CONFIRMATIONS

Executive nominations confirmed by the Senate November 23, 1971:

U.S. COAST GUARD

The nominations beginning Richard E. Sardeson, to be commander, and ending David L. Nelson, to be lieutenant commander, which nominations were received by the Senate and appears in the CONGRESSIONAL RECORD on November 18, 1971.

U.S. CIRCUIT COURTS

Alfred T. Goodwin, of Oregon, to be a U.S. circuit judge for the ninth circuit.

U.S. DISTRICT COURTS

Charles M. Allen, of Kentucky, to be a U.S. district judge for the western district of Kentucky.

Levin H. Campbell, of Massachusetts, to be a U.S. district judge for the district of Massachusetts.

Clarence C. Newcomer, of Pennsylvania, to be a U.S. district judge for the eastern district of Pennsylvania.

Ralph F. Scalera, of Pennsylvania, to be a U.S. district judge for the western district of Pennsylvania.

James S. Holden, of Vermont, to be U.S. district judge for the district of Vermont.

EXTENSIONS OF REMARKS

THE PUBLIC STATEMENTS OF WILLIAM H. REHNQUIST—PART II

HON. BIRCH BAYH

OF INDIANA

IN THE SENATE OF THE UNITED STATES

Monday, November 22, 1971

Mr. BAYH. Mr. President, last week I placed in the RECORD excerpts from the speeches, writings, and testimony of William H. Rehnquist, President Nixon's nominee to replace John Marshall Harlan as an Associate Justice of the Supreme Court. Today, I ask unanimous consent to provide further excerpts from Mr. Rehnquist's public statements. These excerpts are from Mr. Rehnquist's testimony before several congressional committees, and an article he wrote for the Harvard Law Record in 1959 concerning the role of the Senate in the confirmation process. I bring these additional statements by Mr. Rehnquist to the attention of the Senate so that the full RECORD will be available when the nomination comes to be considered by the Senate as a whole.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

FURTHER EXCERPTS FROM THE WRITINGS AND TESTIMONY OF WILLIAM H. REHNQUIST

K. Excerpts from testimony at hearings on Executive Order No. 11065 (SACB) before the Senate Subcommittee on Separation of Powers (October 5, 1971) (unprinted):

* * * * *

Senator ERVIN. What organizations' activities is the Attorney General empowered, or alleged to be empowered, to scrutinize?

Mr. REHNQUIST. Well, under the provisions of 11605, which is President Nixon's Executive Order, it would be organizations which are totalitarian, fascist, communist, subversive, as more fully defined in a later section of the order, plus organizations which have adopted a policy of unlawfully advocating the commission of acts, of force or violence, to deny others their rights under the Constitution or laws of the United States, or which seek to overthrow the Government of the United States or state or subdivision thereof by any unlawful means.

Senator ERVIN. Is not President Nixon's Order far broader than President Eisenhower's?

Mr. REHNQUIST. I think not, Mr. Chairman. I am inclined to agree with Senator Gurney that it is actually narrower. It expands one category, in that it specifically mentions the commission of acts of force or violence to deny others their rights under the constitution or laws of the United States or any state, and I do not believe that that was contained in President Eisenhower's Executive Order. But the definitional sections found on pages 3, 4 and 5 of the Order tend to be tighter than those found in President Eisenhower's Order.

Senator ERVIN. Do you not agree that President Eisenhower's Order was specifically directed toward persons already enjoying or actually seeking federal employment?

Mr. REHNQUIST. Well, I think you have to take the situation as it existed at that time. 10450 did not exist by itself. It existed along with the provision for the Attorney General to compile a list of organizations—and I cannot accurately paraphrase the language in one sentence, but who advocated the overthrow of the Government by force or violence.

Senator ERVIN. Where does the Attorney General get that authority?

Mr. REHNQUIST. He originally got it—Or the origin was an order by President Roosevelt which was not really as refined as the later order issued by President Truman. But I think the customary way of discussing it is to say that it originally came from the Order issued by President Truman.

Senator ERVIN. My point is: What statute empowers the Attorney General to petition the Subversive Activities Control Board to designate an organization, for example, as totalitarian as set out in President Nixon's Order?

Mr. REHNQUIST. Well, I would say the statute that confers upon the President the right to determine suitability and qualifications for federal employment.

Senator ERVIN. Does that statute give the President the power to have the Subversive Activities Control Board, upon petition of the Attorney General, place the organizational membership of all Americans, all Americans, under the scrutiny of the Subversive Activities Control Board?

Mr. REHNQUIST. The statute certainly does not, but much the same objection was raised in these two cases I refer to in my testimony, that it was an improper delegation by the President and it lacked statutory authority, and the Court of Appeals for this Circuit said otherwise.

Senator ERVIN. Well, what statute gives the President authority to confer upon the Subversive Activities Control Board, by an executive order, the power to scrutinize the activities and the acts of every group in America who commits acts of force or violence, or unlawfully damages or destroys property or injures persons, or violates laws pertaining to treason, rebellion or insurrection, riots or civil disorders, seditious conspiracy, sabotage, trading with the enemy, obstruction of the recruiting and enlistment service of the United States, impeding officers of the United States or related crimes or offenses?

That is what this is all about, is it not? It undertakes to give this power.

Mr. REHNQUIST. The Order certainly does undertake to empower the Board to do that, and the general notion that the President could confer this type of power on the Attorney General under the statutory authority vested in him by Congress to review the qualifications of federal employees was upheld by the Court of Appeals for this Circuit.

Now, the added question remains: Can he transfer that power from the Attorney General to the Subversive Activities Control Board?

Senator ERVIN. I believe there is a question prior to that. What statute gives the Subversive Activities Control Board the power to investigate violations of criminal statutes which are punishable as crimes after trial in the courts of this country. And what statute gives the President the power to confer jurisdiction in respect to criminal acts upon the Subversive Activities Control Board?

Mr. REHNQUIST. Well, he was previously upheld in his conferring jurisdiction of much the same type on the Attorney General, under the delegation statute. In my opinion, he can confer that authority on the Attorney General, he can likewise confer it on the Subversive Activities Control Board. Clearly, he can make these findings himself.

Senator ERVIN. The difference is fundamentally that the Attorney General is an executive officer. He is the head of the Department recognized by the Constitution. The Subversive Activities Control Board is an agency created by the Congress, not by the Constitution, and its powers are defined by the Congress.

Mr. REHNQUIST. Mr. Chairman, the Attorney General is a creation of the Congress.

Senator ERVIN. Yes, but he is also a head of the Department, and the head of a department is an officer recognized by the Constitution.

Mr. REHNQUIST. Well, but I really do not think that is significant in this respect. The Constitution says the President may call upon the heads of various departments for their opinion, but certainly that does not pretend to circumscribe what the President may confer in the way of authority upon the heads of departments, nor does it——

Senator ERVIN. You consider that the President would have authority to let the Subversive Activities Control Board try criminal cases?

Mr. REHNQUIST. No, sir, certainly not.

Senator ERVIN. But you do contend that he has the power from some undesignated source to let them investigate things, or acts, which are crimes under state law, and things which are crimes under Federal law, do you not? Is that not your position?

Mr. REHNQUIST. Yes. I do not think it is from some undisclosed source. I think it is from a rather specific congressional statute, his power to define and pass upon the qualifications for federal employment, and the Subversive Activities Control Board, in discharging this function, is not purporting to assess criminal liability. It is purporting to make findings as to the activities of particular organizations for the benefit of potential federal employers who are entitled to take this into consideration, knowing their sympathetic membership in this type of organization.

Senator ERVIN. I have inserted in the record the statutory provisions cited by the President in Executive Order 11605 to sustain issuance of this Order, and I am unable to find a single syllable in any one of them that empowers him to make this vast extension of powers to hte Subversive Activities Control Board.

Mr. REHNQUIST. Well, I understand your position, Mr. Chairman. I simply find myself in respectful disagreement with it.

Senator ERVIN. Well, of course, as a Chief Justice once said, we probably read the same books and found different conclusions, but I would be awfully glad if you would point out some specific provisions in these statutes cited by the President to justify this exercise of power, denied by an Act of Congress, to give the Subversive Activities Control Board that power.

Mr. REHNQUIST. Well, when you say "denied by an Act of Congress," Mr. Chairman, I take it you do not mean affirmatively denied but simply not affirmatively conferred upon it?

Senator ERVIN. Affirmatively implied.

Mr. REHNQUIST. Well, I think that the prior delegation of President, the two I have mentioned in my prepared statement, to, you know, the seven independent agencies which have a good deal more claim to be outside of the Executive Branch than the Subversive Activities Control Board, more than supports this.

* * * * *

Senator ERVIN. I just want to say that as far as I am concerned, I do not think any prior Executive Orders should be cited to justify the assertion of further authority by a President, because, that way, Presidents could lift themselves far up above the Constitution by their own bootstraps, and, as for statutory authority, I do not think the President has the right to issue an Executive Order which has the effect of legislation.

* * * * *

Senator ERVIN. Does not the Executive Order of President Nixon undertake to empower the Subversive Activities Control Board, upon petition of the Attorney General, to investigate any organizations which the Attorney General alleges fit the qualifications prescribed in the Executive Order regardless of whether any of the members of those organizations are employed by the Federal Government or seeking employment by the Federal Government?

Mr. REHNQUIST. I agree with the thrust of your question, except for the use of the word "investigate," Mr. Chairman. On page 22, as I read it, the section (c) says:

"The Subversive Activities Control Board shall, upon petition of the Attorney General, conduct appropriate hearings to determine whether any organization is" such and such.

But certainly there is no triggering mechanism that a member of an organization must first have applied for federal employment before that goes.

Senator ERVIN. Yes. So, it gives him the power to investigate all organizations; that is, to conduct hearings to determine whether organizations fit into any of these categories when the Attorney General files a petition to that effect, regardless of whether those organizations have among their members any federal employees or any persons who have any intention ever of seeking employment with the Federal Government?

Mr. REHNQUIST. There is certainly no nexus between a member seeking employment and the right of the Board to conduct the hearing.

Senator ERVIN. Now, also, it gives the Subversive Activities Control Board, on petition of the Attorney General, the power to conduct hearings in respect to crime, the crimes enumerated in the Executive Order, regardless of whether those crimes are committed by any federal employee or any person who ever contemplates seeking employment with the Federal Government, does it not?

Mr. REHNQUIST. It does, Mr. Chairman. I think that that is the only way it can be done in a situation like this. If the President considers that membership in an organization of this type ought to be a factor to be taken into consideration, the various means for applying for federal employment and the tremendous decentralized nature of the program prevent that from being centralized, and so the only practicable way to handle it is to put it in the hands of those administering the Federal Government employment program, such findings as the Board may make.

Senator ERVIN. Would not the practicable thing be to establish a mechanism for determining the organizational membership of persons who are actually employed by the Federal Government or persons seeking employment by the Federal Government, instead of putting all Americans under the scrutiny of the Subversive Activities Control Board?

Mr. REHNQUIST. I think, in this way, Mr. Chairman, that that would be an extraordinary unworkable way, because the first person, say, who is a member of the Weathermen, that applies for a position in the Federal Government, at that point, under your theory, the SACB would be authorized to investigate or to hold hearings with respect to the Weatherman. Now, then, you have the long process of the Justice Department investigation, hearings, findings of fact by the Board, all of this while the particular individual is presumably having the decision on his employment held up.

Senator ERVIN. Do you think that the American people are so lacking in intelligence that they need the Subversive Activities Control Board to tell them that the Weatherman faction of the Student's for Democratic Society are an undesirable organization?

Mr. REHNQUIST. I think it is desirable, Mr. Chairman, to have some sort of a formal fact-finding process. Perhaps, the Weatherman is an obvious case. But I think it is quite conceivable that having a membership in an organization by a federal employee without the benefit of the fact-finding process might conclude they were somewhat suspect. If the fact-finding process concludes that they do not meet the test of the Order, that, in effect, would permit people to be employed, and it would not be resolved just on the basis of suspicion or on the basis of a particular hunch that the employing officer may have but rather on the basis of a hearing on the record with evidence presented.

Senator ERVIN. Well, it would seem to me the intelligent way to go about this, if the purpose is to ensure loyalty in the federal establishment, would be to investigate the membership of people who are employed, who seek federal employment or who enjoy federal employment, rather than investigating organizational membership of all of the Americans, all of the American people, regardless of whether they are employed by the Federal Government or ever seek employment with the Federal Government.

Mr. REHNQUIST. I think, initially, Mr. Chairman, that would provide a different approach than this. I think that within a matter of a couple of years it would rapidly become exactly the same thing, because you have enough applicants for federal employment and enough belonging to a number of different organizations so that the triggering mechanism would have been put into effect, and the Board would be investigating exactly what it would be investigating now.

In addition, under your system, you would have a system of investigation of organizations with respect to which there is no reason to believe at all that they meet the requirements of the Order, whereas, the way the Order is drawn, the Justice Department must first make some sort of a finding of probable cause before the petition.

Senator ERVIN. Yes, but you cannot tell whether they meet this criteria unless you investigate it. In other words, it seems to me that this is like sailing clear across the Atlantic Ocean when your objective is to get across the creek.

L. Excerpts from testimony at hearings on equal rights for men and women, 1971, before a subcommittee of the House Judiciary Committee (1971).

Mr. REHNQUIST.

* * * * *

While the Department supports the enactment of House Joint Resolution 208, the equal rights amendment, there is no denying that opponents of that amendment have raised significant quesitons which deserve the serious consideration of the committee. The placing in the Constitution of such broad general language as is to be found in House Joint Resolution 208 would, by reason of doubt as to the scope of its language, add substantial uncertainties in this area of constitutional law which would probably require extensive and protracted litigation to dispel. Those who have testified in favor of the amendment in the past do not themselves appear to be in agreement as to the sweep of its language. Yet it is conceded that however broad its sweep, it would not reach many practices of private individuals which unjustifiably differentiate between men and women. The Department of Justice feels that the amendment, no matter how construed, would not be a substitute for legislation, such as H.R. 916.

Some proponents of the amendment have stated that ambiguities in its language cannot be taken care of by legislative history. This rather short answer, however, is not entirely satisfactory.

* * * * *

Hearings before the Senate Judiciary Committee last year have highlighted the extraordinary breadth of construction urged by some of the amendment's supporters. While the President, the administration, and undoubtedly most of the Nation are united in their desire to achieve equality for women, as that term has been commonly understood, there is some question as to whether the broadest possible construction of the amendment may not go substantially beyond that common understanding. We would have some doubts as to whether there is a national consensus for compelling all levels of government to treat men and women across the board as if they were identical human beings. Certainly many people feel that publicly maintained restrooms should continue to be separate, that differing ages of consent and majority are, under some circumstances, justifiable, and that laws which are adopted with the genuine purpose of protecting women, rather than as a disguise for discriminating against them, are likewise permissible. Even if one were to determine for himself that all of these differences in treatment ought to be abandoned, under a Federal system such as ours, the question would remain as to whether a unitary rule should be promulgated by constitutional amendment which would deny to each State the right to choose for itself among rational alternative policies.

* * * * *

In spite of the reservations of the Department of Justice and of these developments which have intervened between the time that the President spoke in 1968 and the present time, the administration is committed to the support of House Joint Resolution 208. The desirability of obtaining some such declaration of policy in the Constitution outweighs the disadvantages of this particular proposal.

Whatever may be the resolution of the committee with respect to House Joint Resolution 208, there is no question but what many of the serious inequalities of treatment suffered by women occur in the area of private conduct, rather than public conduct, and can therefore be reached only by legislation such as H.R. 916.

* * * * *

We are agreed that the EEOC needs additional enforcement machinery to function

effectively. However, we favor legislation providing for direct actions in the district courts by the Commission, rather than legislation like H.R. 916 providing for administrative cease and desist orders, as a means of strengthening the EEOC's enforcement powers.

* * * * *

I have taken, from your statement, that you prefer the legislative approach, and I would like to ask you directly—if you had the choice, would you take the legislative approach or the constitutional approach?

Mr. REHNQUIST. You mean if one could have only one of the two?

Mr. KEATING. All right, let's start out with that one.

Mr. REHNQUIST. Yes. If one could have only one of the two, I think I would prefer the legislative approach. I think it reaches more evils that are of general concern to women than the constitutional amendment would.

M. Excerpts from testimony at hearings on U.S. Government information policies and practices—The Pentagon Papers, before the House Subcommittee on Foreign Operations and Government Information (1971).

Mr. HORTON. Would you like to amplify on the position of the Justice Department?

Mr. REHNQUIST. I will be happy to. I suspect after you hear me amplify, you might rather see it in writing, and I will be glad to.

Section 2954 of title 5, United States Code, which is the statute in question, is derived from section 2 of the act of May 29, 1928. Section 1 of that act provided for the repeal of 128 statutes requiring the submission of reports to Congress, which either had become obsolete or which served no useful purpose.

Section 2 of the 1928 act, which has now become section 2954 of title 5, United States Code, was designed to enable Congress to obtain, if needed, the information theretofore contained in the discontinued report. And we think that is indicated in the Senate report made to the Congress in the enactment of the 1928 statute, and I will quote from that:

"To save any question of the House of Representatives to have furnished to it any of the information contined in the reports proposed to be abolished, a provision has been added to the bill requiring such information to be furnished to the Committee on Expenditures in the Executive Department or upon the request of any seven members thereof.

"This section makes it possible to require any report discontinued by the language of this bill to be resubmitted to either House upon its necessity becoming evident to the membership of either body."

That is the end of the quotation from the Senate report. And it was our conclusion that the legislative history from which the section was derived indicates that its purpose was to serve as a vehicle for obtaining information theretofore embodied in routine annual reports to Congress submitted by the several agencies rather than the extremely broad purpose, which I cheerfully concede is a permissible interpretation of the language itself.

Mr. HORTON. In other words, the Executive has put a very narrow interpretation on that section?

Mr. REHNQUIST. Well, a narrow and entirely justifiable one, I believe, but it's certainly a narrow one rather than a broad one?

Mr. HORTON. Well, what does it mean? What is its meaning?

Mr. REHNQUIST. Well, to me it would mean that the types of annual reports, the requirement of submission to Congress of which was discontinued by section 1 of the 1928 statute can nonetheless be selectively demanded by any seven members of the committee if they wish them.

Mr. HORTON. In other words, that is the limit to which this statute applies?

Mr. REHNQUIST. That is our interpretation.

