other dealings between you and members of the Court in the sixties?

DEAN RUSK: Not really. I was impressed with the fact that the Justices of the Supreme Court live a very antiseptic life around Washington. On the whole, they are very careful not to let themselves become involved in the discussion of matters which might later come before the Court. Now a man like Justice [Hugo Lafayette] Black or some of those Justices simply did not engage in the social life of Washington. When Chief Justice Warren was invited to an embassy dinner, he would occasionally go. And that made him the senior American present because the Chief Justice is senior to the Secretary of State. Well, at the end of the dinner, when the post ambassador made his toast to the President of the United States and then the senior American toasted the chief of state of the embassy, Chief Justice Warren would simply rise and propose the

toast and then he would say, "I will ask my friend, the Secretary of State, to make some comments." He wouldn't make any comments under those circumstances; he would leave that to me. But Earl Warren was very good in dealing with foreigners. He did go on some foreign trips while he was Chief Justice, and those were very good goodwill missions. But on the whole, my experience with the Court has been that these Justices are very careful about their personal life in Washington and don't let themselves be dragged in.

SCHOENBAUM: Did any of them ever informally try to give you some advice the way Frankfurter maybe talked to Acheson?

DEAN RUSK: No. Earl Warren was very resistant to Lyndon Johnson's insistence that he head up the Warren Commission in investigating the assassination of John F. Kennedy. He was very resistant, but LBJ gave him the old LBJ treatment and he finally succumbed.

RICHARD RUSK: And it helped that commission, I'm sure, to have him.

DEAN RUSK: I am sure it did.

RICHARD RUSK: The Court was under some pressure to review the constitutionality of the Vietnam War.

DEAN RUSK: Well, they had it before them on a number of occasions and simply rejected challenges to its constitutionality on the grounds that both the President and the Congress had operated their will. Now an interesting case came up when Jimmy Carter terminated the security treaty with the Republic of China on Taiwan.

RICHARD RUSK: Let me go back just for a minute on this Vietnam thing. Was LBJ or you, either of you, worried about the constitutionality of the Vietnam War being in fact reviewed by the Supreme Court? Was it a close thing?

DEAN RUSK: No. We didn't think it was a close thing because the scale of the forces that were used before 1964 were so small that there seemed to be no doubt that the President had the constitutional authority to deploy that number of servicemen as Commander-in-Chief. It had been done on hundreds of occasions before then. But then after the so-called Tonkin Gulf Resolution, the Congress had declared the policy of the Congress with respect to Vietnam and we took the view that this was not an avoidance of the war power, but an exercise of the war powers of Congress. And the Congress said that the United States is prepared to use armed forces as the President shall determine to oppose those committing aggression against those protected by the Southeast Asia Treaty.

RICHARD RUSK: On legal grounds you were confident then and you remain convinced today?

DEAN RUSK: No question now about the constitutionality of it. Now the policy is open for debate, but I have no doubt about the constitutional issues.

SCHOENBAUM: What about the experience as head of the State Department or head of any government agency during, I think--really, beginning in the sixties and continuing today, the head of any government agency is subject to being sued in his or her personal name even though the suit is really not directed personally at them.

DEAN RUSK: Yes, well, if you're Secretary of State you're named in suits of that sort and when you leave office your successor is substituted by name. But there were a number of such suits before the Supreme Court during my day and I lost a number of them. Let's take the case of [Beys] Afroyim against Rusk. Here was a Jew who was a naturalized citizen of this country for thirty-five or forty years. He paid a visit to Israel and in the enthusiasm of the time over there he voted in an Israeli election. Well under our immigration law, anyone who votes in a foreign election loses his citizenship. And so the State Department, in effect, took his passport away and he brought suit. Well now, here was a case where--

RICHARD RUSK: Did they take his citizenship away too?

