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# NOMINATIONS OF COOK AND POTTER

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## HEARING

BEFORE THE

### COMMITTEE ON ARMED SERVICES

### UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

NOMINATIONS OF

WILLIAM H. COOK, OF ILLINOIS, TO BE A JUDGE OF  
THE U.S. COURT OF MILITARY APPEALS,  
VICE WILLIAM H. DARDEN

DAVID SAMUEL POTTER, OF VIRGINIA, TO BE UNDER  
SECRETARY OF THE NAVY, VICE  
J. WILLIAM MIDDENDORF, II

AUGUST 15, 1974

Printed for the use of the Committee on Armed Services

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## NOMINATIONS OF COOK AND POTTER

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THURSDAY, AUGUST 15, 1974

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:05 a.m. in room 212, Richard B. Russell Senate Office Building, Hon. John C. Stennis (chairman).

Present: Senator Stennis (presiding), Symington, Jackson, McIntyre, Hughes, Nunn, Thurmond, and Taft.

Also present: T. Edward Braswell, Jr., chief counsel and staff director; W. Clark McFadden II, counsel; Phyllis A. Bacon, assistant chief clerk, Charles J. Conneely, Hyman Fine, John A. Goldsmith, Edward B. Kennedy, Gordon A. Nease, Robert Q. Old, and Francis J. Sullivan, professional staff members; Roberta Ujakovich, research assistant, Joyce T. Campbell, Doris E. Connor, Mary Ketner, clerical assistants; Kathie Smith, assistant to Senator Symington; and Charlie Stevenson, assistant to Senator Hughes.

The CHAIRMAN. This is an open session. We will close the door, but it will be open to anyone who wants to come in.

Members of the committee, we have several items on our agenda for our regular meeting today, including some nominations that perhaps we can hear and act on today.

We have ready for the full committee our Military Construction bill, authorization, fiscal year 1975 bill.

And, we have a small item of committee business to attend to today.

We have an amendment to the physicians pay bill, H.R. 15936, which passed last December, I believe. This amendment was attached to our military procurement authorization bill, but was not germane, and was deleted. I don't think it is controversial.

I want to extend a special welcome here to two Members of the House of Representatives who are here with reference to the nomination of Mr. William Cook to be a judge of the U.S. Court of Military Appeals who has rendered very fine service in the House of Representatives as staff member to our counterpart there, the Committee on Armed Services. Congressman Bray and Congressman Fisher are here with Mr. Cook and we are very pleased to have them here on Mr. Cook's behalf.

Come forward, Mr. Cook, if you will, please.

Congressman Bray and Congressman Fisher will you come forward too.

We are delighted to have you gentlemen here, Congressman Bray and Congressman Fisher. We have worked together and across the table from each other many times. We have also learned a lot from



you. Sometimes we get pushed around, but in the right kind of way. Those conferences we have on the military procurement authorization bill are classic in a way. I appreciate very much the services of each of you in the Congress.

Mr. Cook, you are a member of the professional staff of the House Armed Services Committee. And you have been nominated here for the membership in the Court of Military Appeals.

[Nomination reference and report and biographical sketch follows:]

#### 427] NOMINATION REFERENCE AND REPORT

IN EXECUTIVE SESSION,  
SENATE OF THE UNITED STATES,  
August 2, 1974.

*Ordered*, That the following nomination be referred to the Committee on Armed Services:

William Holmes Cook, of Illinois, to be a judge of the U.S. Court of Military Appeals for the remainder of the term expiring May 1, 1976, vice William H. Darden, resigned.

August 15, 1974.

Reported by Mr. Jackson with the recommendation that the nomination be *confirmed*, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

#### BIOGRAPHICAL SKETCH OF WILLIAM H. COOK

Present Occupation—Counsel, Committee on Armed Services, House of Representatives, Washington, D.C.

Business Address—Committee on Armed Services, Room 2120, Rayburn Building, Washington, D.C. 20515.

Business Telephone—225-6702.

Home Address—Apartment 204, 2501 Calvert Street, N.W., Washington, D.C. 20008.

Home Telephone—XXXXXXX

Age—54.

Marital Status—Single.

Religion—Episcopalian.

Education—J. D. from Washington University School of Law, St. Louis, Missouri, Southern Illinois University, Carbondale, Illinois.

Experience—10 years as Counsel, Committee on Armed Services, House of Representatives; 3 years as an attorney with the Department of the Navy; 6 years as an attorney with the Federal Trade Commission; 4 months as an attorney with the Senate Committee on Banking and Currency; 3 years private law practice; 3 years as a partner in a small business.

Security Clearance—Top Secret.