Mr. MCCLOSKEY. Mr. Rehnquist, the rule that permits you to look at the legislative history applies only when the wording of the statute is ambiguous, that is correct?

Mr. REHNQUIST. It's a rule, but it has its exceptions.

Mr. MCCLOSKEY. Do you know of any legal exception in your experience which justifies looking behind the clear language of section 2954, by the executive branch?

Mr. REHNQUIST. Yes, sir. Well, the executive branch is simply trying to forecast what a court would say in interpreting it.

Mr. MCCLOSKEY. Is there any ambiguity in that statute? This is exceptionally clear language. Can you point to me any ambiguity in that statutory section which would justify seeking explanation of that ambiguity?

Mr. REHNQUIST. I don't think it's that clear.

Mr. MCCLOSKEY. Is there any ambiguity in the section that you should find? Can you read the law specifically so the subcommittee at this point can be aware of the ambiguity which, in your judgment, would require going to the legislative history of the statute?

Mr. REHNQUIST. An executive agency on the request of the Committee on Government Operations in the House of Representatives or of any seven members thereof shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

Mr. MCCLOSKEY. Is there any ambiguity there, Mr. Rehnquist?

Mr. REHNQUIST. I don't think the words "any information" are necessarily that sweeping.

Mr. HORTON. Well, what we have to do is define any information, because, at the present time at least, the Executive has put an interpretation on it to the effect that it has to do only with reports which were discontinued. You may be right, but if we are to seek any type of information other than the type, according to the testimony that you have given, and you are giving a factual legal interpretation of it, then we are going to have to make some changes in our legislation, is that not correct?

Mr. REHNQUIST. To obtain it under that statute, yes.

Mr. HORTON. In other words, when Mr. Reuss wrote his letter signed by several members asking for the report from the committee headed by Dr. Richard Garwin, that was not a subject of the section? It was not a matter included within the section, according to the letter of Mr. Ehrlichman, and also according to the statement that you have made?

Mr. REHNQUIST. That was our interpretation, yes.

Mr. HORTON. And then also, I did not sign the letter, but the letter recently signed and transmitted by Mr. Moorhead and several members of this committee asked to be served with reports from the Department of Defense. It is your interpretation that this also would be without the scope of the interpretation of this particular section, because they are not reports that had been required and then discontinued, is that correct?

Mr. REHNQUIST. If that is the nature of the reports requested. I am not familiar with it, but certainly as you describe it, that would be correct.

Mr. MOORHEAD. Would the gentleman yield?

Mr. HORTON. All right.

Mr. MOORHEAD. I understand the Ehrlichman letter refers to an article dated April 1961, in the George Washington Law Review. I think that it would be important to identify the authors of that article.

Mr. Robert Kramer, footnote in the article, was Assistant Attorney General, United States Department of Justice, 1959–61, and Mr. Herman Marcuse, the other author, was and still is, an attorney, United States Department of Justice, Office of Legal Counsel, in your office, Mr. Rehnquist. I think that their positions at the time they wrote the article are significant.

The second thing that I think should be pointed out is that this statute in question, while originally enacted in May of 1928, was amended and reenacted—on September 6, 1966—so that reenactment and reaffirmation of what I consider this broad and sweeping language should be considered by the Congress and signed by the President, approved this language on two occasions.

I don't see how it could be amended to be any broader. If there is any action, I think it should be tested in the courts.

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Mr. MOORHEAD. Now, the staff has prepared an analysis of two significant cases referred to by Mr. Rehnquist, in his statement; that is, *U.S.* v. *Reynolds*, and *U.S.* v. *Curtiss-Wright Export Corp.*, and I think that staff memorandum should also be inserted in the record at this point. That will be so ordered.

(The memorandum follows:)

MEMORANDUM BY LEGAL STAFF, HOUSE GOVERNMENT OPERATIONS COMMITTEE ON THE STATEMENT OF WILLIAM H. REHNQUIST, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE, TESTIFYING ON EXECUTIVE PRIVILEGE, JUNE 29, 1971

The statement declares: "The right of the Executive to withhold certain types of information from the other coordinate branches has been equally well recognized." It refers to two Supreme Court cases as buttressing that assertion. The first case involves the Government's claim of privilege to resist judicial discovery in a tort claims action: *U.S.* v. *Reynolds* (345 U.S. 1 (1953). The second involves a question of the constitutionality of a delegation by Congress of certain legislative power to the President: *U.S.* v. *Curtiss-Wright Export Corp.* (200 U.S. 304 (1936)).

Both cases should be examined closely, since they support Mr. Rehnquist's declaration above only in a highly qualified fashion (*Reynolds* case) or by remote inference derived from orbiter dicta (*Curtiss-Wright* case).

* * * * *

Mr. MCCLOSKEY. Thank you, Mr. Chairman. Mr. Rehnquist, going back to this letter of Mr. Ehrlichman dated June 20, which is before you now, that letter referred to a report on the SST prepared in 1969 by a committee headed by Dr. Richard L. Garwin, and on June 20, the following year, the White House, through this letter, declined to reveal that report on the SST to a committee of Congress of competent jurisdiction.

If I recall correctly, the administration, at that time, was proposing to the Congress in its budget message, that both the House and Senate approve an expenditure of $290 million in 1970 for the SST.

Now, this brings squarely into focus the question of the lawmaking power of Congress when we are asked to vote for or against the SST, and the right of the executive to withhold a report prepared at taxpayer expense relating to that issue affecting whether we should or should not fund the SST. In your judgment, does the executive privilege, which I believe you said was based—in your testimony, on page 18 yesterday—on the generally recognized premise that the President must be free to receive absolutely impartial and disinterested advice from his advisers.

In your judgment, does the right of the Executive to receive impartial and disinterested advice entitle the Executive to refrain from giving to Congress a memorandum on the very subject which the Congress is to legislate?

Mr. REHNQUIST. Certainly, in many situations, I think it would.

Mr. MCCLOSKEY. What, about the SST, could possibly justify claiming executive privilege for a memorandum prepared by the committee for the President?

Mr. REHNQUIST. I am not familiar with the memorandum itself, nor am I intimately

familiar with the questions that are involved—

Mr. McCLOSKEY. This is the question, Mr. Rehnquist. Can you recall the question that I asked you?

Mr. REHNQUIST. Perhaps the reporter would read it back.

(The reporter read the record as requested.)

Mr. REHNQUIST. If this was a memorandum prepared by way of advice to the President as to whether or not he should recommend the funding of the SST, it is, in my judgment, the sort of advice from a subordinate to the Chief Executive which is covered by executive privilege.

Mr. McCLOSKEY. Even though the Executive is asking the Congress to legislate on the SST, is that your testimony?

Mr. REHNQUIST. Yes. The alternative would be that whenever Congress has a subject of legislation before it, and the administration sends a witness down and says this is our position, Congress would be perfectly free to compel testimony, well, how about A through Z, who all participated in it as to advising him, and how did they reach their opinions, and I think that is exactly what it covers.

Mr. McCLOSKEY. Mr. Rehnquist, first of all, the President, in his letter to the chairman, John Moss of this committee, on April 7, 1969, said that the scope of executive privilege must be very narrowly constructed. Under this administration, executive privilege would not be asserted without specific Presidential approval.

Now, if you extend executive privilege to any recommendation made to the President on an issue of pending legislation, isn't that a broad definition of executive privilege which would cover any report prepared for the President on pending legislation?

Mr. REHNQUIST. I don't think that is a broad construction. I think that is one of the classical areas where most people have agreed that the doctrine applies.

Mr. McCLOSKEY. Well, this committee, headed by Richard Garwin, that was asked for a report on the SST, is that any different from any Presidential adviser or consultant or contractor who is asked to prepare a report on the merits of a pending proposal?

Mr. REHNQUIST. I don't know the circumstances of the Garwin committee report, or how it was contracted for, or who Mr. Garwin is, for that matter. But on the hypothesis that he was making a recommendation to the President as to whether or not something should be done, I think that it doesn't require a broad construction of the doctrine to say that that is within it.

Mr. McCLOSKEY. On a project like highway construction, where one highway engineer within the Department of Transportation prepared a report recommending the highway, and another member of the Department of Transportation prepared a report pointing out defects in the highway proposal, would executive privilege be properly invoked for both reports, in your judgment?

Mr. REHNQUIST. Well, there you are taking it down the line a ways. I mean, many of these recommendations, the highway-type recommendations, are not to the President, they are to one of his subordinates.

Mr. McCLOSKEY. Well, I don't think Mr. Garwin's report was directed to anyone other than the Secretary of Transportation, was it?

Mr. REHNQUIST. I am not familiar with the circumstances.

Mr. McCLOSKEY. Let me make the assumption that the Garwin report which was finally released to the Congress in 1970 was, in fact, a representation to the Secretary of Transportation. Is there any difference between that report and a report prepared by the President himself?

Mr. REHNQUIST. It is a question of degree, I think.

Mr. McCLOSKEY. Let's be precise on this. if Dr. Garwin's committee report was prepared for the Secretary of Transportation, would that, in your judgment, make it subject to executive privilege?

Mr. REHNQUIST. It could, if it was on a subject on which the Secretary of Transportation was expected to advise the President.

Mr. McCLOSKEY. Well, isn't every subject considered by the Department of Transportation investigated on something to ultimately advise the President?

Mr. REHNQUIST. No, I would think the highway thing would stop well below the President.

Mr. McCLOSKEY. What about the SST?

Mr. REHNQUIST. I think that is an example of something that was a Presidential decision.

Mr. McCLOSKEY. The President, in his budget, proposed to us that we fund the SST and also the highway program. I find no difference between the highways and the SST, do you?

Mr. REHNQUIST. Yes, I do.

Mr. McCLOSKEY. What distinction?

Mr. REHNQUIST. Well, that the decision as to where individual highways should be located, or the amounts that should be spent on them, are not things that the President participates in.

Mr. McCLOSKEY. Doesn't he participate when he recommends to the Congress each year a budget message which contains, say, $3 billion for highways? Isn't that his recommendation to the Congress?

Mr. REHNQUIST. I suppose in legal theory, it is, but as a practical matter, that is not the sort of decision that is made by the President or that is ultimately decided by the President.

* * * * *

Because the subcommittee's inquiry is a wide-ranging one, it may be helpful if I outline what I conceive to be three related but different situations, all of which have recently received considerable public notice, and all of which are doubtless of interest to the subcommittee.

The doctrine of executive privilege, as I understand it, defines the constitutional authority of the President to withhold documents or information in his possession or in the possession of the executive branch from compulsory process of the legislative or judicial branch of the Government. This doctrine is implicit in the separation of powers established by the Constitution.

Related to the doctrine of executive privilege, but by no means coextensive with it, is the classification of material in the possession of the executive branch under the provisions of executive orders. These executive orders established rules governing the classification of documents involving national defense information, and prohibit disclosure by executive branch personnel of documents so classified to anyone not authorized to receive them. The Freedom of Information Act, which may be said to have established a "right to know" on the part of the public, as against the Government, exempts from its disclosure requirements "matters that are * * * specifically required by executive order to be kept secret in the interest of the national defense or foreign policy." This exemption in the Freedom of Information Act justifies refusal on the part of the executive to make classified material available to the general public. But the mere fact of classification by itself, of course, does not constitute a sufficient basis for withholding information from a committee of Congress, since most, if not all, congressional committees themselves are fully authorized to receive classified documents.

Third, and particularly in the public eye now, is the extent of the authority of the executive branch to seek the aid of the judicial branch in preventing or punishing the publication of material where such publication would be dangerous to the national security. By hypothesis, in this third situation, the material in question is already in the hands of the potential publisher, so there is no question of the executive being compelled to furnish it in order that it may be published. It is this question, of course, which has been the subject of the current litigation in the cases involving the New York Times and the Washington Post.

I will devote my testimony primarily to the question of executive privilege, and to the matter of compliance with the President's 1969 memorandum, since that is what the Attorney General and I understand that you wish, Mr. Chairman. I will, to the extent of my ability, and to the extent that it will be appropriate, be happy to respond to questions about any other matters which are within my competence.

The Constitution nowhere expressly refers either to the power of Congress to obtain information in order to aid it in the process of legislating, nor to the power of the Executive to withhold information in his possession, the disclosure of which he feels would impair the proper exercise of his constitutional obligations. Nonetheless, both of these rights are firmly rooted in history and precedent.

It is well established that the power to legislate implies the power to obtain information necessary for Congress to inform itself about the subject to be legislated upon, in order that the legislative function may be exercised effectively and intelligently.

The right of the Executive to withhold certain types of information from the other coordinate branches has been equally well recognized. In *Reynolds* v. *United States*, 345 U.S. 1, the Supreme Court upheld the applicability of such a privilege against judicial subpena. The claim of the Executive to withhold this type of information from Congress goes back to the administration of President Washington. In 1792, the House of Representatives embarked on its first effort to investigate the conduct of the executive branch in connection with the ill-fated expedition of General St. Clair into the Northwest Territory. When demand was made upon the Secretary of War for the production of all papers connected with that expedition, President Washington called upon his Cabinet for consultation "because it was the first example and he wished that as far as it should become a precedent, it should be rightly conducted * * *. He could readily conceive that there might be papers of so secret a nature as they ought not to be given up."

The Cabinet concluded unanimously on April 2, 1792, that the House of Representatives had the right to institute inquiries, and that it might call for papers generally and "that the Executive ought to communicate such papers as the public good would permit and ought to refuse those the disclosure of which would injure the public. Consequently we're to exercise a discretion."

That is an excerpt from Jefferson's notes of that Cabinet meeting.

President Washington determined that in this particular instance, the disclosure of the papers would not be contrary to the public interest and instructed the Secretary of War to make the papers requested available to the House of Representatives.

In 1796, in connection with the appropriation of the funds required to carry out the financial provisions of the Jay Treaty, the House of Representatives requested the President to produce the instructions to the Minister who negotiated that treaty. This time, President Washington advised the House that he could not comply with its request.

* * * * *

The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the

measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolite; for this might have a pernicious influence on future negotiations or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers.

As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light, and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request.—Richardson, "Messages and Papers of the Presidents," Vol. I, pp. 194–196.

Since that time virtually every President has had occasion to determine whether the disclosure of information to Congress was appropriate.

The Supreme Court, in *United States* v. *Curtiss-Wright Corp.*, decided in 1936, 299 U.S. 304, 319–321, based its decision in part on the authority of the President to withhold information in the field of foreign relations from Congress, and refers to some of the instances when Congress acknowledged this authority in the President. The disputes between Congress and the Executive over the invocation of executive privilege have not been so much about the existence of the authority, as they have about the extent and manner in which it is exercised.

The President's authority to withhold information is not an unbridled one, but it necessarily requires the exercise of his judgment as to whether or not the disclosure of particular matters sought would be harmful to the national interest. As is the case with virtually any other authority, it has a potential for abuse; but as in the case of other authorities, the potential for abuse has never been deemed a sufficient reason for denying the existence of the authority.

The doctrine of executive privilege has historically been pretty well confined to the areas of foreign relations military affairs, pending investigations, and intragovernmental discussions. I will mention a few pertinent examples, and attempt to indicate the reasoning behind the claim of privilege in each of these fields.

* * * * *

There is another category of situations in which Congress has recognized the validity of claims of executive privilege. They center around what may be called the freedom of the executive branch from legislative interference with its decisionmaking process. It includes the confidentiality of conversations with the President, of the process of decisionmaking at a high governmental level, and the necessity of safeguarding frank internal advice within the executive branch. Here, too, I will advert to some examples.

* * * * *

The reasoning behind the claim of executive privilege in these four classical categories seems to me to be as thoroughly defensible in principle as it is well established by precedent.

In the field of foreign relations, the President is, as the Supreme Court said in the *Curtiss-Wright* case, the "sole organ of the Nation" in conducting negotiations with foreign governments. He does not have the final authority to commit the United States to a treaty, since such authority is reposed in the U.S. Senate and, of course, if implementing legislation is required, that legislation must come from the Congress. But the frequently delicate negotiations which are necessary to reach a mutually beneficial agreement which may be embodied in the form of a treaty often do not admit of being carried on in public. Frequently the problem of overly broad public dissemination of such negotiations can be solved by testimony in executive session, which informs the members of the committee of Congress without making the same information prematurely available throughout the world. The end is not secrecy as to the end product—the treaty—which, of course, should be exposed to the fullest public scrutiny, but only the confidentiality as to the negotiations which led up to the treaty.

The need for extraordinary secrecy in the field of weapons systems and tactical military plans for the conducting of hostilities would appear to be self-evident. At least those of my generation and older are familiar with the extraordinary precautions taken against revelation of either the date or place of landing on the Normandy beaches during the Second World War in 1944.

The executive branch is charged with the responsibility for such decisions, and has quite wisely insisted that where lives of American soldiers or the security of the Nation is at stake, the very minimum dissemination of future plans is absolutely essential. Such secrcey with respect to highly sensitive decisions of this sort excludes not merely Congress but all but an infinitesimal number of the employees and officials of the executive branch as well.

I have summarized earlier in my testimony the reasons given by Attorney General Jackson, and reaffirmed by Attorney General Mitchell, as to the need for confidentiality of open investigative files.

Finally, in the area of executive decisionmaking, it has been generally recognized that the President must be free to receive from his advisers absolutely impartial and disinterested advice and that those advisers may well tend to hedge or blur the substance of their opinions if they feel that they will shortly be second-guessed either by Congress, by the press, or by the public at large.

Again, the aim is not for secrecy of the end-product. The ultimate Presidential decision is and ought to be a subject of the fullest discussion and debate, for which the President must assume undivided responsibility. But few would doubt that the Presidential decision will generally be a sounder one if the President is able to call upon his advisers for completely candid and frequently conflicting advice with respect to a given situation.

I would add, finally, that the integrity of the decisionmaking process which is protected by executive privilege in the executive branch is apparently of equal importance to the legislative and judicial branches of the Government. Committees of Congress meet in closed session to "mark up" bills, and judges of appellate courts meet in closed conference to deliberate on the result to be reached in a particular case. In each of these instances, experience seems to teach that a sounder end result—which will be in the fullest object of public scrutiny—will be reached if the process of reaching it is not conducted in a goldfish bowl.

Indeed, if additional precedent were warranted, the decision of the Founding Fathers to conduct in secret all of its deliberations at the Constitutional Convention of 1787 appears to be very much in point.