DEAN RUSK: Well, the State Department did. Well here's a case where I had a constitutional duty to try to enforce the law. After all, the law had been passed by the Congress and signed by our President. It was a part of the law of the land. I had a duty to try to enforce the law. So we joined with the solicitor general to try to oppose Afroyim in that case. Now personally, I hoped to lose that case because I thought the law itself was ridiculous on that point.

RICHARD RUSK: Why didn't you consider mounting a challenge to that?

DEAN RUSK: In fact we did lose it. Because my duty was to support the law. Now after the Supreme Court decided that that part of the immigration law was unconstitutional, some senators and congressmen insisted that I keep the law as it was on the books and not revise regulations so that the next poor devil who found himself in that position would have to bring his own suit. Well, I felt that was a bad constitutional process and harassment, and I went ahead and changed the regulations on that point to conform to the Supreme Court decision. And I got criticized by some senators and congressmen for doing so. So you get into that kind of thing. Now there's one important case that we ought to mention here on this subject. When Jimmy Carter terminated the security treaty with the Republic of China on Taiwan, Senator [Barry Morris] Goldwater and some colleagues and congressmen brought suit challenging his constitutional power to terminate that treaty. Well, that is the kind of question which I think the Supreme Court simply cannot handle. In other words, we can't have the Supreme Court deciding whether or not a security treaty, of all things, is in effect. It's not for the Supreme Court to decide who are our military allies. They can't order the President to send troops in case that particular country is attacked. This is one of those political questions which simply is beyond the competence of the court. And we don't want nine men who haven't been elected by anybody to make such decisions over against the so-called political branches of the government. So there are a good many constitutional questions which cannot be reached by the Court. The U.S. Fifth District Court of Appeals in the U.S. Court system invited me to come down to Texas to a judicial conference they had to speak to them and a lot of lawyers down there. And in those remarks--Ann [S. Dunn] might be able to find them--I urged the courts to be a little careful about their rhetoric; in effect, to confine their language to the issues that are necessary to make the decision and not confuse

things by becoming too far-ranging and flowery. And I used the case of the U.S. against Curtiss-Wright Export Corporation. In that case, Justice [George] Sutherland, one of the very conservative nine old men that FDR--

RICHARD RUSK: Sutherland?

DEAN RUSK: Sutherland. Justice Sutherland, very conservative member of the Court that FDR used to quarrel with, came up with the doctrine that the powers of the federal government in foreign affairs do not come from the Constitution at all, but they came by direct succession from the British government when we became an independent nation. And that to me is utter nonsense, completely revolutionary in notion, and is a kind of unhelpful language that the Court shouldn't use. Now I must confess that in my eight years as Secretary of State I never heard anyone, in dealing with a constitutional issue, refer to this U.S. against Curtiss-Wright Export Corporation. But then if later we had to write a legal brief, our lawyers in arguendo would cite the U.S.-Curtiss-Wright case, you see? So we need to be a little abstemious about language that is excess to the purpose at hand.

RICHARD RUSK: Pop, just how involved did you get in these constitutional cases? There must have been hundreds naming the Department, perhaps you. In your Phinizy lecture you made reference to a Colorado River water business involving Mexico. Just in thinking back do you recall other constitutional cases that you did become involved in?

DEAN RUSK: Well there are constitutional problems involved in some of these matters that don't go to the Court. For example, we had a long-standing controversy with Mexico about the quantity and the quality of the Colorado River waters that we send downstream to Mexico before it enters the Gulf of Lower California. And it seemed to me clearly that we were in the wrong on both points. So we began to move to find some--among other things, for example, irrigation districts in Arizona that were outside the natural watershed of the Colorado River were pumping their polluted water, their tainted water, over into the Colorado River to add to the deterioration of the quality of the water going to Mexico. Well, we started moving in to get ourselves right on this agreement with Mexico, whereupon Senator Carl [Trumbull] Hayden of Arizona, who came to the Congress when Arizona became a state and who was almost senile at this time, simply passed word to us, "Leave my irrigation districts alone." Now it just happened that Senator Carl Hayden not only was President pro tem of the Senate, but he was Chairman of the Senate Appropriations Committee. Now there's a constitutional question. Because if you didn't listen to him you knew you were in trouble across board on your appropriations. Well, you can't go to the Supreme Court and say, "Gentlemen judges, figure this one out," because it's just not workable that way. So we fooled around and finally worked out an arrangement whereby we put a desalinization plant down in the lower Colorado River and--

RICHARD RUSK: At federal expense, I'm sure.