#### PROFESSIONAL BACKGROUND

From January 1, 1963 to the present time, I have served as Counsel, Committee on Armed Services, House of Representatives. This Committee is responsible for legislation regarding the military departments. During a portion of this time, I was responsible for all matters pertaining to military construction, real estate and materials in the Strategic and Critical Materials Stockpiles. For the last five years, I have dealt with the legislative matters regarding military personnel generally and specifically with officer personnel, officer retirement problems, prisoners of war, medical problems, Reserve and National Guard including R.O.T.C., overseas education, and NATO. During the period while I have served on the Committee staff, salary increases have been given so that the present salary is more than double my beginning salary and is now within \$100 of the maximum permitted in the House of Representatives. In 1971 and 1973, I was presented the Distinguished Service Award by the Reserve Officers Association of the United States.

From December 1961 to the end of 1962, I served as Associate Counsel for Property and Special Matters, Bureau of Naval Weapons, Department of the Navy. The Bureau of Naval Weapons is responsible for supplying to the Navy all items of aeronautical and ordnance equipment. Its budget was approximately



one-twentieth of the total national budget. All legal problems within the cognizance of the Bureau other than that of direct procurement were under my direct supervision. This included problems of facilities, claims and taxes, terminations, fraud investigations, GAO reports, and legislative matters. To perform this assignment, I had a staff of 10 attorneys working under my supervision. Their GS levels ranged from GS-7 through GS-14.

Beginning in September 1959 and continuing through November 1961, I served as Assistant Counsel, Bureau of Naval Weapons, Department of the Navy. During this period, my primary responsibility was processing requests of contractors for relief under Public Law 85-804. This Act permits the granting of relief under specified conditions when there is no legal right to a recovery under the terms of the contract. This required exhaustive analysis of the factual situations and preliminary appraisals of the merits of the claim, power to recommend denials and when approvals were recommended, I prepared documented presentations which were submitted to the Navy Contract Adjustment Board for final approval. Also, I prepared Bureau replies, which in turn became Navy and Department of Defense replies, to GAO reports concerning Bureau activities.

From October 1957 to September 1959, I was Assistant to the Honorable John W. Gwynne, Chairman of the Federal Trade Commission, Washington, D.C. This required a workable understanding of all phases of the antitrust laws. The duties included legal research, opinion, speech and article writing; review of all legal case work prepared by the staff and preparation of all legal memoranda for the signature of the Chairman, frequent and close contact with the Directors of the various Bureaus and Chiefs of Divisions of the Commission, with the Executive Director and the General Counsel, with Members of Congress, the heads of other departments and agencies of the Government, with leaders of industry and their representatives and with the general public; analysis and report on legislation; drafting of legislative proposals and preparation of statements for Congressional hearings.

In 1954 I joined the Federal Trade Commission as an attorney. The first assignment was with the Bureau of Investigation. Beginning as an investigator on deceptive advertising cases, by the end of one work year, I completed nine investigations, including a section 7 (merger) and a price-fixing conspiracy matter and, of these, seven resulted in complaints. After one year, I became a member of the staff of the General Counsel. There I analyzed reports of compliance submitted after orders had been issued. This often required negotiation with respondents and their counsel. When satisfactory reports could not be voluntarily obtained, it was necessary to plan and supervise investigations. I was also required to prepare civil penalty complaints and have frequent consultation with the Department of Justice. In this category were the first civil penalty complaints ever issued relating to a price-fixing conspiracy. In addition, there were many varied assignments, including legislative analysis and reports, correspondence, and legal opinions for the Executive Director when there was a conflict of opinion between Bureaus of the Commission.

In a period of less than 42 months, I was promoted from a GS-9 to a GS-15.

From June 1954 through October 1954, I was on leave absence from the Commission to serve as a Staff Member, United States Senate Committee on Banking and Currency, investigating scandals in FHA. I primarily handled the slum clearance projects in New York City. This included interviews with leading figures in the Housing and Finance fields. I was the only attorney accompanying Senator Homer E. Capehart and Chief Counsel William Simon throughout the United States where public hearings were conducted.

From 1943 to 1950, I was engaged in the private practice of law in Charleston, Illinois, associating with the late John T. Kincaid, County Judge of Coles County, Illinois. The practice included probate, real estate, tax, trial and appellate matters.

In 1947, I was admitted to the practice of law in Illinois and in 1956, to the Supreme Court of the United States.

#### BUSINESS BACKGROUND

In 1950, I entered a partnership with my father in the Carbondale Laundry and Dry Cleaners. At the time I joined his business, my father was in ill health. It was a case either of my returning or foregoing a half interest in a business valued at approximately \$150,000. During this period, I managed the activities of 30 production workers, 4 routes, 2 offices and learned the practical meaning of meeting a payroll, negotiating with a union, and attempting to comply with vari-



ous governmental regulations. On November 13, 1954, the business was destroyed by fire. After consideration as to whether to rebuild a profitable business, my father retired to Florida and I re-entered the field of law.