While reasonable men may dispute the propriety of particular invocations of executive privilege by the various Presidents during the Nation's history, I think most would agree that the doctrine itself is an absolutely essential condition for the faithful discharge by the Executive of his constitutional duties. It is, therefore, as surely implied in the Constitution as is the power of Congress to compel testimony.

Mr. MOORHEAD. You referred throughout your testimony to the authority of the executive branch to withhold information from Congress. Your legal argument to the authority of the Executive, the President.

Do you claim a power of the executive branch in addition to that of the President to withhold information from the Congress?

Mr. REHNQUIST. No; in my testimony the terms may be used interchangeably, and I think it helps a little to do that, because frequently the information sought, or the documents sought are not in the personal possession of the President, but I do not intend by that interchangeable use to suggest that anybody in the executive branch has a right to say, "I am claiming executive privilege and I will not furnish the document."

* * * * *

Mr. REID. Let me try and narrow my question from the broad principle.

Does the Executive in your judgment have the right to withhold from Congress information that is central to a congressional decision, which information is embarrassing to the Executive because it may not be on all fours with public executive statements?

Mr. REHNQUIST. You mean simply on the ground that it makes the President look bad?

Mr. REID. Yes.

Mr. REHNQUIST. No, I don't believe he does.

Mr. REID. And, equally, you would hold, therefore, that Congress has the right to obtain documents and information—whether it be on the war or on other questions that are fundamental—at a time that it is relatively timely to fundamental decisions?

In other words, let me put it another way.

* * * * *

I can well appreciate the confidentiality of conferences between the chiefs of states, and I don't think anyone would seriously question that. But that right, it seems to me, does not extend to fundamental questions, such as a major change in the direction of a war, nor does this permit the Executive to conceal a change or, indeed, proceed on a basis that would fool the public or mislead the Congress.

Mr. REHNQUIST. Well, insofar as your suggestion that it is undesirable and bad for the President to fool the public or mislead the Congress, I certainly agree with you.

If you mean to say, in addition, that the top-level advice that is recently and currently given to the President is for that reason to be made fully available to Congress by compelling those advisers to testify to it, I think the executive privilege suggests that is not the case.

Mr. REID. Finally, if the Congress in the exercise of oversight function, that I believe it has, determines certain documents have been improperly classified by the executive, that either the Congress or the American people are entitled to know about, would you question at all the right of the Congress to declassify and make public these documents?

Mr. REHNQUIST. The right of Congress on its own initiative to make public documents which had been classified by the executive, but which Congress felt were improperly so classified?

Mr. REID. That is correct.

Mr. REHNQUIST. Yes, I would question that right.

Mr. REID. Well, I would merely hold that I think the Congress does have that right.

Thank you very much for your testimony.

Mr. REHNQUIST. When I say I question it, Mr. Reid, I don't mean to say that I have thought the thing through. But it certainly isn't apparent on the face of it to me that Congress has that right.

* * * * *

Mr. REID. Permit me to turn to your testimony on page 1. You state that:

"The doctrine of executive privilege, as I understand it, defines the constitutional au-

thority of the President to withhold documents or information in his possession * * *"

You say a little further on.

"This doctrine is implicit in the separation of powers established by the Constitution."

When you say "implicit" you do not mean absolute, I take it.

Mr. REHNQUIST. I meant it is not stated in the Constitution; it is implied from the structure of the Constitution, and certainly it is not absolute in the sense that the President could willy-nilly withhold any number of things requested by Congress just because he did not feel like giving them.

Mr. REID. And there, of course, the Congress has the clear right to compel the production of those documents if they are central to the congressional purpose. And merely the Executive's embarrassment should not trigger a claim of executive privilege. The only point I make here today is that Congress does not necessarily recognize the right of the executive privilege in the extent that claim may be made for it, and different Members have evaluated this differently. It has to be a relatively narrow privilege not in conflict with congressional rights. But I detect from your testimony that you think that it is a rather broad executive privilege; am I incorrect in that?

Mr. REHNQUIST. Well, I suppose it is the old question of compared to what?

Mr. REID. Compared with coordinate balance between the Congress and the Executive. It should not be so broad that it conflicts with congressional powers and rights.

Mr. REHNQUIST. No; and I think generally it does not. I think there are conceivably cases where Congress is pursuing a very legitimate legislative investigation and where there is no question of Congress' right to obtain information generally in the area. Nonetheless, if a particular document were sought which may be quite relevant to the investigation by the standards of *McGrain* v. *Daugherty*, even a conservative justification of executive privilege could justify the withholding of that document, if the President should determine that its disclosure would jeopardize the national security.

Mr. REID. On page 2, if you look at your testimony there, you say,

"These Executive orders establish rules governing the classification of documents involving national defense information, and prohibit disclosure by executive branch personnel of documents so classified to anyone not authorized to receive them."

Would you hold that to be the case if the documents were improperly classified?

Mr. REHNQUIST. The question arises, what is meant by improper classification? The Ninth Circuit decided in a case last year on the Freedom of Information Act that the only review the courts would make of an executive classification was whether it was arbitrary or unreasonable. They would not attempt themselves to decide whether it should have been classified in the manner it was.

Mr. REID. Well, leaving aside the question of the mechanics, would you hold this is a privilege even though the document was improperly classified by any reasonable test? We in the Congress would not hold that you had that right if they were improperly classified.

Mr. REHNQUIST. I think if one can show that the classification was arbitrary or unreasonable—maybe that is just a paraphrase perhaps of what you are saying—that the provisions of executive orders as to dissemination would probably not govern.

Mr. REID. Now, in connection with that, are you familiar with section 18 of the Executive order?

Mr. REHNQUIST. Not word for word.

Mr. REID. Specifically it provides that:

"The head of each Department and agency shall designate a member or members of his staff to conduct continuing review of the implementation of directives within the Department or agency concerned, to insure that no information is withheld here under which the people of the United States have a right to know * * * and will insure that the information is properly safeguarded in conformity therewith."

Is there anyone in the Justice Department charged with the responsibility of a continuing review of the classification used by that Department?

Mr. REHNQUIST. I think that Mr. Nelson in the Internal Security Division is the Department security officer and is the person who is primarily responsible for the administration of that provision of the order.

Mr. REID. Might I turn to page 4 of your testimony, in which you refer to a case, *Reynolds* v. *United States:*

"The right of the Executive to withhold certain types of information from the other coordinated branches has been equally well recognized."

As I read your comment there, you are talking about the right of the Executive to withhold information. And the Court held in that case, as I understand it—the Supreme Court held in *United States* v. *Reynolds*—that such claims are not conclusive, the Court saying:

"The Court itself must determine whether it is appropriate for the claim of privilege."

In other words, the Court in the case which you cited held that that was not the ultimate determination of the Executive, but that the Court ought to see whether the Executive had properly interpreted and exercised the rights that he might have in that regard.

Mr. REHNQUIST. I wouldn't read any of that language from *Reyonlds* quite that way, Mr. Reid. I have read it as meaning that the general area must be an appropriate one for the claim of executive privilege, not that the Court would itself review and determine for itself whether the thing was properly classified.

* * * * *

Mr. Moss. Let me ask about the power of the court to enforce this against Congress. Let's go to another area. Supposing we keep a considerable body of information classified within the Executive Department and the Congress becomes impatient to get over the red-tape involved in getting access to this, and is faced with the clear fact that it has lost confidence in the objectivity of the executive in classifying information. Couldn't the Congress, by conditioning appropriation, deny any funds for the custody, use, and preservations of such records within the executive department?

Mr. REHNQUIST. I think the appropriations power is so extensive that very, very likely, Congress should include some such provision.

Mr. Moss. Now, that is why I refer to this as a gray area. At no point in our history have we ever gone to the mat to test the final power, but I would like to illustrate that the Congress does have, of all the branches of government, it can withhold funds from the courts. It has the power of impeachment. It has powers given to neither of the other branches.

If there is a doctrine inherent in the Constitution, we in the Congress have the doctrine of oversight. We exercise the residual powers of the people, unless they expressly exercise them.

Mr. REHNQUIST. Well, I have some trouble with the idea that the Congress has a sort of residual power from the people and the President has none.

Mr. Moss. I would think so. I realize this is very broad and far-fetched, but we seem to be dealing in a lot of that in asserting a very broad executive privilege which, stripped of all of its trappings, and in the final analysis, the President alone determines the national interest and what the Congress can have, and I don't buy that.

I think there is a concurrent authority for the Congress, if it wants to be as insistent as the Executive, to compel the production of the information it seeks. Would you challenge that?

Mr. REHNQUIST. Do you mean a concurrent authority which would overrule a legitimate claim of executive privilege?

Mr. Moss. I don't know what a legitimate claim of executive privilege is. I know what we finally accommodated to. This committee, working with President Nixon, as with his two immediate predecessors in office, has arrived at a narrowed basis of accommodation of executive privilege, as asserted by the Executive. It is not implied that the committee recognizes that there is a valid claim, but within the scope of that claim there is a means of accommodating; isn't that correct?

Mr. REHNQUIST. Yes; I think so.

Mr. Moss. Certainly, if the Congress were to enact a statute which spelled out a system of classification and specified that be the only system of classification, that would dominate, or do away with the classification under Executive Order 10501, wouldn't it?

Mr. REHNQUIST. Yes; I think Congress could supersede Executive Order 10501 so long as it didn't infringe on the constitutional prerogatives of the President.

Mr. Moss. Well, the President has a very real constitutional responsibility imposed upon him to take care that the laws are faithfully executed, and if that was a law he would have just as much of a mandate to take care that it did be faithfully executed as he would to enforce the Internal Revenue laws, wouldn't he?

Mr. REHNQUIST. Unless he felt the law were unconstitutional.

Mr. Moss. You mean he is going to act as a separate Supreme Court and determine that a law is unconstitutional? Wouldn't he follow the processes of law to determine whether or not that law was unconstitutional?

Mr. REHNQUIST. Well, I think the processes of law in that case would be to somehow submit the matter to the courts.

Mr. Moss. That is correct. You would go to the courts, not the President. And he wouldn't make that unilaterally and have that binding on anyone, would he?

Mr. REHNQUIST. No.

Mr. Moss. Then he would be bound to take care, unless and until the courts determined that the law exceeded the constitutional authorities of the Congress?

Mr. REHNQUIST. I don't believe necessarily that in the interim he would be obligated in the manner you indicate. I think he would have a right to take appropriate steps to have the law tested.

Mr. Moss. Of course he would have a right to test it. I wouldn't question that. That is the system of Government by law that I believe is certainly inherent in the Constitution.

Mr. REHNQUIST. I do, too.

Mr. Moss. That is why I say he would not unilaterally move to achieve this objective. He would do it through the courts, and it would become unconstitutional only if the courts concur with his contention; isn't that correct?

Mr. REHNQUIST. Certainly.

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Mr. ERLENBORN. Thank you.

In that case then, Mr. Chairman, I will proceed.

Mr. Rehnquist, I want to thank you for your appearance and your testimony. If I ask any questions that you feel get into areas of the litigation, please feel free to so comment.

I would like to ask you what I consider to be a rather broad background question.

First of all, there is the question of freedom of the press that is quite current today. Not referring to this litigation, but to the general principle, is freedom of the press complete and absolute or are there limitations, as the court has already found there are limitations on freedom of speech?

Mr. REHNQUIST. Well, I can certainly give you my interpretation from reading that I have done in the field. Certainly the *Near* case, headed some 40 years ago, indicates that there are some limitations to freedom of the press.

Mr. ERLENBORN. The question then I think becomes to whom does freedom of the press extend? Is this a right to be exercised by the so-called working press, or is it a right that exists in the people?

Mr. REHNQUIST. I think under our Constitution legally it extends to the working press, but I think in a philosophical sense it exists to benefit not the working press but to benefit the public at large.

Mr. ERLENBORN. So if you do attribute this to the working press, then we have some unresolved questions as to how you define the working press. I have always wondered when the press used that term "working," who they had in mind as "nonworking press." But beyond that, would you think that the underground newspaper mimeographed on the college campus comes within that classification, or would I as an individual using a Xerox machine come within that classification?

Mr. REHNQUIST. I think the question, though it is difficult to answer in the terms you pose it, is perhaps more easily answerable if you consider that the freedom of speech is protected in the same way as freedom of the press, and I can't imagine any idea or piece of news or statement of opinion however put forth, that wouldn't be protected either by freedom of the press or freedom of speech.

That is not to say that either one is absolute, but I think the mechanics by which it is expressed are not controlling.

Mr. ERLENBORN. You are saying, I take it, that they are somewhat extensive viewed in the same light and are subject to the same limitations. In other words, those things that you should not be able to express through freedom of speech because that area is circumscribed would also be circumscribed under the freedom of the press? Would that be a legitimate conclusion?

Mr. REHNQUIST. I wouldn't want to be held to it precisely. I think there are intimations in some Supreme Court cases that a type of inflammatory oratory in a large group, such as being in effect told, "Let's go burn that building across the street down," might not be subject to the protections of the first amendment, whereas a more abstract pamphlet of the same nature might be.

That may not be a good example, but I do think there are some distinctions.

Mr. ERLENBORN. Now to get the question of what limitations can be exercised. We hear the phrase, "prior restraint" relative to the first amendment and freedom of the press.

Is the Government system of classification of documents in itself sort of prior restraint?

Mr. REHNQUIST. Not in my opinion. I think prior restraint in the sense it is used in talking about the constitutional right of the press means a restraint on the press to print information which is already in its hands and does not extend, at least in the same broad scope, to the right of the press to obtain information which is not presently in its hands.

Mr. ERLENBORN. Prior restraint then might be limited to a judicial restraint?

Mr. REHNQUIST. I think that is the only restraint of that sort that could exist in this country.

N. Excerpts from testimony at hearings on Executive impoundment of appropriated funds, before the Senate Subcommittee on Separation of Powers (1971).

Mr. REHNQUIST.

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But this, I think, is not the kind of question that presents difficulty. The question is where either Congress is not clear in the intent with which it writes a statute, or in the case where that Congress is crystal clear—take the language that Congressman Vinson from Georgia sought to introduce into the military appropriations bill for fiscal 1963, that the Defense Department, in effect, is directed, mandated—and uses all the mandatory words possible. Surely in the latter case there is no question as to what the intent of Congress is. Then the question becomes one of whether, given a mandatory intent on the part of Congress, the Executive has a right to impound.

In the question of trying to find a mandatory intent on the part of Congress, it is not a question of looking for the word "shall" as opposed to "may." Our office, in the memo that was published in the Congressional Record in December 1969, concluded that in providing for certain formula grants for schools—I think it was impacted aid, but I am not sure—Congress had indicated that these were to be spent, not necessarily because it said they shall be spent, but just from taking the overall language of the authorization bill, the enabling statute if there was one in the particular appropriations language, and construing them together to try to find on a reasonable basis what intent Congress manifested.

Well, when it comes to the action of the Executive in these situations, I take it that it is conceded that the President, as I believe Mr. Weinberger suggested yesterday, must consider all the laws in determining whether or not spending is mandated in a particular case. That is not to say that Congress could not pass a law saying notwithstanding the provisions of any other law. I think that is the way that the Arizona Legislature used to draft at least half its laws. I do not think it is a happy form of draftsmanship, but presumably, Congress could, if it wanted to, exempt from the provisions of all other laws a particular appropriation. I think many would feel that was not a wise action, but there is no doubt of Congress' power to do it. But in the absence of language of that sort, you have the provisions of the Anti-deficiency Act, the provisions of the Debt Ceiling Act, and, conceivably, other laws likewise would be relevant in trying to determine from all the circumstances what was the intent of Congress with respect to this particular piece of appropriations legislation.

If, on the basis of consideration of all the laws, the conclusion is that the intent of Congress was to mandate the spending, then our office has taken the position, in the memorandum I previously referred to, that the President is not at liberty to impound in the case of domestic affairs which have no national defense or foreign policy considerations. This is not the position of the Department of Justice. The Department of Justice, through the Attorney General, has taken no position on the matter and it is not the position of the administration. I think the administration, as such, as an institution, has not taken any position on the matter. But that, nonetheless, was and is the position of our office under the particular circumstances there.

But if one gets into the area of national defense spending, I think from the debates in the fiscal 1963 Military Appropriations Act, it is clear that more than one Senator expressed the view that the President had authority in the area of national defense, by virtue of his constitutional standing as Commander in Chief, which might permit him to withhold in that area where he could not have in the strictly domestic area. In fact, I would go further and say that certainly Members of Congress from time to time have taken the view that Congress can't force the President to spend money of any sort. Congressman Laird, before he became Secretary of Defense, and Congressman Flood from Pennsylvania, during debates in Congress in October of 1968, both expressed that view.

So when I say the Office of Legal Counsel has taken the position that the President must spend in the domestic area when it is clearly mandated that he do so, I recognize that there are views to the contrary and that this is not an easy question or one that admits of no argument on the other side.

In the foreign affairs field, also, there is probably an exception, though it is not anything one would want to opine on until he had a problem before him. But given the foreign affairs power of the President and a case like the *Curtiss Wright* case, which certainly indicates that the President's power in that area is quite different from the domestic field, I think a different conclusion could well be reached.

I think that Thomas Jefferson, when he was President, objected to Congress appropriating money to pay specific salaries to his ambassadors. His view was that Congress, under the doctrine of separation of powers, ought to appropriate a lump sum for the payment of ambassadors and he would decide who got what. That battle was never renewed, so far as I know, and I think it was resolved in favor of congressional specification. But it is some indication of the fact that people right there at the founding of the country, someone like Jefferson, felt that foreign affairs powers were quite different than the power of the President in domestic affairs.

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Professor JOHNSON. What recourse does the Congress have if the President does impound funds despite a mandatory appropriation?

Mr. REHNQUIST. That is not an easy question to answer. I think Congress, as such, probably does not have judicial recourse. Whatever recourse it is has a political one. If the act of Congress is sufficiently clear that identifiable beneficiaries were intended to get the funds, that those beneficiaries may have some sort of legal action to compel the allocating of the funds to them I think has to be regarded as a debatable question. I think 20 years ago, one would have said there simply is not that right in any beneficiaries, but with the expansion of the doctrine of standing, I think you cannot be quite so confident of it now.

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Professor STOLZ. Assuming that the Department is prepared to approve this bill, do you see any objection to broadening it to include the Comptroller General instituting an action to prevent an illegal impoundment?