DEAN RUSK: Yeah. Sure. But--(laughs)

RICHARD RUSK: While we're on the topic of outrageous remarks from senators to you, or congressmen to you, any others leap to mind?

DEAN RUSK: I'm convinced that the overwhelming majority of senators and congressmen are honest, decent people trying to do a good job. But there are always a few who step over the bounds. I went to see one senator once about getting his vote on foreign aid. And he heard me out and then he leaned back in his chair and he said, "Well Mr. Secretary, I'm interested in the price of cattle and in the price of oil. If you can do something for me on the price of cattle and the price of oil I'll try to do something for you on foreign aid." Now this was not just the interest of people in his state. He personally was heavily interested in both cattle and oil, you see.

SCHOENBAUM: It must have been Senator [Robert Samuel] Kerr (laughter)

RICHARD RUSK: Can we identify that one for the record?

SCHOENBAUM: Was it Senator Kerr?

DEAN RUSK: You named him, I didn't. But you run into that kind of thing from time to time and you just have to learn to live with it and work your way around it.

RICHARD RUSK: Did you get involved at all in preparing the defenses or advising your legal counsel on how to handle these constitutional cases?

DEAN RUSK: Oh, to some extent, but not really in detail. And I delegated that kind of thing to our legal adviser's office and to, of course, the solicitor general handled that kind of litigation for the State Department.

[break in recording]

RICHARD RUSK: What was your involvement with constitutional cases?

DEAN RUSK: When these cases would come up I would be involved in the discussion of the general policy, but I would leave the legal work to the legal adviser's office and to the solicitor general. Now there was one famous case in which I--an extradition case--which I was unwilling to take the advice of the legal adviser's office. Many years ago the Canadians asked an American labor leader to come to Canada to help root the communists out of their maritime unions. So he went up there and spent a good many years, but in the process they used some pretty heavy-handed tactics and he found himself accused in Canada of conspiracy to commit assault, whatever that is supposed to mean. Well, conspiracy to commit assault was not an extraditable offense under the extradition treaty. While he was out on appeal he jumped bail and came back to the United States. Jumping bail is not an offense subject to an extradition treaty, but the Canadians asked that he be extradited. In order to do it, they went back to an administrative hearing some years earlier and found that in some administrative hearing this man had denied the facts on which he was later convicted in Canada. So they brought perjury. They asked that he be extradited on the grounds of perjury. Well, here was a case where the Canadians were using perjury to convert non-extraditable offenses into extraditable offenses. And in that perjury situation he did not have the benefit of Fifth Amendment rights in Canada. And so I just decided, dammit, that this was an American citizen located in the United States and that I was not going

to have the Canadians jiggle this thing around and extradite him on the basis of perjury in a situation where he had a right to deny; he had a right to assert his innocence. Now behind the scenes I might confess finally here on tape that a member of the Canadian Cabinet told a Cabinet colleague of mine that they didn't really want him back, that there was just so much of a fuss in the Canadian Parliament they had to ask for him. Well, the legal adviser's office recommended that he be extradited. And I called then and said, "Now I'm not going to extradite this man. So you do the best you can with the law of the matter." The extradition law states that the final step in extradition is a personal decision by the Secretary of State. It's a ministerial decision, as it is with the Home Secretary in Great Britain. And the statute says that the Secretary of State may issue a warrant of extradition. It doesn't say he shall. He may issue. Well that means he may not. So that final decision of the Secretary of State is a plenary decision. So I just refused to extradite this fellow.

SCHOENBAUM: Overruled the legal (unintelligible).

DEAN RUSK: And that created quite a flap in Canada, and they negotiated a new extradition treaty.