#### EDUCATIONAL BACKGROUND

1955-56 Graduate work, antitrust and trade regulation field; George Washington University, Washington, D.C.

1946-47 Student, Washington University School of Law.

1940-42 St. Louis, Missouri. J.D., 1947.

1938-40 Student, Southern Illinois University, Carbondale, Illinois, majoring in government, economics and history.

#### MILITARY

1942-46 Entered the Army in 1942; trained with the Armored Infantry; was retained as cadre in basic training battalion and promoted to a corporal; attended Army Administrative Candidate School and was commissioned a Second Lieutenant in 1943; promoted to First Lieutenant; discharged in January 1946.

#### ORGANIZATIONS

American Bar Association; Federal Bar Association; Church of the Epiphany; Delta Theta Phi legal fraternity; Kappa Alpha Order, social fraternity.

The CHAIRMAN. Congressman Bray, I will call on you first, please, sir. We will be interested in anything you say. We appreciate your being here, each of you.

#### STATEMENT OF HON. WILLIAM G. BRAY, U.S. REPRESENTATIVE FROM INDIANA

Mr. BRAY. We have had some very good arguments with the Senate Armed Services Committee on authorization bills.

I am ranking minority member of the House Armed Services Committee, and have known Bill Cook since he first came to the committee, which was almost 11 years ago, as I recall. He has been a very capable, fair, very hardworking and conscientious member of our professional staff. And the legislative work that he is handling fits in very well with this appointment. It has been the personal problem legislation that comes before the committee.

I have found Mr. Cook to be a man that is professionally sound and very dedicated to the Armed Services. I will say that he has judicial temperament, which I don't think I ever had. But I think he would make a superior member of this court. It is a court which I have the very highest regard for and the creation of it was one of the finest things we did. We have watched over it jealously to see that it has been able to perform effectively.

The CHAIRMAN. Thank you very much, Congressman Bray.

Congressman Fisher from Texas, we will be glad to hear from you.

#### STATEMENT OF HON. O. C. FISHER, U.S. REPRESENTATIVE FROM TEXAS

Mr. FISHER. Mr. Chairman, I am delighted to have the privilege of appearing and making a few comments concerning the pending confirmation of Bill Cook to the Court of Military Appeals.

It just happens that for the past 3 or 4 years I have been chairman of the subcommittee which has been very ably served by Mr. Cook on



the legal staff. So I have had an opportunity to observe him quite closely. During a portion of that time, Mr. Bray was also on the same subcommittee. I am sorry Mr. Hébert was out of town or he would be here with us; and he sends his regrets.

But you Senators who have had occasion to deal with Mr. Cook in connection with our conferences are already aware of his unusual attributes in this regard. I know that your professional staff deals with him more intimately than you do, and they would confirm everything I have said and everything that Mr. Bray has said.

Very briefly, Bill Cook is an extraordinarily able legal counsel. He is a very dedicated man. He doesn't know what overtime means. He is one of the hardest working staff men that I have seen operate in our committee. That is saying quite a bit, because we have got a lot of able, hardworking men. But Bill never quits until he gets the job done. And he has an analytical mind, and he has a judicial mind. He will be objective on that court, and I think he will be a great credit to the Court of Military Appeals. I am honored and delighted to commend him to you.

The CHAIRMAN. Thank you very much, Congressman Fisher. That is a very impressive statement that you have made.

Mr. Cook, you do not have to make a statement, but if you wish to make one, you may. If you have one written out, you can insert it in the record.

#### STATEMENT OF WILLIAM HOLMES COOK, NOMINEE TO BE JUDGE OF THE U.S. COURT OF MILITARY APPEALS

Mr. Cook. I have said it in the statement, sir. But I want to express my gratitude to you for the early hearings. Of course I will pledge to do the best job my ability will permit me to do if confirmed by the Senate.

[Prepared statement follows:]

#### STATEMENT OF Mr. WM. COOK

Mr. Chairman and Gentlemen of the Committee:

It is with a sense of both gratitude and humility that I come before you today—gratitude to our former President who submitted my nomination and to President Ford who has requested that the confirmation hearings go forward and appreciation to you, Mr. Chairman, for scheduling these early hearings. Humility in the sense that, if confirmed, I will be following in the giant footsteps of your former Chief of Staff, the Honorable William Darden.

Over the nearly eleven years I have served on the staff of the House Armed Services Committee, I have had occasion to observe and participate in many Senate-House Conferences affecting the military and each time I have been impressed with the sincerity and dedication and knowledge of the conferees on both sides of the table. My respect for the Congress, its able lawmakers and the law has grown with each such event.

My service on the Armed Services Committee Staff of the House, my prior experience as a civilian counsel of the Navy and my four years of active duty during World War II have also caused me to have great admiration for the Department of Defense and military services.