Mr. REHNQUIST. I can see a good deal of objection from the point of view of the Executive. Traditionally, there has been rivalry between the Comptroller General and the Attorney General. By the way that things are set up, the Comptroller General is basically an agent of Congress and the Attorney General is an agent of the Executive. And every time you confer additional authority on the Comptroller General, you are subtracting something from the executive branch. I am sure the executive branch would not take the position that you must never subtract anything. But I think it would want to look very carefully at what was being subtracted.

Professor STOLZ. Well, I suppose that the theory behind this measure is an alternative to what the chairman was talking about as a way of resolving these disputes as they come up, a somewhat more legitimate, polite way than the internecine use of political clout.

Is there any real objection—if that is the theory of it and the Department is preparing to accept it with respect to illegal expenditure—is there any reason why they should not be prepared to accept it with respect to illegal nonexpenditures?

Mr. REHNQUIST. I think the separations are distinguishable. I think the claim of the Comptroller General to get in at the beginning of a dispute over whether money should be expended, where he contends that it can be expended, is a logical extension of his power to audit accounts, which is the basic power conferred on him under the Budgeting and Accounting Act of 1921, whereas I think nothing in his power to audit accounts suggests to the same extent that he have the authority to force expenditures. I mean, if you do not spend money that you ought to spend, presumably, your accounts are not going to be surcharged.

Professor STOLZ. That is true, they are not going to be surcharged, but it is at least possible that it is just as illegal not to spend money as it is to spend it improperly.

Mr. REHNQUIST. I suppose, speaking in the abstract, that it could be. In theory, one might be obligated to spend just as surely as he is obligated not to spend.

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Professor BICKEL. Maybe Congress did not choose to make that a case. But it seems to me a different case from what is now the very broad area of foreign relations, where all kinds of monies are appropriated for all kinds of purposes, and if that whole area is put in a special position, this is a rather slender foundation to rest that argument on.

Passing on to the war power, I am even more puzzled. It is difficult for me to see why, as Commander in Chief, with his independent powers to command the Army and the Navy and the Air Force, why that means that if Congress appropriates money for 50 bombers and he decides he does not need 50 bombers, even though Congress appropriates it in mandatory fashion, which is the only real case we are talking about, he can override it. Whereas in what seems to me an even more crucial case, from the point of view of the Commander in Chief function, if Congress fails to appropriate money for the 50 bombers and he figures he needs them, he cannot generate the money and spend it. Either way, it seems to me the Commander in Chief is subject to the will of Congress. He commands whatever the Congress provides or fails to provide.

Mr. REHNQUIST. You have a specific thing in the Constitution that no money shall be withdrawn from the Treasury unless appropriated by Congress. Certainly a more general power such as the power of the Commander in Chief would not be construed, I should not think, to override that. But you do not have the same categorical direction at all in the Constitution as to whether the President must spend where Congress has appropriated. That is much more doubtful.

Professor BICKEL. One wonders about that. That brings us to the basic constitutional position. But one wonders whether the power of Congress to make laws, which is stated, of course, in substantive terms and implies the power to spend the money that is appropriated and appropriate the money necessary to carry out such purposes. The very distinctly stated duty of the President to execute laws, just as distinct as the prohibition against spending money that is not appropriated by law, referring it back to section 8 of article 1 for the affirmative power of the Congress—the distinct duty of the President to execute the law is just as distinct as the prohibition against spending unappropriated money. One wonders why that does not mean that he is to carry out the laws of the Congress. When Congress says spend $50 million, he spends $50 million, because that is not just—because behind that is always, in the constitutional scheme, a substantive policy, which is the law. That is really the law which he is supposed to carry out in substantive policy.

Now, you know, in modern times, problems have arisen and a practice has arisen that indicates that that is not enough. Those simplicities are not enough. Problems arise after the money has been appropriated and some mind has to be applied to them and a judgment has to be made. And it is that practice that we are here dealing with. But the original constitutional position seems to me to go across the board and to be all in favor of Congress.

Mr. REHNQUIST. Well, to say that because the President is required to take care that the laws be faithfully executed, that he simply has a ministerial duty to carry out whatever law Congress has passed regardless of the fact, say, that it may, in his opinion, and quite justifiably, infringe on some constitutional prerogatives of his, is not an idea you would subscribe to.

Professor BICKEL. No, I certainly would not. Nor did I suggest that.

Mr. REHNQUIST. But you are saying that the authority to take care that the laws be faithfully, or his direction to take care that the laws be faithfully, executed is by itself some sort of direction to him to simply carry out the will of Congress without regard to—

Professor BICKEL. Certainly; it is the only foundation upon which one can argue that when Congress passes a statute establishing Social Security Administration and medicare or something, and says, this is the policy and this is how we want people taken care of—the only foundation for saying that the President, after having vetoed the law—well, take a specific example. Congress passes the Internal Security Act of 1952, or the Taft-Hartley Act, and the President vetoes it and Congress overrides his veto. The only foundation for saying that the President can't impound that policy is that the Constitution says he is charged with taking care that the law is executed. Now, that does not mean he does not have any discretion, he does have an Executive function, nor does it mean that Congress can override the Executive function. They cannot come in and tell him how to execute it or monitor his directives to his subordinates. As you say in one opinion, Congress can't come in between the President and the Commissioner of Education. It can't speak to the Commissioner of Education over the President's head. It can't, in other words, shortcut the Executive function. But it sets the policy. That is what is meant by law and the position is that the President has to carry it out or Executive discretion reaches farther than I am sure you would argue that it ought to reach.

So my problem is that I have difficulty seeing where the power of the Commander in Chief or the power of foreign relations as such cuts into this general scheme and allows for the argument that whereas a mandatory appropriation in the domestic field would have to be obeyed, a mandatory appropriation to buy tanks or to hand over $50 million to Israel or Saudi Arabia does not have to be obeyed.

Mr. REHNQUIST. Well, I think it gets difficult to probably make an impression on one or the other in the abstract. I do think it is clear beyond dispute that, for instance, a number of Senators during the 1963 debate made a point that the power of Congress to compel spending in the national defense area, where you are talking about whether you are going to have additional planes or not, is not the same as its authority in the domestic field. And I suspect that I could cite examples from either the foreign affairs field or from the defense field where Congress can't compel the President to act, whether it be spending money or otherwise, to the same extent it can in the domestic field.

Now, given that difference——

Professor BICKEL. If I may interrupt, Mr. Rehnquist, I would dispute that except as you come to very specific functions that can be defined as those of the Commander in Chief, just as very specific functions can be defined as those of an Executive which the separation of powers prevent Congress from taking over. Congress can't tell you who should command a regiment, who should command a division. It can't tell you how to command those troops tectically or, if you will, strategically. But I do not follow that this has a sort of vague, continually outgoing reach. It has been the fashion since World War II, I think, to regard the foreign affairs and war power as sort of interminable vistas that reach out into an undefinable future and I think one of the salutary things about the day we are living in now is that people are reexamining that and reexamining the rather vague, general, and indiscriminate statements of the past that of course, the Commander in Chief, or of course, the President is in charge of foreign relations, and he can do virtually anything.

Mr. REHNQUIST. I fully agree with you.

Professor BICKEL. Maybe we had better stop right there.

Mr. REHNQUIST. Maybe we had.

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Mr. REHNQUIST. Senator, certainly so far as the power of the purse being the power to insist that money be appropriated before it is spent, I do not have the slightest doubt and I take it that no one who has studied the matter would. I think it is a more difficult question when you start talking about the power to compel money to be spent.

Let me, if I might, pose an example that would certainly trouble me and I would hope it would trouble those who are partisans of the other view. Supposing Congress appropriates a million dollars and says it has to be spent to equip all the people in regiment "A" with blue uniforms and the President decides he does not want blue uniforms on regiment "A." Now, I think, clearly within his power as Commander in Chief, he has a right to prescribe the mode of dress of that regiment. Can he be compelled to spend that money even though he is perfectly free under the Constitution to refuse to use the proceeds of it?

Senator ERVIN. I respectfully disagree with you, because I think the power to make rules for the Government and regulation of the land and navy forces includes the power to say what kind of uniforms they should wear if Congress should so specify. I think the President is authorized to direct their fighting and authorized to direct them when they are called out to suppress insurrections. I think that is the power of the Commander in Chief, but not to determine whether their uniform shall be blue or some other color.

Professor BICKEL. It seems to be something going more to the heart of the function of the commander is discipline, is it not? Yet the Constitution happens to provide on that subject. It is Congress which decides that a breach of discipline gets tried by a jury of a man's peers or gets tried by six majors and one colonel or what the penalty for it is or whatever. Because Congress is given that power specifically by the Constitution. I think all that is reserved is what you can define as the power to command and what is left of the power of command after you carve out the things that belong to Congress.

Mr. REHNQUIST. I do not agree with the view that power to make regulations governing land and naval forces would go as far as you suggest.

Professor BICKEL. You do not agree?

Mr. REHNQUIST. No.

Professor BICKEL. If it is enacted by Congress, the President could not decide not to enforce it.

Mr. REHNQUIST. I would suggest as far as the Congress suggested it, it would go.

Professor BICKEL. If you are living under a constitution where Congress can say what

the means are for enforcing discipline on your troops, you have swallowed the camel. That certainly should enable you to swallow the gnat of Congress also saying what kind of uniforms they ought to wear.

Mr. REHNQUIST. No, I do not think that follows. I think it is two different kinds of things.

Professor BICKEL. A camel and a gnat.

Mr. REHNQUIST. I do not agree that they are so different in size.

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Professor MILLER. I ask Mr. Rehnquist what he sees in the inherent Executive power of the Commander in Chief and foreign affairs? Do you find any limits at all that you can perceive, Mr. Rehnquist?

Mr. REHNQUIST. I would not speak of it as inherent Executive power.

Professor MILLER. Excuse me. Then where does it come from?

Mr. REHNQUIST. The power of the Commander in Chief and the foreign affairs power that is impliedly conferred by the Constitution, is certainly recognized in the *Curtiss-Wright* case.

Professor MILLER. As a matter of technical law, Mr. Rehnquist, what Mr. Justice Sutherland said in that case was dicta, was it not, not necessary to the case itself? You are relying on a pretty flimsy straw when you rely on *Curtiss-Wright*. I know it is about all you have.

Mr. REHNQUIST. Well, we have a nearly unanimous opinion written by Sutherland, and concurred in by Brandeis and Cardozo. I would not regard that as flimsy.

PROFESSOR MILLER. I mean the language about the delegation of the power to the Executive. What the *Curtiss-Wright* case, in effect says, is that the National Government has all the powers of any sovereign, despite the Constitution's basic theory that the National Government is one of limited delegated power. That is the import, it seems to me, of the *Curtiss-Wright* case. It does not really go to the question of the division of powers between the President and Congress and to rely on it for presidential power seems to me is going far beyond what the court said.

Mr. REHNQUIST. It may be carrying it beyond what was necessary for the holding of the case, but the Court speaks in terms of the President, not of the National Government when it is talking about the foreign affairs power.

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Professor MILLER. Let's jut stay with the expression of the Senate, at least, that there should be no ground troops in Cambodia or Laos.

Professor WINTER. For any purpose?

Professor MILLER. All right. I am just asking whether or not the Commander in Chief power would go as far as thought desirable?

You are putting forth the theory of Executive power which has a good deal of political theory behind it, of course. The English term for it is "reason of state." There are certain areas where the President does have a sort of inherent power where he can act, without regard to law or without regard to anything else. I am asking whether you think in that context, whether you believe, could the President flout or ignore what Congress wants and quietly say, "I am going to send troops in anyway?"

Mr. REHNQUIST. Giving the widest latitude to the discussion format that the chairman has set up, which I appreciate and think is very valuable, I nonetheless think that as an officer of the administration, it would be inappropriate for me to express a view on something that particular and specific in a format like this. Let me try in another way to answer the question.

Supposing instead of the Cooper-Church amendment, the Congress had passed a law or a resolution saying that in no circumstance should another assault be made on "Hamburger Hill." To me, that would be a rather clear invasion of the President's power as Commander in Chief.

Professor MILLER. Why is it clear? To be clear, you have to have standards to judge by. All I am asking for are the standards. Where do you find them and who sets them out or do you set them out in each case that comes along?

Mr. REHNQUIST. I think that you try to find them from historical precedents, from what was meant by the Framers at the time they gave the Commander in Chief power to the President, and from reasoning from other provisions of the Constitution. It is the most difficult area of all of the Constitution, I think, because it is amorphous. But I think it was designed by the framers to be amorphous and we just have to wrestle with it the best we can.

O. Exchange of Correspondence Between William Rehnquist, Assistant Attorney General and Edward M. Kennedy, a Senator from Massachusetts Concerning Pocket Vetoes (1970).

WASHINGTON, D.C.,
December 29, 1970.

Hon. JOHN N. MITCHELL,
Attorney General, Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: As you know, on December 26 it was announced that the President would not sign S. 3418, the "Family Practice of Medicine Act," and that the bill would therefore be subject to a "pocket veto," under which Congress would have no opportunity to reconsider the legislation in light of the President's objections.

Whatever the merits of this particular bill—and I strongly supported it in the Senate—the President's action raises extremely serious questions that far transcend the bill itself and that go to the heart of the distribution of power under the Constitution between Congress and the Executive Branch with respect to the enactment of Federal legislation. Surely, contrary sporadic practice notwithstanding, the Pocket Veto provision of the Constitution—Article I, Section 7, Clause 2—was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress, and was not intended to apply to brief adjournments of Congress during a session such as the recent Christmas period. This is all that the leading decisions of the Supreme Court appear to have held. See *Wright* v. *United States*, 302 U.S. 583 (1938); *Pocket Veto Case*, 279 U.S. 655 (1929). Indeed, in *Wright* v. *United States*, the Supreme Court expressly suggested that the Pocket Veto provision might not be applicable in a case involving a brief adjournment within a session.

In light of the discrepancy between the theory and practice involving the Pocket Veto provision, I would be grateful to receive a clarification of the Administration's position on this issue.

Sincerely,

EDWARD M. KENNEDY.

DEPARTMENT OF JUSTICE,
Washington, D.C., December 30, 1970.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: The Attorney General has asked me to reply to your letter to him of December 29 relating to the pocket veto of S. 3418, inasmuch as I had given the advice to the White House that under the circumstances a pocket veto by the President would be appropriate.

In your letter you state that the pocket veto "was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress, and was not intended to apply to brief adjournments of Congress during a session such as the recent Christmas period. You also state that "in *Wright* v. *United States*, the Supreme Court expressly suggested that the pocket veto provision might not be applicable in a case involving a brief adjournment within a session." Suggesting a "discrepancy between the theory and practice involving the pocket veto provision", you have requested a clarification of the Administration's position on this issue.

The position of this Administration on the "pocket veto" issue is, as nearly as I can determine, entirely consistent with that of preceding Administrations which have considered the question. The two decided Supreme Court, cases, both of which are cited in your letter, have, with one exception, pretty well marked out the boundaries of the pocket veto power, and in my opinion the President's exercise of that power in declining to sign S. 3418 conforms both to these judicial precedents and to the consistent practice of other Presidents during the last quarter century.

The Pocket Veto Case, 279 U.S. 655 (1929), decided by a unanimous Court, seems to me to have expressly rejected your contention that the pocket veto provision was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress. Although the adjournment of Congress there involved was for a period of several months, it was neither an adjournment at the end of the session nor at the end of the Congress, since the Senate adjourned on July 3rd until November 10th, while the House adjourned on July 3rd *sine die*. Notwithstanding the difference in length of time of adjournment between that case and the situation respecting S. 3418, the Court in the *Pocket Veto Case* was required to interpret the following language from the constitutional provision authorizing the "pocket veto": ". . . if any bill shall not be returned by the President within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law." (Art. I § 7, United States Constitution.)

The bill which was pocket-vetoed by President Coolidge in the *Pocket Veto Case* had been presented to him on June 24, 1926, and the adjournment of Congress took place on July 3rd. The Court said:

"The specific question here presented is whether, within the meaning of the last sentence—which we have italicized—Congress by the adjournment on July 3rd prevented the President from returning the bill within ten days, Sundays excepted, after it had been presented to him. If the adjournment did not prevent him from returning the bill within the prescribed time, it became a law without his signature; but, if the adjournment prevented him from doing it, it did not become a law. This is unquestioned." 279 U.S. at 674.

The Court went on to say that the term "adjournment" as used in the constitutional provision authorizing pocket vetoes did not refer only to the final adjournment of Congress. It pointed out in support of this conclusion that the word "adjournment" is used both in section 5 of Article I in reference to the power of a smaller number than the majority of each House to "adjourn" from day to day, and in the fourth clause of the same article, in reference to the prohibition that neither House during the session of Congress shall, without the consent of the other, "adjourn" for more than three days.

The Court then stated:

"We think that under the constitutional provision that the determinative question in reference to an 'adjournment' is not whether it is a final adjournment of Congress or an

interim adjournment, such as an adjournment of the first session, but whether it is one that 'prevents' the President from returning the bill to the House in which it originated within the time allowed. It is clear, and as we understand it, it is not questioned, that since the President may return a bill at any time within the allotted period, he is prevented from returning it within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period." 279 U.S. at 680.

The Court then concluded that since Congress had adjourned prior to the expiration of the ten day period given President Coolidge by the Constitution in which to decide whether or not to veto the particular bill there involved, the pocket veto provision became operative. It seems clear to me that the Court's decision did not turn on the length of the adjournment, any more than on its finality, but that it turned instead on the fact that the adjournment commenced within the ten day period allotted to the President by the Constitution to decide whether or not to veto the measure in question.[1]

The most recent formal expression on the pocket veto provision appears in the opinion of Attorney General Biddle of July 16, 1943, 40 Op. A.G. 274. The Attorney General after reviewing the cases and the historical practice, advised President Roosevelt that an adjournment of Congress within a session was an occasion for a pocket veto.

In the memorandum on the same subject transmitted to the White House in November, 1968 by my predecessor in this office, the precedents then existing were summarized in this language:

"The experience of the past quarter of the century discloses the following practice. If the tenth day (Sundays excluded) after the presentation of the bill fell into a period in which neither House was in session, Presidents uniformly exercised their pocket veto power, even if the period of adjournment were short, or if Congress reconvened on the day following expiration of the constitutional period."