RICHARD RUSK: Oh, they did?

DEAN RUSK: Yeah. In which conspiracy to commit assault, or something like that, was included among the crimes that could be extradited.

RICHARD RUSK: When the government would serve process against you or rather, these various attorneys would serve process on you, what would they do? Bring the papers into your office?

DEAN RUSK: No. I don't know on whom they served those. Maybe the legal adviser.

RICHARD RUSK: When you were named?

DEAN RUSK: Yeah, when I was named. Yeah. No I don't recall ever having personally received a subpoena.

RICHARD RUSK: Pop, in your Phinizy Lecture you talked about your experience at the Law of the Sea Conference in Venezuela at the time that Richard Nixon resigned and the reactions of delegates there.

DEAN RUSK: Oh, yes.

RICHARD RUSK: Care to flesh that out? That's an interesting story.

DEAN RUSK: I was in Caracas, Venezuela at a session of the Law of the Sea Conference as a member of the U.S. delegation. And one evening I sat with about fifteen representatives of other countries listening by shortwave radio to President Nixon's resignation speech. It was a very dramatic evening. Well afterwards almost all of these fifteen representatives found a way to

come up to me and say, "This is very impressive. You must have a very strong Constitution. This could not have happened in our country."

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BEGINNING OF SIDE 2

DEAN RUSK: --raised some very serious constitutional issues for us. But there's such strength and resilience in our constitutional system that we came through even that in order. I must confess, President Gerald Ford brought us out of the trauma of Watergate pretty decently and pretty cleanly. By the way, I might.

RICHARD RUSK: You did not foresee that Nixon resignation or his eventual impeachment. I remember after the Saturday Massacre I called from Nome, Alaska and said that Nixon was a dead duck.

DEAN RUSK: No. I wasn't sure what would happen because I wasn't sure that even if the House had brought a bill of impeachment against Nixon in the Senate that the Senate would have provided the necessary two-thirds vote to impeach him. But I might add a comment here that might surprise some people. I approved the step taken by Gerald Ford to pardon Richard Nixon promptly for a reason that I haven't heard people talk about. I thought that as soon as President Ford knew that he was going to pardon Richard Nixon, he should have gone ahead and done it and not put prosecutors, defending attorneys, judges, juries, through a great charade. Because had the trial proceeded with Ford knowing he was going to pardon Richard Nixon, this would all have been a playacting. And I thought Ford took the right step.

RICHARD RUSK: A very courageous step.

DEAN RUSK: Yeah.

RICHARD RUSK: Anything further about that incident?

DEAN RUSK: No. I became somewhat concerned in that summer of--what was it--'74.

SCHOENBAUM: '74.

DEAN RUSK: About--

RICHARD RUSK: That whole experience definitely confirmed--

DEAN RUSK: --what this whole experience would do to the personality of a President. Here he was, beleaguered on all sides. It must have been hell for him. I even wondered whether at the end of the day he might commit suicide sometime. And I was a little concerned about the powers of

the President being in the hands of a person who was so distraught and I was glad to hear later that the Secretary of State and the Secretary of Defense had, in effect, interposed themselves between the White House and the national military command structure so they would be sure to know of any command that President Nixon might have given during that summer to our military to take action here or there or the other place.

SCHOENBAUM: I wonder, though, if they can actually constitutionally do that? I mean, if the President gives an order and--maybe as a practical matter they can do that. But if the President gives an order, it would seem--

DEAN RUSK: Well, I regret that I am not able to be specific about this, but one order was given, not a nuclear order. One order was given which simply was not carried out.

RICHARD RUSK: This was during this time, Pop? During the Watergate Crisis?

DEAN RUSK: Yeah.

SCHOENBAUM: Can you elaborate?

DEAN RUSK: I can't specify.

RICHARD RUSK: Now didn't you call [Henry Alfred] Kissinger and bring this concern of yours up?

DEAN RUSK: Well, I mentioned it to Kissinger, yes.