There is something unique about military law in a disciplined society and, as I view the role as a Judge on the Court of Military Appeals, it is to preserve and protect individual liberties while, at the same time, assuring that the military establishment is able to function in an orderly fashion. Obviously, this is a fine line which only can be determined on a case-by-case basis.

Gentlemen, this concludes my statement and I will be pleased to try to answer any questions you may have.



The CHAIRMAN. You come mighty well recommended. We know you too, several of us do.

I have no great volume of advice to give. You will remember, I know, that justice is blind. But you don't have to be blind yourself, and you don't want to be blind. It is an important position, highly important I think. I have a feeling that out among the services maybe we have too much law and too little discipline. That is said with credit to all of the Services. I believe that if you are going to have a military organization you must have discipline.

Mr. COOK. I have said that in this statement, sir.

The CHAIRMAN. I am glad you did.

The vote may be close, but I believe you will be approved by the committee this morning.

Let's see if the other members of the committee have a word.

Senator THURMOND, I will call on you.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Cook, I want to congratulate you upon your appointment. I feel sure that you will fill this high position in a very fine manner.

We are all familiar, of course, with your outstanding work as a member of the staff of the House Armed Services Committee.

I just wonder if you have any particular comments as to the law as it concerns military justice?

Mr. Cook. I have said it in the statement. Will you permit me to read one paragraph:

"There is something unique about military law in the disciplined society and as I view the role as a judge in the Court of Military Appeals, it is to preserve and protect individual liberties while at the same time assuring that the military establishment is able to function in an orderly fashion."

Senator THURMOND. That is a very fine statement. I think that pretty well sums it up.

As you know, opinions by the Court of Military Appeals in recent years have resulted in considerable change in the field of military law. Do you have any opinions on this recent trend?

Mr. Cook. Senator Thurmond, I don't know.

There are cases coming up before the Court, but I have made it a point not to look at these cases. I do think that there has been a tendency in the immediate past to forget discipline and forget the establishment and to think of the individual. We must think of the individual, but I think probably in my opinion the court has gone overboard.

Senator THURMOND. Mr. Cook, one final question.

Do you feel that all the benefits of our civil law are applicable to those serving in the military uniform?

Mr. Cook. Insofar as we can do it within this discipline society of which I was just speaking.

Senator THURMOND. That is a good answer. I think you have summed it up there.

The CHAIRMAN. Repeat that answer.

Would you yield?

Senator THURMOND. Yes, sir.

Mr. Cook. I said, in so far as civil liberties would be provided within this disciplined society.

Senator THURMOND. Which is essential to the operation of the military establishment.



Mr. Cook. Yes, sir.

Senator THURMOND. I think that is a very sound answer. I want to congratulate the President upon your appointment and those who support you. It will be my pleasure to vote for your confirmation.

Mr. Cook. Thank you very much.

The CHAIRMAN. Gentlemen of the committee, we have a supporting statement here from Congressman Hébert of Louisiana, who is the chairman of the Armed Services Committee, and also L. Arends, the ranking minority member of the House Armed Services Committee. Without objection, we will put those two statements in the record at this point.

[Statements referred to follow:]

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
Washington, D.C., August 8, 1974.

HON. JOHN C. STENNIS,  
*Chairman, Armed Services Committee,*  
*U.S. Senate,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: Because of the Democratic Primary in Louisiana on Saturday, August 17, 1974, I am unable to attend the confirmation hearing of William Holmes Cook, who has been nominated to be Associate Judge on the Court of Military Appeals, but I take this opportunity to assure you that I give my strongest endorsement. He has served on the staff of the House Armed Services Committee for more than 10½ years and during that time I have had an opportunity to closely work with him and can vouch for his competence and his excellent integrity.

I urge you and your Committee to support Mr. Cook, as I know he will bring credit to the Court. I also request this letter be made a part of the record of the confirmation hearing on Mr. Cook.

With warmest regards, I am

Sincerely,

F. EDW. HÉBERT,  
*Chairman.*

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., Aug. 13, 1974.

HON. JOHN C. STENNIS,  
*Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: A commitment of long standing in Illinois prevents me from attending your confirmation hearing on Thursday on the nomination of William Holmes Cook, to succeed Judge William H. Darden as Associate Judge of the United States Court of Military Appeals. I had hoped to be present at this hearing with Mr. Cook to introduce him and personally add my endorsement to his nomination. In my absence, however, I respectfully request that this letter be made a part of the hearing record.

Mr. Cook was born and reared in my area of Illinois, and I have known him for a number of years. He currently serves as Counsel for the Committee on Armed Services of the House of Representatives; and as a senior member of that Committee, I have worked closely with him since he came to the staff in 1963. He has had a long and distinguished record both in private practice and government service, which I will not review since it is already well known to you.