The following instances were relied upon in support of this statement:

(1) In the spring of 1944, the Congress adjourned from April 1st to April 12th. A private bill had been presented to the President on March 30, 1944, 90 Cong. Rec. 3380. The tenth day (Sundays excepted) following the day of presentation was April 11, 1944, i.e., the day preceding the reconvening of the Congress. On that day, President Roosevelt signed a memorandum of disapproval. The bill was considered to have been pocket-vetoed. 90 Cong. Rec. 3408.

(2) In the spring of 1956, both Houses of Congress adjourned from March 29th to April 9th. A private bill had been presented to the President on March 22nd, and the tenth day following the day of presentation was therefore April 3, 1956. President Eisenhower withheld his approval from the bill, and it was considered to have been thereby pocket-vetoed as of April 3, 1956. 108 Cong. Rec. Index 732.

(3) In the summer of 1964, both Houses of Congress adjourned from August 21 to August 31 during the Democratic presidential nominating convention. A private bill had been presented to the President on August 14, 1964, and the tenth day following the day of presentation was August 26, 1964. President Johnson signed a memorandum of disapproval on August 24, 1964, which was communicated to the House of Representatives on September 2, 1964. 110 Cong. Rec. 21409.

Most recently, in the summer of 1968, President Johnson pocket-vetoed a bill relating to cotton importation during an adjournment of both Houses of Congress of approximately one month. 4 Weekly Comp. Pres. Docs. 1222.

Similar precedents may be found going back a good deal further than the quarter century period covered in the memorandum described above. Those which occurred prior to 1928 are collected in House Doc. No. 493. 70th Cong. 2d Sess. They include pocket vetoes during Christmas adjournment of Congress by Presidents Andrew Johnson, Benjamin Harrison, and Grover Cleveland.

In *Wright* v. *United States*, 302 U.S. 583 (1938), a majority of the Court held that where only one House had adjourned, and the adjournment of that House was for a period of only three days, "Congress" as that term is used in the constitutional provision authorizing pocket vetoes, had not adjourned, and therefore a pocket veto was not available to the President in that situation. The Court's majority declined to speculate on the result if one House had adjourned for more than three days.[2]

The Court in *Wright* summarized its ruling in these words:

"We hold that where the Congress has not adjourned and the House in which the bill originated is in recess for not more than three days under the constitutional permission while Congress is in session, the bill does not become a law if the President has delivered the bill with his objections to the appropriate officer of that House within the prescribed ten days and the Congress does not pass the bill over his objections by the requisite votes." 302 U.S. at 598.

In the situation confronting President Nixon with respect to his disapproval of S. 3418, both Houses of Congress had adjourned for a period of longer than three days—the Senate from December 22nd to December 28th, and the House from December 22nd to December 29th—and by their adjournment had prevented the President from having the full ten day period allotted him under the Constitution to decide whether or not to veto in the ordinary manner the bill in question. In my opinion, therefore, on these facts the general rule of the *Pocket Veto Case*, rather than the exception to that general rule carved out in the *Wright* case, governed, and the President was not only authorized to exercise a pocket veto, but if he wished to disapprove it at all, he very probably had no choice as to the form of veto.

You state in your letter that the President's action raises extremely serious questions that far transcend the bill itself and go to the "heart of the distribution of power under the Constitution between the Congress and the Executive branch with respect to the enactment of federal legislation". While I believe that the President was on very firm legal ground in taking the action he did, there is no doubt that the use of the pocket veto power has been a bone of contention between the President and the Congress throughout the years. Indeed, the *Pocket Veto Case, supra*, apparently resulted from an effort on the part of the House of Representatives to repudiate the traditional interpretation of the pocket veto clause—by then more than a century old—and to limit the exercise of that form of veto to the final adjournment of Congress. This effort on the part of the House was, of course, unsuccessful. Again in 1940, Congress passed a bill, H.R. 3233, 76th Congress, which purported to repeal as of the date of their "enactment" all bills and joint resolutions which prior to the beginning of the 76th Congress had been pocket-vetoed, during an adjournment of the Congress other than a final adjournment. President Roosevelt vetoed the bill on the ground that it was inconsistent with the constitutional practices going back to President Adams, as well as with the Supreme Court's interpretation of the Constitution in the *Pocket Veto Case*, 88 Cong. Rec. 8024. The veto was sustained.

Thus, while the Administration's position with respect to presidential use of the pocket veto provision is largely at odds with the position taken in your letter, I believe it is consistent both with the decided cases and with quite well established historical practice.

Yours very truly,

WILLIAM H. REHNQUIST,
Assistant Attorney General, Office of Legal Counsel.

P. Article by William Rehnquist, "The Making of a Supreme Court Justice," Harvard Law Record October 8, 1959.

THE MAKING OF A SUPREME COURT JUSTICE

(By William H. Rehnquist)

(NOTE.—This article was written shortly before Mr. Justice Stewart was named to the Supreme Court. It was delayed by the editors, pending his confirmation by the Senate.)

The Supreme Court of the United States is now in the midst of one of the storms of criticism which have periodically assailed it. Bills have been introduced in Congress to limit the jurisdiction of the high court, to overrule some of its controversial non-constitutional decisions, and to declare the sentiment of the Senate as to the necessity of judicial background on the part of a nominee to the Court. It has been urged that the "advice" of Senate be sought by the President before any nomination to the Court is made.

Criticism of the Supreme Court can easily become frustrating to the critics, because the individual justices are not accountable in any formal sense to even the strongest current of public opinion. Nonetheless, it ill behooves the critics of the present Court to seek imposition of new curbs on it until such controls as now exist are fully tested and found wanting.

Specifically, until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

As of this writing, the most recent Supreme Court Justice to be confirmed by the Senate was Charles Evans Whittaker, Examination of the Congressional Record for debate relating to his confirmation reveals a startling dearth of inquiry or even concern over the views of the new Justice on constitutional interpretation. Mr. Justice Whittaker was nominated by President Eisenhower in

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[1] The Court in that case also said (though the statement does not appear to have been necessary to its holding) that even though one or both Houses of Congress were to authorize an agent to receive messages from the President, "the delivery of the bill to such officer or agent . . . would not comply with the constitutional mandate." 279 U.S. at 684. While *dicta* is not entitled to the same weight as is a holding, the fact that the language is subscribed to by a unanimous Supreme Court, and the fact that it is found in one of the only two cases from that Court dealing with the question, make it the best available authority on the point.

[2] The Court majority in *Wright* rejected the argument that because the originating House was the one which had adjourned for three days, the President was prevented from returning the bill within the meaning of the constitutional language. While some of its reasoning, in so doing, if lifted out of context, could be said to undercut the reasoning in the *Pocket Veto Case*, the fact that the *Wright Court* reserved the question of the effect of an adjournment of even one House alone for more than three days would indicate that its language is to be confined to the fact situation there presented.

March, 1957. *Brown* v. *Board of Education* (the Segregation Cases), 347 U.S. 483, had been decided three years before, and implementing decisions had been handed down in the interim. *Slochower* v. *Board of Higher Education*, 350 U.S. 551, where the Court held by a vote of 5–4 that the New York School Board could not fire a teacher for the reason that he had invoked the Fifth Amendment before a Congressional Committee, had been decided less than a year before. At the moment of Whittaker's nomination, the services of cases involving the rights of Communists to be admitted to practice law in a state and to refuse to answer questions put to them by legislative investigating committees was pending on the docket of the Supreme Court,[1] of antisocial activities.

If any interest in the views of Mr. Justice Whittaker on these cases was manifested by the members of the Senate, it was done either in the cloakroom or in the meeting of the Judiciary Committee. The discussion of the new Justice on the floor of the Senate succeeded in adducing only the following facts: (a) proceeds from skunk trapping in rural Kansas assisted him in obtaining his early education; (b) he was both fair and able in his decisions as a judge of the lower federal courts; (c) he was the first Missourian ever appointed to the Supreme Court; (d) since he had been born in Kansas but now resided in Missouri, his nomination honored two states.

Given in addition the fact that Mr. Justice Whittaker had been an eminently successful courtroom lawyer, the fact that he had been a leader in the activities of the organized bar, and the fact that he had been very highly regarded as a judge of the lower federal courts—all of which he was—the Senators could still have no indication of what Mr. Justice Whittaker thought about the Supreme Court and segregation or about the Supreme Court and Communism.

Less than thirty years before, the Senate had made no bones about its concern with the judicial philosophy of a Supreme Court nominee. Then, too, the Supreme Court was nearing the vortex of a storm—but it was a storm raised by the very groups who are claimed to be the special wards of the Warren court. State and federal laws regulating minimum wages, maximum hours, and other business practices were being struck down by the Court as violative of "freedom of contract;" a freedom which, the Court said, was embodied in the phrase "due process of law." The labor injunction, the strike as a conspiracy, and the "yellow-dog" contract were in their heyday. When, in February, 1930, President Hoover sent to the Senate the name of Circuit Judge John J. Parker to be Associate Justice of the Supreme Court, he sparked one of the most remarkable battles over a judicial nomination in the history of the upper chamber.

Objections to Parker's confirmation were at once voiced by two groups: organized labor, and the National Association for the Advancement of Colored People. Labor's objection was based on Parker's opinion, as a judge of the Circuit Court of Appeals for the Fourth Circuit, in the so-called "Red-Jacket" case.[2] His opinion for that court had upheld an injunction forbidding certain union organizers from attempting to organize a mine, and thereby induce the employees of the mine to breach their "yellow-dog" contracts. The objection of the NAACP stemmed from a campaign speech made by Parker in 1920, while running for governor of North Carolina on the Republican ticket. In this speech he had said:

"The Negro, as a class, does not desire to enter into politics. The Republican party of North Carolina does not desire him to do so. We recognize the fact that he has not yet reached the stage in his development where he can share in the burdens and responsibilities of government. This being true and every intelligent man in North Carolina knows that it is true . . . the participation of the Negro in politics is a source of danger to both races."

No very definite issue developed as to the campaign speech. It seemed agreed by most of the participants in the debate that the statements were understandable in the context of North Carolina politics, but that from a hindsight born with Parker's nomination for national office they would much better have been left unsaid.

As to the labor injunction, though, precise battle lines were drawn and the issue was debated in editorial columns, in masses of letters and telegrams to the Senate Judiciary Committee, and finally on the floor of the Senate. The most surprising fact about this great debate of 1930 was that none of the protagonists on either side doubted that the question should be: What were Parker's views on labor injunctions and yellow dog contracts? *The New York World*, in opposing Parker's confirmation, probably spoke for both sides when it said editorially on April 23, 1930:

"The Senate has every right, if it so chooses, to ask the President to maintain on the Supreme Court bench a balance between liberal and conservative opinion in the country as a whole, and every right on this premise to object that the presence of Judge Parker on the bench would increase, rather than lessen, the top heavily conservative bias of the Supreme Court as now constituted."

Most of the participants further agreed that the result reached by the Court of Appeals in the "Red-Jacket" case was undesirable; Parker's antagonists contended that he approved the result, or at least never batted an eye in reaching it, while his defenders claimed that he was bound by controlling decisions of the Supreme Court on the question, and as a judge of an intermediate appellate court had no choice but to follow them.

A few glittering generalities were hurled by each side, but to a remarkable degree editorial writers, members of the bar, and Senators engaged in a case-by-case analysis of the law as Parker found it when he had written the "Red-Jacket" opinion three years previously. The administration stood squarely behind its nominee, and Attorney General Mitchell even prepared a legal memorandum reaching the conclusion that Parker had no choice in writing the opinion that he did. On the Senate floor, the forces in favor of confirmation were nominally led by Senator Overman from the nominee's home state of North Carolina. But though Overman did a prodigious amount of work behind the scenes, he took little part in the debate on the law. The forces opposing confirmation were led by Senator William E. Borah of Idaho.

Senator Borah's principal speech began in the afternoon of one day and concluded the following day. The first part of it, before any requests to yield were made, occupies nine of the full, closely printed pages of the *Congressional Record*. Borah spoke to a question charged with emotion and public interest, and on which most of the demagogic fireworks were in the armory of his side. Yet his speech is anything but rabble rousing. Instead it is a closely reasoned, masterful exposition of the role of the Supreme Court in our system, coupled with an analysis of the precedents in an attempt to show that Parker must have reached his "Red-Jacket" result by choice, since the controlling cases did not compel it.

Almost any reply to Borah would have been anti-climactic, yet Senator Gillett of Massachusetts gave the Idahoan no quarter. He did not quarrel with the propriety of the inquiry, but he took vigorous issue with Borah's interpretation of the state of the law as Parker found it. In what appears to be an even closer reading of the cases than Borah's Gillett ably defended the proposition that Parker was doing only what the Supreme Court decisions required him to do. After extended debate, the Senate refused to confirm Parker by a vote of 41–39.

Several times during this debate Senator Borah made clear his views as to the nature and scope of the Senate's inquiry into the philosophy of a Supreme Court nominee. In his principal speech, he mentioned that the case of *Hitchman Coal Co.* v. *Mitchell*, 245 U.S. 229, upholding the legality of "yellow-dog" contracts, had been decided thirteen years earlier by the Supreme Court. At this point he was interrupted by Senator Carter Glass of Virginia:

GLASS. "And we have sat here all these years and permitted that to remain the law?"

BORAH. "No; we have tried by an Act of Congress to repudiate that principle, but the Supreme Court of the United States said that our action was null and void. Mr. President, that is what makes this matter so very important. They pass upon what we do. Therefore, it is exceedingly important that we pass upon them before they decide upon these matters. I say this in great sincerity. We declare a national policy. They reject it. I feel I am well justified in inquiring of men on their way to the Supreme Court something of their views on these questions."

Again, during the debate on Parker's confirmation, Borah said:

"Upon some judicial tribunals it is enough, perhaps, that there be men of integrity and of great learning in the law, but upon this tribunal something more is needed, something more is called for, here the widest, broadest, deepest questions of government and governmental politics are involved."

Surely the first part of this last quotation epitomizes the Senate's attitude, as manifested in discussion on the floor, toward the confirmation of Mr. Justice Whittaker. His integrity, his learning, his success at the bar, would be the only necessary subjects of inquiry in the case of a judge appointed to a lower court. Indeed, perhaps no further inquiry would be proper in the case of a judge of a lower court. He is not there to apply his own judicial philosophy, willy-nilly, to the litigants before him, but rather to decide the case of those litigants by application of the principles laid down by higher courts. Such a process involves the use of the same ability to reason by analogy as lawyers call on constantly, and therefore the legal ability of an appointee to a trial court is of paramount importance.

Similarly, in the case of the judge who actually tries the case, we do not expect a decision between individual litigants strictly in terms of popular sentiment. The people through their legislative representatives enact what laws they will, subject to constitutional limitations. But once a law is written, neither the people nor their representatives are further consulted as to what was meant by it; the written words, together with relevant background material, are interpreted by a presumably impartial judge. Democracy ends at the courthouse door, and Joe Doaks is not to be imprisoned simply because a majority of the people sitting in the jury box or on the courthouse steps think he should be.

These reasons suggest that the primary concern with an appointee to an inferior fed-

[1] *Schware* v. *New Mexico Board of Bar Examiners*, 353 U.S. 232; *Konigsberg* v. *State Bar of California*, 353 U.S. 252; *Watkins* v. *U.S.*, 354 U.S. 178; *Sweezy* v. *New Hampshire*, 354 U.S. 254.

[2] *International Organization, United Mine Workers* v. *Red Jacket Consolidated Coal & Coke Co.*, 4th Cir., 18 F2d 839, decided April 18, 1927.

eral court should be his ability to apply rules laid down by more authoritative sources, rather than his feeling as to whether this material is right or wrong. But in the case of the Supreme Court, the "something more" which Borah spoke of comes into play. I would prefer to interpret this phrase, not as meaning that it takes more ability to be a Justice of the Supreme Court than a judge of the lower federal courts, but rather that there are additional factors which come into play in the exercise of the function of a Supreme Court Justice.

The Supreme Court, in interpreting the constitution, is the highest authority in the land. Nor is the law of the constitution just "there," waiting to be applied in the same sense that an inferior court may match precedents. There are those who bemoan the absence of *stare decisis* in constitutional law, but of its absence there can be no doubt. And it is no accident that the provisions of the constitution which have been most productive of judicial law-making—the "due process of law" and "equal protection of the laws" clauses—are about the vaguest and most general of any in the instrument. The Court in *Brown* v. *Board of Education*, supra, held in effect that the framers of the Fourteenth Amendment left it to the Court to decide what "due process" and "equal protection" meant. Whether or not the framers thought this, it is sufficient for this discussion that the present Court thinks the framers thought it.

Given this state of things in March, 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws", then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

RURAL ELECTRIFICATION NEEDED IN ALASKA

HON. NICK BEGICH

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mr. BEGICH. Mr. Speaker, the development of rural electrification is an extremely important program in Alaska. When I testified before the Subcommittee on Farm Credit and Rural Electrification of the Senate Agriculture Committee on October 26, 1971, I said that Alaska is the potentially richest supplier of energy in the United States, but also we are the most underdeveloped power-rich State in the Union. Much has been done in this area, but there is much more to be done. For continuing progress, we must turn to the National Rural Electric Cooperative Association for aid and assistance. They realize the problems involved in this area and are working to solve them with the knowledge accumulated across the Nation.

Every year the rural electrification systems hold regional meetings to discuss mutual problems and to discuss avenues of action on these problems. This year there were 389 farm and rural leaders at the regional meeting and they represented 93 cooperatives from the States of Alaska, California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

These men are dedicated to the task of providing for the needs of the rural electrification system. I have received a copy of the resolutions that were passed at the October meetings, and I believe it is important that we turn to these resolutions for guidance. I am sure that my colleagues will find the following resolutions educational and valuable:

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

REGION IX—SPOKANE, WASH.,
October 10–12, 1971.

9–1. REAFFIRMING PAST ACTIONS

Resolved, we reaffirm our support of the Continuing Resolutions be adopted at the NRECA Annual Meeting at Dallas, Texas, February, 1971, subject to the following deletions and amendments:

Be it resolved that the following Continuing Resolution be deleted:

17. *Hydroelectric Development of Snake River*

Be it resolved that the following Continuing Resolutions be amended as shown:

5. *Preference Principle.* Change "Federally-financed nuclear projects" to "Federally-financed power facilities or portions of power facilities".