SCHOENBAUM: Do you know they interposed themselves?

DEAN RUSK: Well, you just ensure that you know which messages flow between the White House and the national military command center. That's not hard.

RICHARD RUSK: Did you propose to them specifically how they could--

DEAN RUSK: No. No. No.

RICHARD RUSK: He assured you that it had already been done?

DEAN RUSK: You see, we have talked at times about the psychotic pilot, and a lot of safeguards have been set up to take care of that problem. But if we find a President who is in an unstable situation, then there are ways by which that will be guarded against.

RICHARD RUSK: You're convinced of that?

DEAN RUSK: Oh, yeah.

RICHARD RUSK: Do you know what they are?

DEAN RUSK: Yes, but I'm not going to put them on this tape.

RICHARD RUSK: Is it security classified? Those procedures?

DEAN RUSK: Well, it's super security classified.

SCHOENBAUM: Did Kissinger tell you that there was an order?

DEAN RUSK: I'm not going to get into any of this stuff.

SCHOENBAUM: (laughs) Nice try Tom!

[break in recording]

RICHARD RUSK: Watergate tended to confirm everything you had always felt about the American constitutional system.

DEAN RUSK: Oh, I think it demonstrated that there's enormous strength in our constitutional system. To go through that episode and really almost come out at the other end without missing a step. It was really a very impressive experience. Oddly enough, the international reaction to the whole Nixon experience and Watergate was largely, "What's all the shooting about?" because that kind of thing is more or less taken for granted in so many other political systems--(laughs)

RICHARD RUSK: The Soviets were flabbergasted that Richard Nixon was thrown out of office.

DEAN RUSK: I have speculated a little bit about how other Presidents would have handled this Watergate thing. For example, I think President Kennedy would have--Well President [Harry S.] Truman would have fired somebody on the White House staff and told the Congress to go to hell and that would have been the end of it. President Kennedy would have gotten on television and told what happened and told people that this would never happen again and give them his smile and that would be the end of it. President Johnson was much too astute a politician to have let himself get into that position to begin with. But Nixon got trapped by some of his own qualities.

RICHARD RUSK: Was that the most serious constitutional crisis of your lifetime in our society?

DEAN RUSK: Oh, I think so. Yeah. Yeah.

RICHARD RUSK: At Runnymede you showed up in England representing Lyndon Johnson at the ceremony for John Kennedy. You refer to this a great deal and you give out copies of your Runnymede speech as having particular meaning.

DEAN RUSK: Yes. One of the really highlights of my life was a privilege I had in 1965 to go to Runnymede, the field of Magna Carta, and there receive from Her Majesty the Queen [Elizabeth

II Alexandra Mary] an acre of land at Runnymede as a gift from the British people to the American people in memory of John F. Kennedy. It was just right. Kennedy would have deeply appreciated that because that would be the kind of thing that would greatly appeal to him. And I made a little speech there and I have copies of that. And I have sent them round to a good many people including people who hold celebrity auctions. Instead of a necktie, I send them an autographed copy of those remarks. But that was one of the events of my life that I have always greatly cherished.

SCHOENBAUM: Did you spend any time directly with the Queen? Did she make any remarks?

DEAN RUSK: Well, she made a little speech. She made a little speech and the Prime Minister made a speech and [James] Harold Wilson, the former Prime Minister; Harold Macmillan made a little speech. But it was just a perfect occasion.

RICHARD RUSK: Pop, you do a better job than certainly most private citizens and probably most officials in relating our American experience to that British experience and articulating the debts that we owe to their traditions and everything they were able to achieve. Did that win you any particular dividends as far as the British were concerned?

DEAN RUSK: No. I commented on that. You see, we and Britain, from a constitutional point of view, have a common heritage which began to take separate ways in 1776. But before that their history and our history was the same. So their Magna Carta, their Petition of Rights, the Habeas Corpus Act, their Bill of Rights are part of our own Constitutional history. And, as a matter of fact, as everybody who studies it know, up until very late in the process our founding fathers were trying to establish the rights of Englishmen on these shores. And it was not until very late in the game that they decided they had to go for independence. I'm rather moved by noting that if you look at the one hundred fifty-nine members of the United Nations today sitting there in that General Assembly, about eighty of those independent nations emerged out of some relationship to the British political system. It's a great moving experience.