Let me say, however, that in all my dealings with Mr. Cook I have been deeply impressed by his honesty, his integrity, his legal ability, his keen interest in military personnel and our defense establishment, and his dedication to excellence in any task to which he is assigned. He is held in particularly high esteem by all members of our Committee. In my judgment, his past experience and training make him ideally suited to serve on the Court, and I have complete faith that if approved by your Committee and confirmed by the Senate he will perform his duties with outstanding competence and distinction. It was this confidence which led me to be a sponsor of his candidacy initially.



Your favorable consideration of Mr. Cook's nomination will be appreciated.  
 With best wishes, I am  
 Sincerely,

L. C. ARENDS

The CHAIRMAN. Senator McIntyre, do you have any questions or statement?

Senator MCINTYRE. Mr. Chairman, is Mr. Cook being nominated for the chief judge? Was Bill Darden, chief judge over there?

Mr. BRAY. That is nominated by the President.

Senator MCINTYRE. That is nominated by the President.

With such high recommendations as our distinguished colleagues of the conference, Mr. Fisher and Mr. Bray, I have nothing to say, except to applaud their recommendations and wholeheartedly support their nomination.

Mr. COOK. Thank you very much, Senator McIntyre.

The CHAIRMAN. Senator Taft?

Senator TAFT. Thank you, Mr. Chairman.

Mr. Cook, in your work on the Armed Services Committee have you been familiar with the U.S. Code of Military Justice?

Mr. COOK. I have not been particularly assigned to the Code of Military Justice, but I have followed the decisions very closely.

Senator TAFT. Has any legislation gone through while you have been on the committee relating to changes in it?

Mr. COOK. There has been some legislation passed by the House. I did not work on it, sir, and the Senate did not take it up. I am quite familiar with that legislation.

Senator TAFT. Is there legislation presently pending?

Mr. COOK. No, sir.

Senator TAFT. I note particularly that you served for 4 years in the armed services, starting as an enlisted man and moving up to an officer.

Mr. COOK. Yes, sir.

Senator TAFT. I do think that we have some special problems in the armed services. In the last couple of days in the subcommittee chaired by Senator Sam Nunn, we have been going into personnel matters. There are broad changes in the personnel policies which, I think, have already taken place and probably more than are going to take place. Do you feel that you can administer the Code of Military Justice in the best interest of the services in that connection?

Mr. COOK. Of course it is hard to anticipate the contingencies that might take place in the future. I think the best answer would be that the court is maintaining about the same workload as when it had several military people in it, which I think shows that the system needs a court and needs someone to determine on a case-by-case basis what the rights are, sir.

Senator TAFT. I was thinking more of the all-volunteer force, and the changes that this brings about in personnel policy. It wasn't a policy that was particularly favorably looked upon by the Armed Services Committee on the House side.

Mr. COOK. Of course, the chairman of our committee has made his views known quite well in the subject; and I do think Senator, that probably one of the primary jobs that will be required within the court in the next year or so will be taking a very hard look at what if any changes are needed in the Court of Military Justice.



Senator TAFT. Would you take into account the fact that we have shifted from a draft system under which many of the men served are drafted as opposed to now, an all-volunteer system?

Mr. COOK. Sir, I am not sure. I would have to think about an answer to that. I just can't give you a definite answer at the moment.

The CHAIRMAN. Senator Nunn, do you have any questions?

Senator NUNN. I don't have any questions Mr. Chairman. I have known Bill Cook for a long time. I have the pleasure of working on the House Armed Services Committee for 1 year back in 1962, before he arrived, and since that time I have been in touch with the staff and of course the former members of the committee, and Chairman Vinson. I have heard nothing but very high praise of Bill Cook, his work, his integrity, his ability, and his judgment, and I will be pleased to cast my vote in his favor.

The CHAIRMAN. Thank you, Senator.

Senator JACKSON, you have just come in.

Senator JACKSON. Yes.

Mr. Chairman, I will be brief. I just wanted to associate myself with the remarks of Senator Nunn.

Bill Cook stands in a very fine position here succeeding Bill Darden, who had a similar position of course on this committee. I think it is a very fine idea to continue that tradition. He is a first rate professional, and I have enjoyed working with him in our joint conferences over the years.

I don't think I need to say any more.

Mr. COOK. Thank you.

Senator JACKSON. I move his approval at the appropriate time.

The CHAIRMAN. We will try to take it up this morning.

Mr. Cook, you know it is not with reference to any particular case if I didn't believe you would do your duty the best you could as you saw it I wouldn't vote to confirm you, but I think we are up against some practical realities of life, as we are in other matters. In the military, I think we have leaned over backwards trying to decide these military discipline cases that I am referring to now, too much as a civil court would decide them.

Mr. COOK. I agree.