18. *Payout Status of Colorado River Storage Project.* Change last sentence to "We also urge the Bureau of Reclamation to make available to all preference customers definitive marketing criteria and rates on all interim power of proposed projects in ample time for the area preference customers to avail themselves of this power."

32. *Rural Telephone Program.* We reaffirm our support for the rural telephone program and pledge our backing of adequate REA telephone loan appropriations, as determined and recommended by the National Telephone Cooperative Association, and we pledge support to the newly-formed Rural Telephone Bank.

38. *Rural Housing.* We recommend that the level of the Farmers Home Administration insured housing program be set at 300,000 units a year beginning with the current fiscal year so as to make possible the achievement of the rural part of the national housing goal set by Congress in 1968. We urge NRECA, statewide associations, power supply and distribution systems to continue their vigorous support of the National Rural Housing Campaign which in large measure has been responsible for the tremendous momentum gained by the FmHA rural housing program during the past year.

48. *Safety Accreditation.* Delete period after the word "program", and add the following phrase: "and as a step towards compliance with the Federal Occupational Safety and Health Act of 1970."

Be it further resolved that the following resolutions be added to the list of continuing resolutions:

63. *Reorganizing USDA.* We recommend that as an alternative to the Administration's proposal for reorganizing the Department of Agriculture out of existence that the USDA be given the official overall responsibility for the mission of rural development which it is obviously better suited to perform than any other existing or proposed department by virtue of its rural and farm orientation, its long experience working with rural people, and its extensive local field operations. Further, we recommend that Congress devise a comprehensive, nationwide rural development program to be undertaken by the Department of Agriculture with provisions for additional components that the USDA will require along with provisions for expanding existing components and for changes or innovations in existing USDA structure that will be necessary to insure success.

64. *Community Facilities.* We recommend that the Farmers Home Administration insured water and sewer loan program beginning in fiscal 1972 be set at a level of $750-million and that the accompanying grant program be set at $250-million. Water and waste disposal systems for rural America are especially essential for the sound orderly growth and ecology of the country. We urge rural electric systems to help develop, support, and organize such services as necessary and to provide necessary management, maintenance and other technical assistance to them as appropriate to maintain their feasibility.

65. *Streamline FmHA.* We urge Farmers Home Administration to streamline its administrative procedures in order to increase the productivity of its local county offices involving such things as standardization of regulations, enlisting the assistance of third parties in preparing loan documents, and contracting for as much of the detail work of servicing loans as possible. We also urge the Congress to appropriate adequate funds for additional FmHA personnel in order to handle the agency's tremendously expanded workload.

66. *Mobile Home Standards.* Because there is no required national uniform inspection or certification program for mobile homes, we encourage member systems to seek adoption as a minimum standard of their state government, the industry standard for Mobile Homes, A119.1, American National Standards Institute.

67. *Anti-Trust Laws.* We urge Congress to give high priority to strengthening the nation's anti-trust laws to the effect that encroachment in any manner upon territory served by rural electric cooperatives, and by municipal, and other publicly owned nonprofit distribution systems would be restraint of trade and at the expense and detriment of local people and their locally owned systems.

68. *Geothermal Resources.* We urge the Congress to amend the present law on disposition of geothermal resources underlying public lands, first, to provide that the U.S. Geological Survey shall explore and assess the magnitude of such geothermal resources; and secondly, to establish by law policies governing the disposition of such resources to prevent monopoly control over them and to assure preference in their sale to publicly owned and consumer-owned power systems.

69. *National Power Grid.* We reaffirm our support for development of a national power grid capable of moving large blocks of electricity back and forth across the country as may be required to meet load requirements; with various segments of the system to be owned and operated by individual electric systems or voluntary combinations of such systems without limitation as to type of ownership, and in such manner as to preserve the pluralistic character of the industry and the integrity of individual participating systems. The capacity of the grid should be planned so as to accommodate the needs of all systems desiring to participate in its utilization. We support and urge construction and operation by the Federal government of such transmission facilities as are necessary segments of a national power grid, but are uneconomic in terms of return necessary to justify private investment.

70. *Women's Action.* We strongly urge that women be made equals in the rural electrification program. Women can and must be placed in positions of leadership. They should be nominated and elected to the board of directors of our electric cooperatives. They can competently serve on advisory commit-

tees and aid effectively in special projects sponsored by the systems. We especially recommend that all systems develop an active program to involve women in cooperative governmental affairs committees. We recognize the need for zealous interest in consumer affairs. Women are substantial users of electricity and are the major purchasers of appliances, furniture, clothing, foods and other supplies used in the home. Our cooperatives must offer assistance, aid in securing educational resource persons and materials, and support efforts by women in securing better laws and protection for the consumer.

9–2 ESSENTIALITY OF REA LOANS AT 2-PERCENT INTEREST AND CFC PROGRAM

Whereas, many people's needs for modern central station electric service are being met only because of the Federal program of loans at two percent interest to consumer-owned rural electric systems, and

Whereas, the economic development of rural areas, especially those which are, either because of economic problems or declining population or both, disadvantaged, is possible only if those areas have electric service on a par with that of more fully developed areas at fully competitive rates, and

Whereas, the rural electric systems which borrow capital from the Rural Electrification Administration sign and carry out agreements—in return for the privilege of borrowing at an interest rate of two percent—to serve customers in remote areas on the same basis as those living near the sources of electric power, and

Whereas, many systems have expressed their willingness to supplement their REA loans with higher cost capital, and have for this purpose organized and invested in their own self-help supplemental financing institution, the CFC (National Rural Utilities Cooperative Finance Corporation);

Now, therefore, be it resolved that we oppose any and all efforts to phase out the REA program in its present form with interest rates at two percent;

Be it further resolved that we petition the Administration and the Congress to provide adequate funds for loans at two percent interest to meet the full capital requirements of both distribution and power supply cooperatives serving areas suffering from lack of population or from economic underdevelopment while at the same time meeting the basic requirements in all other rural service territories;

Be it further resolved that we pledge our cooperation with each other to assure the success of our supplemental financing operation through CFC and to assure adequate funding for the REA program in its present form.

9–3. FARM CREDIT LEGISLATION OF 1971

Whereas, the credit needs of agriculture and of rural America continue to grow and have changed significantly since the original Farm Credit System laws were enacted, and

Whereas, the Commission on Agricultural Credit, a panel of 27 farm and rural leaders which included NRECA General Manager Robert D. Patridge, conducted a 10-month study of present and future credit needs of farmers and rural communities which resulted in recommendations for modernizing and expanding the scope of the Farm Credit System's lending operations to meet the changing needs of rural America, including the growing need for loans for rural farm and non-farm homes and home improvements, and

Whereas, these recommendations are the basis for the Farm Credit legislation introduced in the first session, 92nd Congress, and approved by the Senate;

Now, therefore, be it resolved that we commend the Commission on Agricultural Credit for its forward looking recommendations in this area, the Farm Credit Administration for translating these recommendations into proposed legislation and the Senate for passing the Farm Credit legislation;

Be it further resolved that we urge the House of Representatives to act promptly and favorably on the bill as passed by the Senate;

Be it further resolved that a copy of this resolution be sent to the Members of Congress representing this Region.

9–4. RURAL HEALTH

Whereas, the health of rural people is jeopardized by a shortage of doctors, dentists and nurses by the emphasis being placed in the medical profession on the training of specialists rather than the training of general practitioners, by the absence or inadequacy of hospitals and other medical facilities in many rural areas, and by the rapidly escalating cost of medical services, and

Whereas, this situation poses a serious problem to rural people, which, if not corrected now, will reach crisis proportions as the rural doctors now in general practice retire;

Now, therefore, be it resolved that we urge the medical profession to train more doctors and nurses, including general practitioners;

Be it further resolved that we in the rural electric program work with other groups on programs to improve rural medical facilities and hospitals and to encourage doctors to enter the practice of medicine in rural America.

9–5. ENVIRONMENTAL REGULATIONS

Whereas, the rural electric cooperatives serve electricity to the rural areas over transmission and distribution lines that cover great expanses of the Federal and State land in Western United States, and,

Whereas, each rural electric cooperative is interested in the environmental problems facing both Federal and State governments and is desirous of supporting regulations, fair, reasonable and consistent, and,

Whereas, it appears that there is a developing problem of complexity, duplication and delay in electric power line construction because of regulations enforced by the various responsible public agencies, and,

Whereas, the rural electric cooperatives deem it appropriate to support the environmental movement with constructive suggestion.

Now, therefore, be it resolved, that the appropriate Federal and State environmental control agencies are hereby urged to adopt and implement appropriate simplified regulations and procedures that recognize particular problems inherent in western public land areas that eliminate the duplication of Federal and State regulatory controls, that give greater authority and flexibility to local area offices, and that recognize the difference between distribution and transmission lines.

Be it further resolved, that a sincere effort be made to keep the costs of complying with environmental regulations from defeating the basic purpose and intent of the Rural Electrification Act, including the concept of area coverage.

9–6. BPA SERVICE TO PREFERENCE CUSTOMERS

Whereas, consumer-owned power distribution systems are classified as preference customers under the Bonneville Act, and as such are entitled to service from the Bonneville Power Administration under established BPA rate schedules, and

Whereas, Elmhurst Mutual Power & Light Company; Alder Mutual Light Company; Ohop Mutual Light Company; Parkland Light & Water Company; Eatonville Power & Light Company; Town of Milton; Town of Fircrest; Town of Steilacoom; are consumer owned systems which meet the qualifications of preference customers but have been unable to obtain service from the Bonneville Power Administration, and

Whereas, under present circumstances these systems are unable to directly share in the benefits and responsibilities of participation in regional power supply programs as are the customers of BPA, and

Whereas, it is the feeling of the NRECA Region IX Session Committee that this right to participate in direct Federal power supply by all or any consumer-owned utilities under local autonomy in utility service should be maintained, and

Whereas, the above systems desire to become Bonneville customers; therefore be it

Resolved, that we strongly urge the Administrator of BPA to accept these systems as customers and take steps necessary to provide service to them either directly or by wheeling agreements at the earliest possible date.

9–7. ELECTRIC RESEARCH

Whereas, we recognize the urgent need for electric power research and development programs, particularly for the Liquid Metal Fast Breeder Reactor, and

Whereas, voluntary contributions are being solicited which will be most helpful for this purpose, and we urge all systems in Region IX to contribute, but

Whereas, vast sums will be required to carry on adequate research and development programs for new concepts in generation, transmission and distribution methods, including the LMFBR;

Now, therefore, be it resolved, that we urge that intensive legislative efforts be made to obtain adequate funds from as broad a public base as possible, preferably through Federal appropriations.

9–8. KEEPING G-T A VIABLE FORCE

Whereas, Generation-Transmission loans are, and have been from the beginning, a most vital element in the REA program because they have provided the rural electric systems with an effective bargaining leverage and have given the systems a realistic alternative when existing power suppliers refuse to provide wholesale power on acceptable terms and conditions, and

Whereas, this bargaining leverage is even more important to the rural electrics today as they have to struggle to survive in an industry where technology and economics are putting a dangerous squeeze on the smaller electric systems, and

Whereas, the G-T program cannot serve as a bargaining tool if wholesale power suppliers can feel assured that Congressional and/or Administrative policy decisions will put a lid on G-T loans;

Now, therefore, be it resolved, that we respectfully urge both Congress and the Administration to support the G-T program that it might continue to be a viable force, recognizing that REA has never had adequate funds for this job but also recognizing that the need for help at the wholesale power negotiating table is now greater than ever.

9–9. NATIONAL FUEL POLICY

Whereas, the United States is currently experiencing a progressively worsening shortage of fossil fuels, including natural gas, coal and oil, which threatens the ability of electric utility systems to meet their public responsibility of providing reliable service, and

Whereas, this shortage has been accompanied by sharp increases in gas, oil and coal unit prices of from 50 percent to 100 percent, and

Whereas, there exists a significant interlock of corporate control over the production and processing of otherwise competitive power plant fuels; for example, nine major oil companies, which also produce large quantities of natural gas, hold substantial interests in the coal, oil shale and uranium industries, and

Whereas, such interlocking control could reduce or eliminate price competition between various fuel types, thereby raising the cost to the American public of nearly all goods and services, and

Whereas, certain types of anti-trust law violation can, as a practical matter be prosecuted only by the Federal Government, which in some cases is also uniquely capable of preventing repetitions of such violations;

Now, therefore, be it resolved that we urge the President, the Congress, the Federal Trade Commission and the Department of Justice to explore all avenues which may uncover evidence of potential violations of existing anti-trust laws in the fuel industry, to vigorously prosecute all such violations and to enact laws designed to prevent future abuses of the economic power peculiarly inherent in large energy companies;

Be it further resolved, that:

(1) We urge the Federal Trade Commission to investigate the mergers of major oil and coal companies, and urge Department of Justice cooperation in such investigations;

(2) We urge the Department of Justice to conduct a grand jury investigation of coal prices;

Be it further resolved that we urge the President and the Congress to take all further measures necessary to assure the nation of an adequate fuel supply in future years, including limitation on export of coal and removing restrictions on import of oil.

9–10. NUCLEAR FUEL ENRICHMENT

Whereas, the U.S. Atomic Energy Commission has abandoned its long-established policy of performing nuclear fuel enrichment services at a price reflecting actual cost to the Government of the work involved, and has initiated new fuel enrichment pricing criteria based on the hypothetical cost of rendering such service in a new, privately constructed and operated plant, including allowances for taxes foregone, return on private investment and the private cost of borrowed capital, and

Whereas, the Controller General of the U.S. and the U.S. Attorney General are in disagreement as to the legality of AEC's new fuel enrichment pricing criteria, and

Whereas, the apparent justification for AEC's new enrichment pricing criteria is a desire to suppress widespread objection to the Administration's announced goal of selling AEC's fuel enrichment plants to private owners, and

Whereas, private operation of such plants would substantially further raise the price of nuclear fuel, thereby increasing the nation's electricity bill by approximately $1-billion per year;

Now, therefore, be it resolved, that we strongly oppose AEC's revised nuclear fuel enrichment price criteria, and urge prompt passage of legislation requiring that such prices be based on actual cost incurred by the Government in providing the service.

9–11. NATIONAL ENERGY POLICY

Whereas, the economic and social structure of our country is dependent upon an abundant and reliable supply of electric energy, and

Whereas, the people in many parts of the Nation live in constant danger of blackouts and brownouts, and

Whereas, the Nation's requirements are increasing 100 percent every 10 years, much faster than supply facilities are being expanded, and

Whereas, industry and commerce, which take 60 percent of our total consumption of electric energy, can expand only when and where they can get adequate electric service, and

Whereas, the American laboring man and woman increase their productivity by using ever-increasing amounts of electric energy—the present amount used by the average worker being equal to the labor of 560 persons, and

Whereas, increases in generation and transmission of electric power are inhibited by many factors including environmental problems, inadequate supplies and high prices of desirable fuels, a trend toward monopolistic control of energy sources, inadequate technology in the production and use of new fuels and in extra high voltage transmission, and lack of a national power grid, and

Whereas, our national resources can be marshalled and allocated properly to meet the power crisis only if the Nation develops a national power policy;

Now, therefore, be it resolved that we give our utmost support to the prompt development of a national energy policy aimed at ensuring all Americans an abundant, dependable, enduring supply of electric power at lowest possible cost consistent with conserving our environment and resources;

Be it further resolved, that we seek the active help of all groups and individuals who are, or can be made aware of their vital stake in such a policy;

Be it further resolved that we ask the major political parties and candidates for national office to take policy positions on this matter to the end that during the next campaign there will be a fair debate of the issues leading to affirmative action in the next Congress.

9–12. EXTENSION OF DEFERMENT PERIOD ON REA LOANS

Whereas, the House and Senate Committee on Appropriations in reporting in the Department of Agriculture Appropriations for fiscal 1971, and again for 1972, endorsed the self-help supplemental financing organization, National Rural Utilities Cooperative Finance Corporation (CFC), established by REA rural electric systems borrowers, and

Whereas, both Appropriations Committees expressed interest in encouraging rural electric systems to invest in CFC and urged REA to assist its borrowers to make such investments;

Now, therefore, be it resolved, that the rural electric systems of this Region support the concept of deferment of principal payments on loans beyond the present three-year allowance with the understanding that rural electric borrowers requesting and receiving such extended deferment invest amounts equivalent to the deferred quarterly principal payments on such loans in Capital Term Certificates of CFC.

9–13. COOPERATIVE-MUNICIPAL COOPERATION

Whereas, the electric cooperatives which are assisted by the Rural Electrification Administration require continued assistance to serve the more sparsely settled and remote regions, and

Whereas, it would provide rural electric cooperatives a distinct advantage in serving their customers with low cost electric service if they could jointly participate with municipal utilities in issuing bonds to finance an electric generating station, and

Whereas, Representative Vernon Thompson has introduced legislation which would amend Section 103(C) of the Internal Revenue Code to include rural electrics among exempt person, thus making them eligible to buy power from electric plants financed with tax exempt bonds without jeopardizing the tax status of the bonds,

Now, therefore, be it resolved, that NRECA strongly endorse Representative Thompson's legislation and urge the members of the rural electric cooperatives take an active role in supporting this legislation.

9–14. ELECTRIC RATES

Whereas, the concept of lowest cost electricity has proved to be an important factor in the development of our Nation and the improvement in the standard of living of our citizens, and

Whereas, the cost of electricity is an important element in the cost of all goods and services, and

Whereas, numerous power companies and Federal power agencies have announced their intentions to seek substantially higher power rates, and

Whereas, these proposed higher rates will inevitably result in continued inflation;

Now, therefore, be it resolved, that while we recognize that increased costs experienced by power suppliers do mean that some increase in electric rates may be inevitable, we reaffirm our support of the concept of lowest-cost power; and

Be it further resolved, that we urge the Administration, as a part of its avowed policy of combatting inflation, to do all within its authority to hold the line on electric power rates of Federal Power Marketing Agencies, and

Be it further resolved, that the Administration use its good offices to discourage power companies from seeking massive rate increases, and

Be it further resolved, that we deplore the current high level interest rates which are feeding inflation and raising the cost of all goods and services, including electric power rates, and we urge prompt action to lower rates from their present unconscionable levels, and

Be it further resolved, that we commend Congressman Wright Patman of Texas for his continuing efforts.