RICHARD RUSK: You studied [William] Holdsworth's History of the Common Law? Was that when you worked for Augustus [M.] Roan?

DEAN RUSK: No. No. I did that one summer when I was at Oxford. It's about a twelve-volume history, and I must say I was a bit bored by some of those old common law forms of action. But--

RICHARD RUSK: You read through the whole works?

DEAN RUSK: Yeah. Great events back there. Some of these old common law judges, at the risk of their own lives over against the King or even the Parliament, would put their arms around a prisoner at the bar and say, "You can't do this to this man." That's where some of our great ideas of liberty came from.

RICHARD RUSK: Was that a course requirement for you or something you did?

DEAN RUSK: No. I just did it. This is metaphorical but what we have done, beginning in Britain, we have transformed the old common law notion that the King can do no wrong into the notion that if it is wrong, the King must not be permitted to do it. And that's a great thing.

RICHARD RUSK: Hey, that's good, Pop. Thank you.

SCHOENBAUM: By the way, Holdsworth was the--

[break in recording]

DEAN RUSK: --my politics tutor at Oxford, W.C. Costin, made some slighting reference to the charge that the Justices of our Supreme Court are political in origin. And so I went off and did a quick thumbnail biography of over a period of about two hundred years of the Law Lords of Great Britain who make up their Supreme Court.

RICHARD RUSK: How quick a study was that?

DEAN RUSK: It didn't take all that long if you look at things like Who's Who and things like that. And I found that ninety percent of their Law Lords came up through political experience. They had been members of the cabinet; they had been law officers of the government of the day and things like that. And I took this back to W.C. Costin and he was flabbergasted because by the time I was there, they had prided themselves on the professional character of their judges. It wasn't true of the Law Lords. Well, I'll see you fellows.

[break in recording]

DEAN RUSK: --1968 President Lyndon Johnson called me in and said that he was going to nominate me to the Supreme Court. Well I must say I was flabbergasted by that because I had not completed my law degree; I had never practiced law or sat on a bench. I pointed that out to him. He said, "The Constitution does not require that you be a lawyer." Which is correct. And I said, "But I couldn't get confirmed by the Senate." He said, "Oh yes, you could. I talked to Dick [Richard Brevard] Russell [Jr.] the other day and he said you'd be confirmed very quickly." So I finally said to him, "Mr. President, I very much appreciate the generosity of spirit which caused you to make this suggestion, but as your adviser I would have to advise you strongly against it and as the prospective nominee I would have to tell you I could not possibly accept it."

RICHARD RUSK: Why did you turn that down?

DEAN RUSK: Well I didn't want to--A lot of reasons. But I didn't want to be the first non-lawyer nominee to the Supreme Court. The ABA [American Bar Association] undoubtedly would have opposed it. There'd have been all sorts of hullabaloo in the Senate even if the votes might have been there. I don't know whether they would have been or not.

RICHARD RUSK: That's funny. You could have slipped out for a year and a half and picked up your law degree.

DEAN RUSK: But had that gone forward it would have failed anyhow because my name would have gone along with Abe Fortas' nomination to be Chief Justice. As you know, that failed, and the Senate simply held those nominations over until Nixon became President. So that would have failed. But that was just a little illustration of the generosity of Lyndon Johnson. But it was a very bad idea.

RICHARD RUSK: Would you have enjoyed a role on the Supreme Court?

DEAN RUSK: No.

RICHARD RUSK: You don't think so?

DEAN RUSK: No.

RICHARD RUSK: Why?

DEAN RUSK: Oh, it's just not my cup of tea.

RICHARD RUSK: Well, okay.

END OF SIDE 2