The CHAIRMAN. I think we have too much law, if I may express it that way, and too little discipline as a result in the last few years. I get this not from the Pentagon, and not from any reading I do, I get it from those line sergeants whom I talk with—I think they know more about it than anybody else. They have been stripped of their authority to a large degree. They are not complaining about it, but they are just telling me facts when I ask them in conferences I have had with them. They are comparing things now to what it was when they came in as recruits. I know enough about the discipline that I had as a boy in my home to know that you have to have discipline, you can't be too easy, and I think it takes some for all of us.

I just say that based on what experience I have had.

Do you want to say anything else, sir?

Mr. COOK. No sir.

The CHAIRMAN. Are there any witnesses against this gentleman?

Senator McINTYRE. No. Mr. Chairman. But I would just like to briefly reply to what the chairman was saying a minute ago.

Looking here at the law, it says, three judges appointed from civil life. I suspect what was in the minds of the people who put this to-



gether was a little bit the experience that I had in World War II when I came right out of the legal profession into the military. I remember a U.S.M.A. man saying to me one day, "Tom, why do you spend so much time defending these guys when you know we wouldn't charge them if they weren't guilty?"

I told the young lieutenant—who happened to be a very fine officer—that I had just gone through school, and after 3 years of internship in a law firm in New Hampshire, I had come to the Army and I believed very much in the civil authority that you are innocent until you are proved guilty.

So I hope that you will remember that part. I believe in discipline as the chairman is talking about. But you must not consider those guys guilty the minute they are charged.

Senator TAFT. Mr. Chairman, I was the recorder on a naval court for sometime, and I also was a defense counsel in quite a number of cases in the Navy. I remember very well, after I had been a recorder for a while, the captain called me in 1 day and said, "Look, I think you are doing fine, but your sentences are a little light. You are interfering with my prerogative to reduce them."

Senator McINTYRE. That is the military attitude in its worst form. I think that is what that little civil life means.

The CHAIRMAN. Gentlemen, if there is nothing further, we thank you again for commenting here.

Thank you Mr. Cook.

We will move on to the next item.

The CHAIRMAN. Gentlemen of the committee, now we have the nomination of Dr. David Samuel Potter. This reference and report form says he is of Virginia, but Senator Jackson says he is of the State of Washington, so I stand corrected.

I want to assure you that we are glad to have you here. From what I know about your work, I was pleased to see you nominated as Under Secretary of the Navy. That position members of the committee, I think, is a highly important one, to be Under Secretary of any of those services. I am going to have a few words to say later, but I yield to Senator Jackson now to say whatever he wishes.

Senator JACKSON. Mr. Chairman, may I just make a short statement.

Dr. Potter was born in Seattle, and served in the Navy in World War II, and got his B.S. degree, I believe, in 1945, from Yale, and his Ph.D. from the University of Washington in about 1951. I met him in the post-World War II period when he was serving at the Applied Physics Laboratory which is funded by the Navy in cooperation with the University of Washington. During that period they accomplished some outstanding things in undersea warfare. I got to know Dr. Potter quite well, including the times when he was Assistant Director of the Laboratory. Dr. Henderson was the Director.

Then in 1960 he went to General Motors where he was in the research and development area in various capacities up until, I believe, 1973, when he became Assistant Secretary of the Navy for R. & D.

I should make two observations. One, he is a first rate professional. His Ph. D. is in physics. His biography speaks for itself.

And secondly, I think he is a good planner, from the knowledge I have. And that is a unique combination, to be a great academician and a top man in the profession, and also to have experience not only in Government—the Applied Physics Laboratory is essentially a Gov-



ernment contract—but also with the world's largest corporation in their area of research and development as it pertains to defense matters in the three specific areas of ocean sciences, electronics and gas turbine engines, the three main areas.

So I just want to commend him most highly, Mr. Chairman, to the committee, for confirmation. He is the type that one would put together for a good job description, the kind of person that you need for this particular assignment.

The CHAIRMAN. Thank you, Senator. I think your consideration that you have made here is real good with reference to Dr. Potter, is really good.

[Nomination, reference and report and biographical sketch follows:]

#### 354] NOMINATION REFERENCE AND REPORT

IN EXECUTIVE SESSION,  
SENATE OF THE UNITED STATES,

June 24, 1974.

*Ordered*, That the following nomination be referred to the Committee on Armed Services:

David Samuel Potter, of Virginia, to be Under Secretary of the Navy, vice J. William Middendorf II, elevated.

August 15, 1974.

Reported by Mr. Jackson with the recommendation that the nomination be *confirmed*,

#### BIOGRAPHICAL SKETCH OF DAVID S. POTTER

*Present address*—1201 Ina Lane, McLean, Virginia 22101.

*Born*—January 16, 1925, Seattle, Washington.

*Marital status*—Married to the former Juanita Mae Beck, four children.