9–15. HUNGRY HORSE PROJECT

Whereas, the Hungry Horse Project Act of 1944 is applicable throughout Montana, and power from or attributable to the Hungry Horse Project shall be made available throughout Montana by means of requirements contracts between Montana rural electric cooperatives and appropriate Federal power marketing agencies;

Now, therefore, be it resolved, that we urge the Secretary of the Interior to request Congress for appropriations to construct transmission lines or enter into transfer agreements with the owners of transmission lines from other Federal dams in Montana to rural electric cooperatives; and

Be it further resolved, that we urge that the wholesale price of power throughout eastern Montana be the same at each point of delivery regardless of whether power is delivered from a Federal transmission line or is transferred over the facilities of a private utility or other owner.

9–16. HYDRO-THERMAL PROGRAM

Whereas, the electric utilities of the Pacific Northwest have reached a hydrothermal accord on the proper timing of construction of thermal generating plants in the Pacific Northwest and the addition of hydro-peaking capacity to enable all the electric utilities to meet the continued demand for electric energy; and

Whereas, implementation of this hydrothermal program requires the participation of the Federal Government, through the Corps of Engineers and the Bureau of Reclamation, to provide peak generating capacity at existing federal project with a minimum investment for maximum benefits, and the participation of the Bonneville Power Administration to maximize the use of the federal transmission grid. The rural electric cooperatives will participate in obtaining financing and the development of the thermal generating plants, and

Whereas, the hydro-thermal accord emphasizes the location of thermal plants near load centers, properly sized to minimize the number of plants, thereby preserving lands and right-of-way which would be required for transmission lines, and the failure to continue the hydro-thermal accord will result in smaller generating projects, the piecemeal development of smaller transmission systems, and higher cost for electric energy, and

Whereas, the comprehensive plan outlined in the hydro-thermal accord will insure that electric consumers in the Northwest will have sufficient powers for industry, for irrigation and for domestic use,

Now, therefore, be it resolved, that the President of the United States, the Bureau of the Budget, and the Congress continue to im-

plement the hydro-thermal program with net billing procedures as presented by the Pacific Northwest utilities.

9–17. TRANSMISSION LINES AND COAL RESOURCES

We favor construction of transmission and substation facilities to integrate Federal and public power projects in the Missouri River Basin and the Pacific Northwest in order to achieve maximum benefits of low cost electric energy. Specifically, we urge construction of Federal transmission lines between these two areas to permit development of the vast low-cost coal resources available in Montana to meet future customer load requirements in both areas.

We emphasize the lack of reliability and capacity in the Montana Power Company present 115 KV line Rainbow to Cut Bank, and urge the immediate consideration of the 161 KV Rainbow to Browning line to provide a loop feed and the capacity and reliability presently denied this area.

9–18. MIDDLE SNAKE

Whereas, the hydroelectric power which would be produced at multiple purpose dams on the Middle Reach of the Snake River is vitally needed in the Pacific Northwest and represents the cleanest, most efficient, new energy resource available to the region, and

Whereas, the Federal Power Commission Examiner has recommended that a hydroelectric license be issued to the Washington Public Power Supply System and Pacific Northwest Power Company to jointly build and operate a Middle Snake project;

Now, therefore, be it resolved, that we urge the Federal Power Commission to issue a license to the joint applicants for construction of this vitally needed multipurpose project.

9–19. BUREAU OF RECLAMATION PAYOUT SCHEDULES

Whereas, Federal legislation has established a criteria of 50-year payout for multiple purpose water resource projects and NRECA has supported and promoted such projects;

Now, therefore be it resolved, that we urge that NRECA and its members request the U.S.B.R. to revise the payout schedules to conform with Federal legislation, resulting in rate stability.

9–20. LINE RELOCATION ON PUBLIC LANDS

Whereas, many State and Federal highways are either being rebuilt or new ones constructed, and

Whereas, many of these highways cross public lands and electric utilities have distribution and transmission lines adjacent to them, and

Whereas, electric line rights-of-way across public lands are revokable upon demand for any public use, such as for highway construction or improvement, with the utility receiving no compensation for vacating its rights-of-way, and

Whereas, electric utility use is public use,

Now, therefore, be it resolved, that we respectfully urge that Congress and the various State Legislatures pass laws that will require the agency funding State or Federal highway construction on improvement reimburse electric utilities their actual costs for any electric line relocation required.

9–21. UTILITY CORRIDORS

Whereas, this country is witnessing ever increasing demands that more land be made available for use by the general public, and

Whereas, the amount of land that can be made available for public use is rapidly diminishing, and

Whereas, all utilities, whether they be electric, telephone, water, sewer, public roadways, etc., are each year requiring more and wider strips of lands for their rights-of-way.

Now, therefore, be it resolved, that utility corridors be established along all State and Federal highways constructed in the future and the accommodation of all utilities become a part of the planning of new highways.

9–22. PREFERENCE POWER IN NORTHERN CALIFORNIA

Whereas, the City of Santa Clara, California, is a preference customer of the Bureau of Reclamation, Department of the Interior, and

Whereas, the Bureau has withdrawn a major portion of the city's power supply forcing the city to purchase a substitute quantity from Pacific Gas and Electric Company at exorbitant rates, and

Whereas, this action is most unfair and penalizes the citizens of Santa Clara to the benefit of the power company,

Now, therefore, we urgently request that Congress and the Department of Interior institute a complete study on the matter of supplying preference power in Northern California to insure that private power companies are not receiving preference power to which they are not entitled.

9–23. AREA LOAN FUNDS

Whereas, the practice of approving REA loans to cover the needs of systems for a period of only one year instead of two years is uneconomical and requires considerable extra work,

Now, therefore, be it resolved that we urge full funding of the program so REA can return to the policy of granting two-year loans at the earliest date possible.

9–24. MULTIPLE PURPOSE POWER PROJECTS

Whereas, the authorization and construction of multiple-purpose projects benefits the economy of the nation, and many of these projects are in this region;

Now, therefore, be it resolved, that we urge the Congress to appropriate funds to complete planning and begin construction of the following projects at the earliest possible dates:

Bradley Lake, Alaska;
Auburn-Folsom, California;
Bonneville, Oregon-Washington (second powerhouse);
Ice Harbor, Washington (new units);
Chief Joseph, Washington (new units);
Lower Teton, Idaho;
Asotin, Washington-Idaho; and
Dixie Project, Southern Utah.

Be it further resolved, that we urge the Congress to authorize Federal construction of the following multiple-purpose projects:

Burns Creek, (Crandall), Idaho;
Kootenai Falls, Montana;
Fort Benton-High Cow Creek, Montana;
Lower Flathead, Montana;
Lenore, Idaho; and
Ben Franklin, Washington.

9–25. IN MEMORIAM

Whereas, we feel deeply the loss of several of Region IX's finest rural electric cooperative leaders during the past year,

Now, therefore, be it resolved, that we pause a moment in silence and pay our respects to those leaders who have served our program so long and so well.

9–26. APPRECIATION

Whereas, the success of the rural electrification program depends to such a large extent upon the drive, work and leadership of many people and groups, all of whom deserve recognition and a warm thank you;

Now, therefore, be it resolved, that the delegates of this Region do hereby express their deep appreciataion to all those who have been, and are, contributing to the success of the program. Particularly, this resolution gives special recognition to:

1. The NRECA Board of Directors and the staff for providing the high level of leadership and wide variety of valuable services to the NRECA membership.

2. Robert D. Partridge, General Manager of NRECA, for his dynamic leadership and to his staff for their services and devotion to our program.

3. David A. Hamil, Administrator of REA, and his staff for their great devotion to rural electrification.

4. The REA staff members both in the field and at headquarters for their loyal, devoted and efficient work on behalf of the program.

5. Friends of rural electrification in legislative bodies and executive branches of the Federal Government, as well as in the States, for their assistance on issues crucial to our program.

6. Henry Curtis of Northwest Public Power Association for his generous help to the Resolutions Committee.

7. The many individuals, suppliers, the Ridpath Hotel, the Washington Statewide Association and its manager Bob Smith, his staff and member electric systems, and other organizations for contributing to the success of this regional meeting.

9–27 GENERATORS AT GRAND COULEE

Whereas, the power load in the Pacific Northwest will be increasingly supplied by thermal generation which must be operated at high load factor to obtain maximum efficiency and such base-load operation will require large amounts of hydroelectric generation to meet the peak loads; and

Whereas, the Congress has authorized and the Bureau of Reclamation is now constructing a third powerplant at Grand Coulee Dam consisting of six 600-Mw hydroelectric generating units; and

Whereas, the Grand Coulee Reservoir provides a regulated supply of water sufficient for the peaking operation of additional generating units; and

Whereas, the Bureau in its design has made provision for increasing the size of the Third Powerplant by six additional 600-Mw generating units when authorized; and

Whereas, the Third Powerplant provides one of the most economical sources available for such large amounts of peaking power generation; and

Whereas, this Third Powerplant peaking generation can be obtained without polluting the environment or depleting non-replaceable fuel resources; and

Whereas, it is recognized that the Bureau of Reclamation will require time to prepare a report requesting authorization of these additional units for submittal to the Congress; and that the Congress will then require time for deliberation on the authorization of these additional units; and that the Bureau of Reclamation will then require time to prepare designs, procure equipment, and construct and install these additional units;

Now, therefore, be it resolved that the members fo Region IX both individually and jointly, press for and lend support to the authorization and construction of an additional six generating units in the Grand Coulee Third Powerplant in as timely and orderly manner as possible.

9–28. NORTH SLOPE TRANS-ALASKA PIPELINE

Whereas, we are facing an energy crisis in the United States and particularly on the west coast and the Pacific Northwest, and

Whereas, there exists large oil and gas reserves on the north slope of the State of Alaska, and

Whereas, the best available information indicates that the proposed pipeline is the safest and most practical method of transport to make these resources available to the people of the United States, and

Whereas, we believe that by careful planning, construction and management, energy resources can be utilized to meet human needs with minimal environmental damage;

Now, therefore, be it resolved that Region IX endorses and urges the Secretary of Interior to issue the permit for the immediate construction of the North Slope Trans-Alaska pipeline from the Arctic to Valdez, Alaska;

Be it further resolved that copies of this resolution be delivered to the President of the United States, the Secretary of the Interior and to the Senators and Representatives of Region IX states.

9–29. 18-YEAR-OLD VOTER

Whereas, we believe that the education of young people (both urban and rural) in the principles of cooperation and in the encouragement of their involvement in citizenship processes is one of the top priorities of the rural electric program, both locally and nationally;

Be it resolved that Region IX endorse the resolution of the NRECA Board of Directors, calling for an extensive national voter education and registration program among the new, young voters;

Be it further resolved that rural electric women be encouraged by local boards and managers to help in this very vital field of endeavor.

9–30. AMERICANA CRAFT FAIR

Whereas, the first rural electric Americana Craft Fair held in conjunction with the NRECA Annual Meeting in 1971 was an unqualified success and a splendid monument to cooperation, and

Whereas, we believe that this project is a creative implementation of Continuing Resolution, "Women's Participation", since proceeds were given to the Rural Electric Building of the Agricultural Hall of Fame and to ACRE;

Now, therefore, be it resolved that Region IX women participate in the Craft Fair at Las Vegas in 1972; and that proceeds from the fair be divided equally between ACRE and the Agricultural Hall of Fame;

Be it further resolved that each state in Region IX cooperate fully in planning a regional booth, thereby saving in efforts and expenses on the part of each of the eight states.

WEST VIRGINIA 4–H CLUBS HONORED FOR ENVIRONMENTAL IMPROVEMENT ACTIVITIES

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Tuesday, November 23, 1971

Mr. RANDOLPH. Mr. President, there is no more potent weapon for use in the improvement of our country than the youth of America. The dedication, energy, and idealism of our boys and girls are regularly focused on the needs of America at all levels. The results of their involvement are widespread.

I am gratified that a group of young West Virginians was selected for national recognition of their work in behalf of a better environment. The Hustlers and Crackerjacks 4–H Clubs, of White Sulphur Springs, were chosen to receive the national youth award of Keep America Beautiful at its convention in Washington on November 11 and 12.

The members of the clubs were honored for their active program, which is part of the total community effort to qualify White Sulphur Springs as an All-American City by 1976. They used to good advantage, a week visiting Washington, the highlight of which was presentation of the award.

Adults who accompanied the club members were Mrs. Fred Halterman, Mr. and Mrs. Marshall Bostis, Mrs. Treva Weikel, Glen Simmons, and Lantie Cole.

The club programs are carried out under the supervision of Donette Zickafoose, Greenbrier County extension agent for 4–H work.

Participants from the clubs were Debbie Humphrey, Patty Bostic, Robin Bostic, Chuck Bostic, Eddie Cook, Joyce Kaptis, Sharon Houdyshell, Linda Houdyshell, Danny Hall, Pam Weikel, Dean Weikel, Beverly Coleman, Addia Tate, Berry Weese, Cindy Collins, Joan Wilson, Christie O'Neil, Donna Ford, Elaine Ayers, Debbie Ford, Shirley Ayers, Kathy Ford, Mike Honaker, Charles Vallandingham, Danny Honaker, David Vallandingham, Donna Honaker, Rhonda Stidom, Kathleen Wilson, Patricia Baud, Darrell Hinkle, Delbert Hinkle, Philip Watson, and Billy Erwin.

Mr. President, the award from Keep America Beautiful was accepted by Kathleen Wilson for the Crackerjacks and Hustlers 4–H Clubs. She described in detail the activities that earned the award, and I ask unanimous consent that her acceptance speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

KEEP AMERICA BEAUTIFUL ACCEPTANCE SPEECH

(By Kathleen Wilson)

Good afternoon.

I am Kathleen Wilson, and I am a representative of the White Sulphur Springs Crackerjacks and Hustlers 4-H Clubs. The clubs are urban groups in Greenbrier County, southeastern West Virginia. We have been involved in state youth conservation programs for several years. In 1970 we expanded our anti-litter and beautification activities. We, the young people of these clubs, committed ourselves to an extended anti-litter and anti-pollution program in connection with the town-wide "spirit of 76" 5-year improvement project in preparation for the 1976 bi-centennial of the United States and of White Sulphur Springs.

The following are various projects our club undertook:

Gleaned litter from neglected and rural areas of our community.

Shovelled snow from sidewalks and raked leaves from lawns of the senior citizens.

Cleared litter and raked leaves from the high school and elementary school lawns.

Wrote, directed, and performed a skit, entitled "Litterbugs Miss All the Fun" for the children of our community.

Sponsored a "Beautification Week" of anti-litter activities.

Sponsored and participated in an Anti-Litter Day with groups competing for prizes donated by the Chamber of Commerce for the group collecting the most trash. And one conscientious group of 4th graders even accused another group of stealing their trash, but the 4th graders still won first prize.

Presented programs on litter and pollution to the Girl Scouts, the Women's Izaak-Walton League, and a community public meeting. On the day that we presented the skit for the Women's Izaak-Walton League, we had planted 5,000 pine tree seedlings donated by the Forestry Service in the small community of Auto. To make things complicated, on the way home the truck which was transporting us had three flat tires, and we ended up having only half-an-hour to take showers, put on clean clothes, eat, and be at the meeting ready to perform the skit. Anyone could have guessed what we spent the day doing since we still smelled like pine.

Attempted to convince town officials to leave the city dump open for public use and to have the police issue strong warnings about the enforcement of litter laws.

Displayed "live litterbug" (a mirror in a box) in a local store. This was a small box with the words "see the live litterbug" printed on it. When you looked into the box, you saw your reflection in the mirror. People would look inside the box, get embarrassed, and refuse to tell the person behind him what it was; they would let the other person see for themselves.

Sponsored and participated in a Litter Parade to dramatize the need for litter prevention.

The Green Mitt Garden Club, Greenbrier Business and Professional Women's Club, the Women's Izaak Walton League, White Sulphur Springs Women's Club, all the junior high school bands in the county, Cub Scouts, Girl Scouts, and Boy Scouts, and many church organizations took part in the conservation parade.

Our club presented a float in the parade made of tin cans in the shape of a horse, entitled "Nightmare of the Highway." After the parade someone even stole our "Nightmare."

Participated in the community's annual Christmas Parade with a live float stressing the conservation theme with the slogan, "Time, Our Greatest Gift to Our Community."

Cleaned litter from the town parking lot and Memorial Park, a playground area used by the community's children. We provided a trash can in the playground for the children's litter.

Distributed litterbags, donated by the Forestry Service, to motorists driving through the community.

Prepared and presented programs on litter-prevention and pollution control at the Greenbrier County 4–H Round-Up. Our skits won first and second prizes. One of the skits was written by a young club member and presented by the younger members of the club.

The conservation chairman of the club appeared on radio station WRON and talked about the club's anti-litter beautification program and urged citizens to get involved in similar projects.

Researched litter and other pollution problems and prepared articles that were published in community newspapers.

Wrote to leading detergent companies, asking them what they were doing toward anti-pollution of water. Then we tried the various products of the companies—some low in phosphates, some with no phosphates. We found that the no-phosphate detergent did not clean as well as the products we had been using in our homes. But we did find one low-phosphate detergent, Wisk, that performed equally well. We wrote to the Lever Company for samples and informational brochures. These we distributed over White Sulphur Springs, asking the people to try Wisk and if they found it to be comparable to their present detergent, to buy and use Wisk. We are still in the process of finding out the results of these efforts.

Prepared a proclamation on Conservation Education Month urging everyone to be concerned with conservation and secured the Mayor's signature and endorsement for the project.

Toured pollution abatement facilities of WESTVACO (Bleached Board Division) plant and heard a lecture on pollution control.

Participated in the West Virginia Youth Conservation Program sponsored by the West Virginia Department of Natural Resources and the Sears Roebuck Foundation. The club's conservation projects were honored with awards presented at the West Virginia Youth Conservation program meeting. In 1969, 1st place; 1970, Governor's Cup; 1971, 4th place.

The Greenbrier Valley Conservation District sponsored an Art Poster Contest and

provided cash awards for the winners. Several of our members entered the contest.

The White Sulphur Springs Star and the West Virginia Daily News provided full coverage of our anti-litter efforts.

The goal of the White Sulphur Springs "Spirit of 76" project is to make the town as "All-American City" by 1976, and the Crackerjacks and Hustlers 4-H Clubs have committed themselves to improving the city "ecology-wise" as much as possible before the end of the program. These clubs have taken the initiative by launching and carrying through anti-litter, anti-pollution, and conservation projects. As a result, other organizations and a number of community officials have been encouraged to join in and participate in a town-wide environmental improvement program. And we hope that if you are ever in our part of the state of West Virginia that you will appreciate the beauty we have created.