*Education*—1945, B.S., Yale University; 1951, Ph. D. (Physics), University of Washington, AEC Fellow (1949–50).

*Military*—1943–46, Ensign, U.S. Naval Reserve; V-12 Program—Yale; served on board U.S.S. Katmai (AE-16) in the Pacific.

#### *Employment*—

September 1973 to present, Assistant Secretary of the Navy (Research and Development); 1973 to September 1973, Director of Research, Detroit Diesel Allison Division, General Motors, Indianapolis, Indiana; 1971 to 1973, Chief Engineer, Milwaukee Operations, GM Delco Electronics; 1966 to 1969, Director, GM Defense Research Laboratory, Santa Barbara, California; 1960 to 1966, Head, Sea Operations Department, GM Defense Research Laboratory; 1955 to 1960, Assistant Director, Applied Physics Laboratory, University of Washington; 1946 to 1955, Physicist, Applied Physics Laboratory, University of Washington.

*Professional societies*—Marine Technology Society; American Physical Society; American Institute of Aeronautics and Astronautics; American Acoustical Society; The Society of the Sigma Xi; National Academy of Engineering.

*Publications*—Dr. Potter has published more than thirty professional papers.

The CHAIRMAN. Dr. Potter, I just want to emphasize to you the importance that this committee attaches to this position you have taken. Someone said to me from one of the services, I have forgotten who it was—he said, “well, we look upon the Armed Services Committee of the Senate as our sponsor and our protector.” Well, that is all right. That is a compliment to us, and we accept that compliment. But we in turn look to you gentlemen for candor and frankness and fullness in presenting matters to us, you see, your problems and the effects with respect to a problem area or a problem case. We can sponsor someone we have to deal with at arms length. I am not trying to give you a lecture, but that continuity, as you know, results in understanding.



Do you like that idea with reference to these duties you are approaching now?

Dr. POTTER. Yes indeed.

The CHAIRMAN. From what I know about it I thought you would say yes.

Do you wish to make a statement?

**STATEMENT OF DAVID SAMUEL POTTER, NOMINEE TO BE UNDER SECRETARY OF THE NAVY**

Dr. POTTER. I have no statement, sir. I have been more and more aware in this 11 months of my service as the Assistant Secretary of the responsibilities that the Under Secretary has. And I am quite prepared to carry them out if I am confirmed.

The CHAIRMAN. I have a rule that I know you are familiar with. The Democratic Caucus adopted a policy with respect to nominations that requires that you and others be asked if you would respond to a question to appear and testify before any duly constituted committee of the Senate. Did I make that clear?

Dr. POTTER. Yes, sir.

The CHAIRMAN. What is your answer to that question?

Dr. POTTER. Yes, I will do so.

The CHAIRMAN. Mr. Braswell, has the Doctor met the requirements of this committee with reference to financial matters, and any possible conflict of interest?

Have you and Mr. Braswell had an understanding about this?

What about the finance situation?

Mr. BRASWELL. Mr. Chairman, Dr. Potter has written a letter bringing up to date his prior position, and there are no problems on this question.

The CHAIRMAN. Anything that should show up, you will report them to us and deal with it.

Dr. POTTER. Yes, sir.

The CHAIRMAN. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Jackson, will you proceed for a while?

Senator Symington will be here in the meantime with his report on the Military Construction Subcommittee, gentlemen. I hope we can pass on these nominations, a few minor committee matters, and also the military construction bill too.

Senator NUNN. Mr. Chairman, I think on the agenda this morning is also the officer grade relief issue, H.R. 14402, too which I am particularly interested in.

Senator JACKSON (presiding). Senator Thurmond.

Senator THURMOND. Mr. Secretary, you may recall that when you appeared before this committee to be Assistant Secretary of the Navy for Research and Development, I suggested you carefully study the Blue Ribbon Defense Panel to the court. I don't know whether you have had a chance to study that or not.

Dr. POTTER. Yes, I went through some portions in considerable detail.

Senator THURMOND. I was just thinking, in our new capacity here in the overall view, so to speak, that this would be helpful to you if you had not had the opportunity to study it. And I again urge you to review it if you feel it would help you.



Dr. POTTER. Yes, sir.

Senator THURMOND. Mr. Secretary, what do you see as the major problems facing the United States today?

Dr. POTTER. I think the number one priority or the problem is our people. Very closely behind that are the capital assets, acquiring the ships, and so on that are necessary to the task. But I do believe the number one priority is to maintain our force levels, and to maintain the quality levels that are required. So it is a personnel problem, number one.

Senator THURMOND. Mr. Secretary, I keep hearing reports that the Navy is experiencing serious problems in the area of shipbuilding, cost overruns, poor standards of production, delay in schedules, and other difficulties, and that these problems are increasing rather than decreasing. I wonder if you are aware of these problems, and if so, if you have some plans in mind to try to solve these problems.

Dr. POTTER. Senator, the problems have certainly come to my attention. Over the last 11 months I haven't been directly concerned with the ones that have received the recent publicity. I have gotten into them in the last 2 or 3 weeks. We are making a very real effort to understand the problems that do exist, to try to settle claims as rapidly as possible, and to take some of the corrective actions that are clearly indicated. There is a study that we are right in the middle of now as to how we can improve our performance in the shipbuilding area. I will make it a very definite part of my task.

Senator THURMOND. You do feel it is a matter that does deserve priority, I presume?

Dr. POTTER. Yes, indeed.

Senator THURMOND. Mr. Secretary, obviously you would be getting into these shipbuilding problems more in your new role. I would appreciate having the opportunity to talk with you prior to the hearing next year as to your finding in the current status of these matters. I have visited some of these shipyards too. We would be pleased to chat with you about these matters.

Dr. POTTER. Yes, indeed.

Senator THURMOND. Mr. Secretary, I just have one more question here. What are your views on the total force policy?

Dr. POTTER. I am favorably inclined to them. But we have to work out a program which makes the concept suitable to the Navy. We are very earnestly addressing that one now. It is my hope that we will have considerable success.

Senator THURMOND. I wish you well in your new appointment. I feel sure you are carrying out your duties in a highly competent manner. I will be glad to support your nomination.

Senator JACKSON. Senator Hughes?

Senator HUGHES. I have only three questions. I would like to have the answers submitted in writing, since I am not sure that the answers will not be confidential.

Senator JACKSON. They will be submitted to you, Dr. Potter, and you may respond in writing to Senator Hughes. If it is confidential, it will be kept confidential. That is a decision that can be made when the answer is given.

Senator HUGHES. Dr. Potter, I wanted to get your reactions to the criticisms of the Trident submarine contract which are reported in to-



day's New York Times. As Assistant Secretary for R. & D., you were intimately involved in that contract, were you not?

1. Do you believe that the Trident is enough within the state of the art to justify a fixed-price contract?

Yes; the specifications for the Trident ship construction do not extend the state-of-the-art for nuclear submarines. The submarine technology is predicated on the SSN 688 Class and the weapon system on full utilization of Poseidon developed technology. Although larger in size than any previous submarine, the Trident employs proven design features and materials of earlier classes.

2. Do you believe that the current cost estimates for Trident are reasonable and that the fixed price can be met?

Yes; the contract price was subjected to an extremely thorough cost analysis by both the contractor and the Navy. The negotiated price is considered to be fair and reasonable and can be met.

3. What safeguards do we have that increased costs will not put Electric Boat into the position of difficulty which Grumman Aircraft had with the F-14?

The contract was drafted with due regard for the need to provide flexibility for both parties during the course of the contract while emphasizing the very necessary element of cost discipline. Specific features have been incorporated into the contract addressed to economic escalation, progress payments, and the spread between target and ceiling prices.

*Escalation*—Contract provides standard shipbuilding cost escalation clause (based on Bureau of Labor statistics) modified to more accurately reflect escalation costs incurred. In view of uncertain economic conditions, escalation cost protection will be extended to include all contract costs up to ceiling price.

*Progress payments*—Because of the large (over \$100 million) facilities investment by GD/EB, Navy has negotiated a payment clause which prevents GD from receiving cash in excess of 100% of incurred costs while not increasing the existing cash burden incident to the large facilities investment.

| <i>Lead ship pricing</i>            | <i>\$ Millions</i> |
|-------------------------------------|--------------------|
| Target cost.....                    | 253                |
| Target fee (12.8% target cost)..... | 32.4               |
| Target price.....                   | 285.4              |
| Ceiling price.....                  | 384.4              |

*Cost Sharing*—Below Target Cost 70% (Navy) 30% (GD), Above Target Cost 95% (Navy) 5% (GD) to \$279.6M Cost then 85% (Navy) 15% (GD). The share-lines and spread between target and ceiling price provide a reasonable sharing of risk between the contractor and the Government.

Senator JACKSON. Senator Nunn.

Senator NUNN. I don't have any questions. I have a great deal of confidence in Senator Jackson's judgment and his recommendation of our nominee, Dr. Potter. I have read his résumé, and I had heard about his background, and I intend to support his nomination.

Senator JACKSON.

[Off the record.]

Senator JACKSON. Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

I have no questions of Dr. Potter. His background seems to eminently qualify him. I will be glad to support Dr. Potter.

Senator JACKSON. Thank you, Senator Taft.

Any further questions of Dr. Potter.

We are delighted with your nomination, and we appreciate your testimony. Thank you very much.

We will now go into executive session.

[Whereupon at 10:42 a.m. the committee went into executive session.]