A HOLIDAY MESSAGE

HON. BELLA S. ABZUG

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mrs. ABZUG. Mr. Speaker, I received a most thoughtful and moving holiday message the other day. I would like to share it with you and all of my colleagues:

This year my brother and I will observe Christmas, as we did a year ago, in prison.

Our mother, 85 years old, will observe the holiday at home, waiting, pondering, hoping. She waits not for our release alone, but for the release of all prisoners, here and everywhere. She awaits in her prayer and longing, the release of humanity from the iron conscienceless prison of war . . .

She supported us during our "crime" and our trial, she visited us in prison. When questioned on T.V. about our breaking the law, she said simply, "It was not God's law they violated." Her words had gone, we feel, to the heart of the matter, not only for us, but for all Americans, and especially for American women . . .

Certainly the trouble is not that we do not want peace. We have seen enough war, we are sick unto death of death. The war has come home like a stalking corpse, trailing its blood, its tears, its losses, its despairs—seeking like an American ghost, the soul of America.

We want peace. But the rub is that we do not want to pay the price of peace. We still dream of a peace that has no cost attached. We want peace, but we live content with poverty and injustice in our midst, with the murder of prisoners and students, the despair of the poor, to whom justice is endlessly denied. We long for peace, but we also wish to keep undisturbed an arrangement of privilege and power that ensures the economic misery of two-thirds of the world's people.

Obviously there will be no genuine peace, while such a violent scheme of things continues. America will extricate itself from the bloody landscape, the ruined villages and mutilated dead of Vietnam. But nothing will be settled there, nothing mitigated at home. Nothing changed, that is, until a change of heart leads to a change of the social structure of every area of our national life.

In this change, women will of necessity play a great part, and thus liberate themselves.

But to do this, they must see clearly the nature of their enslavement. The modern state is perpetually mobilized for war; a mobilization of conscience, appetite, cupidity and fear. Such a dragnet necessarily takes captive the 51% of Americans who are women. Women are part of the war making state . . . Women are irreplaceable cogs in the cyclic machinery of cupidity and consumerism: they produce the children who fight the hot wars and accept the cold wars, both as inevitable conditions of life. Women, too, are champions of private property, defenders of lily white schools, resisters against neighborhood integration, advocates of corrupt "nine points of the law" politics of those in possession.

Liberation from such slavery will not be an easy achievement. For some women, it will mean casting off a role of predestined poverty and exploitation. Women will refuse to be victims. For others, liberation will mean refusal to play the power game, realizing how cruelly dispassionate the will to power is, they will realize that the slavemasters inevitably becomes the victim of violence, greed and hate.

The season we celebrate speaks of the liberation of peoples. In Jewish and Christian tradition, freedom is both a gift of God and an achievement of people. It costs: blood, tears, imagination, energy—above all and including all: love, the instrument and end of all human striving.

Greetings to you and yours, from prison. Peace and liberation.

DANIEL BERRIGAN,
PHILIP BERRIGAN.

REHABILITATION WORKING AT RFK YOUTH CENTER

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mr. MOORHEAD. Mr. Speaker, how many Atticas do we need before we will admit that our prisons are not accomplishing the task of prisoner rehabilitation?

Some will say that the job of prisons is merely to incarcerate and nothing more. I do not agree.

With the high rate of recidivism, it is obvious that much of the crime in our Nation is caused by those already familiar with institution walls, be they city, State, or Federal.

For this reason, it is always heartening to see a prison rehabilitation program working.

In this instance I am referring to the record of the Robert F. Kennedy Youth Center, in Morgantown, W. Va., where some of the most innovative rehabilitation programs are functioning, and functioning well.

A recent article in the Pittsburgh Post-Gazette tells just what is taking place at the RFK Youth Center. I think all of my colleagues will be interested in this institution and its techniques:

STONE WALLS DO NOT THIS PRISON MAKE—RFK CENTER GIVES YOUNG OFFENDERS CHANCE

MORGANTOWN, W. VA.—One night this week, three young men climbed out a dormitory window, raced across a dimly lit campus and disappeared into the darkness.

Another evening at the same campus, a young man looked up from a pool game during a dormitory dance. "Man, this place is called prison," he said, "but it's the first decent chance I've had to do anything in 17 years."

He had gotten a message that the three who ran away had missed.

Most inmates at the Robert F. Kennedy Youth Center do see the light—a light that the federal government is trying to find for a troubled correctional system that has led to Atticas and San Quentins.

"What we're trying to do," says a youth center official, "is to say to troubled young men and women that we want to help, how about giving us a chance."

The chance—for 235 young offenders here—is a multi-million-dollar rehabilitation experiment which has produced convincing results in less than three years.

Without bars or high wire fences, the Kennedy Youth Center is easy to leave. And many have escaped—about 100 since the facility opened in December, 1968.

But records also show that more than 300 of the 400 who have been released from the center are still free—a success rate of about 75 per cent.

"That's not an ideal figure," says Roy Gerrard, former director of the center who is now deputy director of the U.S. Bureau of Prisons. "But it's a lot better than any other place I know of."

Inmates who escape from the Kennedy center don't get a second chance there. Records show that most of the 100 escapees were apprehended and sent elsewhere, mostly to maximum security institutions.

There are no cells at the Kennedy center. Instead, there are individual rooms in seven dormitories that dot a 250-acre campus just outside Morgantown, home of West Virginia University. Scattered on the grounds are athletic fields, a gymnasium, classroom buildings and an indoor swimming pool, part of an $11 million physical plant.

For the center's 210 males and 25 females, who range in age from 16–23, life is far different than at practically any other penal institution.

"The objective is to normalize the environment, to keep an offender in the same community environment in which he must eventually live," says Jay Flamm, center director.

All inmates are involved in some kind of educational or work program.

An important ingredient in the formula is money. Flamm says the government spends about $34 per day on each inmate, easily the highest per capita expenditure of any federal penal facility. This cost includes the $11 million price tag on the physical plant.

The average expenditure for all federal prisons is about $10.50 a day for inmate, according to federal prison officials in Washington.

At Kennedy Center, inmates receive at least six hours of instruction per day in areas lavishly equipped to teach electronics, woodworking, power technology, graphics, aeromechanics, basic and remedial education courses and data processing.

Classes are taught by 22 instructors hired as guidance counselors and then trained to teach vocationally.

The counselors attempt to work in small discussion groups outside of classes. Gerrard says they have been quite successful in avoiding the problems of race and homosexuality that plague most penal institutions. The center population is about 50 per cent black.

Most of the inmates here are persons who have stepped outside the federal law for the first time. They are referred here by the courts and by other penal institutions when officials spot a potential for rehabilitation.

"Society hasn't come up with many answers for corrections," says Gerrard. "A lot of the things we're doing at Kennedy might point the way to a better future."

A typical Friday night at the center will find a dance in one of the dormitories, where coeds and social workers from West Virginia University come for the evening.

"The mission of the center is a pioneering one," says Flamm.

"What we're finding is that you can do things differently and make a go of it."

"At the center the students know we care and will try to help them," Gerrard says. "That's what it's all about anyway."

"The answers we're finding can be applied in other places if the public is willing to pay the price."

Outside a dance one recent Friday night, an inmate who was to be released in two days said his life may have been turned around in the past nine months.

"If you could see where some of us come from," he said, "you'd know why more don't run away. This place is better than most of our homes. And some of us have found out here that this might be our last honest chance to turn our life around."

NEWSPAPERS TELL CITIZENS HOW TO WORK FOR A BETTER ENVIRONMENT

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Tuesday, November 23, 1971

Mr. RANDOLPH. Mr. President, Americans are concerned with the threat that pollution poses to life. We know that unless we discontinue our wasteful, damaging ways, much of the world will not be a fit environment in which to live.

Desire to improve the situation, however, is not always enough. We need to know how our concern can be transformed into action.

I am pleased by the attention being given to this matter by newspapers in West Virginia and throughout the Nation. Many of them are taking the lead to inform readers just what they can do for a cleaner, better environment.

The Inter-Mountain, published in my hometown of Elkins, recently published a concise checklist of ways in which individual citizens can help improve the environment in their communities. It contains valuable advice for all Americans.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BATTLE WITH POLLUTION BEGINS AT HOME

Homeowners can familiarize themselves with pollution-stopping actions. Here are some suggestions:

1. Acquaint yourself with anti-pollution ordinances and make sure you abide by them. When you see a flagrant violation, report it to the proper authorities.

2. Don't burn leaves or trash. Better to start a compost heap and return the nutrients to the soil. Remove weeds in the lawn by hand rather than applying a herbicide.

3. Use insecticides sparingly, and only when absolutely necessary, to kill flies, mosquitos and midges. If you must use them, follow directions carefully.

4. Plant trees and shrubs. They absorb carbon dioxide, produce oxygen, help purify the air and prevent soil erosion.

5. Use a hand mower if your lawn is small. Keep gasoline-powered tools in top operating condition so noise and exhaust fumes will be minimized.

6. Be careful with matches around wooded or grassy areas. Forest and grass fires cause air and water pollution.

7. When on a picnic, be sure to properly dispose of all paper dishes, cups and other refuse. Pick up any discards left by others. Littering of picnic grounds spoils them for everyone.

8. When building a house, be sure it is well insulated and tree-shaded. This will minimize fuel consumption in winter and air-conditioning loads in summer.

9. In winter, turn your thermostat down a few degrees. Have your home heating system checked annually, or any time it appears to be operating inefficiently.

10. If you live in the city, don't litter the sidewalks. Use litter baskets—and curb your dog!

11. Observe parking regulations so that the sanitation department can collect garbage and clean the street without obstruction.

12. Encourage and support your sanitation department when it seeks more modern and efficient collection and disposal equipment.

13. If you live in a building with an incinerator, follow instruction carefully so you don't litter incinerator rooms. If you put your garbage out on the street for collection, make sure you use a spill-proof container.

14. Start a campaign to save newspapers, cans and bottles for collection and recycling where facilities are available.

15. Never flush away what you can put in your garbage pail. Organic materials like cooking fat clog plumbing and septic tanks, causing sewage overflow.

16. Measure detergents carefully, using only enough to get your clothes clean. Try to run your dishwasher only once a day or less, depending upon the size of your family.

17. Don't use heavy electrical appliances, such as washers and driers, during those hours, usually 5 to 7 p.m., when the electrical load is at its peak. The strain at the local generating station may contribute to air pollution. Install low wattage bulbs in lamps not used for reading. Turn out lights not being used to conserve power.

18. Don't drive a car when you don't have to. Walk, bicycle, or use mass tranportation, if possible. When you do drive, avoid quick starts and stops. Don't leave the engine running while parked. Car exhaust is a pollutant.

19. Make sure your car is equipped with required antipollution devices and have them checked regularly. If you buy a new car, read the instructions in your owner's manual regarding maintenance and up-keep of these devices. Match horsepower ratings to your needs. Don't buy a high horsepower car if you don't need it.

20. Burn a fuel rated most efficient for your engine, in terms of the reduction of emissions.

21. Get an engine tune-up every 10,000 miles or at least once a year. Be sure to change oil and air filters regularly.

22. Carry a litterbag in your car—and in you boat too. Bring the bag back with you and dispose of it properly at the end of your trip.

23. Help reduce noise pollution. Don't use your horn unless safety dictates. Keep your muffler and tail pipe repaired.

THE LATE HONORABLE J. HOWARD EDMONDSON

HON. JOHN J. ROONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 17, 1971

Mr. ROONEY of New York. Mr. Speaker, the untimely passing of the Honorable J. Howard Edmondson, former Governor and Senator from the State of Oklahoma, was indeed a shock. Howard Edmondson was in the prime of life yet he had already achieved more than most men could ever aspire to in their entire careers. In 1953, he served as a chief prosecutor in the county attorney's office in Tulsa and the following year was elected county attorney and reelected to that post 2 years later. In 1958, he was elected Governor of the State of Oklahoma and in the capacity introduced many innovative reforms. In 1963, he came to the U.S. Senate to fill the unexpired term of the late Senator Robert S. Kerr. At the time of his unexpected death he was managing the Senate campaign of our distinguished colleague ED EDMONDSON, his brother. To his wife and children and to his brother I extend the Rooneys' deepest sympathy on their terrible loss.

KENTUCKIAN REELECTED PRESIDENT OF KEEP AMERICA BEAUTIFUL—SENATOR RANDOLPH RECEIVES AWARD

HON. JOHN SHERMAN COOPER

OF KENTUCKY

IN THE SENATE OF THE UNITED STATES

Tuesday, November 23, 1971

Mr. COOPER. Mr. President, representatives of citizen organizations, dedicated to a clean and attractive America gathered in Washington on November 11 and 12 for the 18th annual meeting to Keep America Beautiful.

This organization and its State and local affiliates work at the grassroots level in the crusade for a better environment. Such groups are essential to any effort to improve our world.

Mr. President, for the past year, Keep America Beautiful has operated under the active leadership of its president, James C. Bowling, a native of Paducah, Ky. I am proud that a former citizen of my State is so deeply involved in this important work. During the 2-day meeting, members of Keep America Beautiful demonstrated their appreciation for Mr. Bowlings work by reelecting him to a second term as president. I know that their confidence is well-placed.

This annual meeting, attended by more than 600 persons, was addressed by my friend and colleague, Senator JENNINGS RANDOLPH, of West Virginia, the chairman of the Senate Committee on Public Works.

Keep America Beautiful also presented a special award to Senator RANDOLPH with the following citation:

Presented to the Honorable Jennings Randolph, senior senator from West Virginia for distinguished leadership and personal dedication to improving the environment for the citizens of his state and country.

Mr. President, I am pleased to add my commendation to Mr. Bowling and Senator RANDOLPH for their outstanding leadership for a better America. I have had the opportunity to know, as a fellow member of the Committee on Public Works, of the long record of initiatives and leadership to protect the environment.

CITIES SERVICE OIL SETS THE PACE IN WILDLIFE AND MARINE LIFE CONSERVATION

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mr. COLLINS of Texas. Mr. Speaker, America is proud of the innovations in wildlife and marine life conservation made by Cities Service Oil. Cities Service has received a first place award in petroleum engineer's environmental control development program for its fee land operations which have developed more than 30,000 acres of lands and waters for recreational benefits and improved air environment.

The awards program will be a continuing part of Petroleum Engineer Publishing Co.'s editorial program in Petroleum Engineer, Pipeline & Gas Journal and Hydrocarbon News, and is designed to disseminate to the public and throughout the industry the positive story of the petroleum industry's developments in pollution prevention. We salute Cities Service for their achievement in environmental control which was recognized in the award statement:

CITIES SERVICE OIL SETS THE PACE IN WILDLIFE AND MARINE LIFE CONSERVATION

Through Cities Service Oil Co.'s land management program, the company is following its corporate philosophy of being a good neighbor wherever it operates and a good steward and conservator of its landholdings and natural resources.

Cities Service cites its fee land operations and development in Ouachita, Moorehouse and Union parishes in North Louisiana.

More than 30,000 acres of fee lands and water have been developed to improve value of the land, provide recreational benefits, and improve the air environment—all within the business concept.

Some 1400 acres covered by water and known as Black Bayou Lake is a satisfying and productive fishing spot. As a good neighbor, Cities Service keeps the latch string to the lake on the outside, permitting anyone to fish and hunt duck without charge.

Following guidelines of the Louisiana Wildlife and Fisheries Commission, a 240-acre pond for the raising of crawfish was developed on a small area near a bayou which was unsuitable for conventional farming. Thus, the oil company is producing high protein fish food in a highly engineered pond that surfaces over a gas field and tieing the two operations together as natural resource-related. In doing so, Cities Service is supplying an increasing demand from Louisianians for crawfish, the poor man's delight and the gourmet's delicacy.

More than 13,000 acres have been dedicated to the Louisiana Wildlife and Fisheries Commission's wildlife management area. While the company will continue to cut timber from this area, the land becomes part of a large reserve managed by the state commission and available to the public for hunting.

Cities Service has more than 22,000 acres in timber within the 3-parish area. First planting of pine was in 1955, first "thinning" in 1970. Typical of the company's pine planting program: in one year, pine seeds were broadcast from a helicopter on 1250 acres. In addition, 400,000 pine seedlings were planted on another tract.

Cities Service recognizes that trees are essential to a healthful environment, and, figured on the accepted formula, reports its timber holdings are creating enough oxygen to supply the annual needs of almost 400,000 people.

More than 2400 acres are dedicated to farming on a tenant basis. Pecan farming is another innovation on the fee lands. Some 400 acres already are planted in pecan trees and an additional 600 trees will be planted annually for the next few years.

In its land management program. Cities Service feels it is attaining stature as a good steward of its fee lands—developing the natural resources to their utmost, replenishing renewable natural resources, maintaining and improving the environment and extending land usage for recreational purposes.

SISTER CITIES PROGRAM

HON. J. CALEB BOGGS

OF DELAWARE

IN THE SENATE OF THE UNITED STATES

Tuesday, November 23, 1971

Mr. BOGGS. Mr. President, I wish to pay tribute to an organization which is doing the shirt-sleeves work of creating international understanding and good will. I speak of the Town Affiliation Association of the United States.

President Eisenhower provided the inspiration for the Town Affiliation Association when he announced a broad people-to-people program in 1956. Since then, with the cooperation of the National League of Cities and the U.S. Information Agency, TAA has promoted "sister-city" programs between 370 American cities and towns and 445 cities and towns in 60 foreign countries.

Once the groundwork for a sister-city affiliation has been laid by a local affiliation committee, usually with the mayor as honorary chairman, the stage is set for a long and varied friendship between the cities. Since sister-cities are chosen on the basis of mutual interests, projects involving visitor exchanges, letter writing, school affiliations, and business and cultural exchanges develop naturally.

We in Delaware are particularly proud of the fact that TAA has flourished in recent years under the presidency of a dynamic and distinguished business leader from Dover, Del., Mr. Frederick W. Brittan. Mr. Brittan has accomplished what everyone said should be done but no one knew quite how to do. He has brought people to people across thousands of miles in a way that is personally meaningful to them.

Thanks to Mr. Brittan's tireless efforts, Delaware has an active sister-city program. It has enriched the lives of Delawareans with numerous cultural, social, educational, and commercial exchanges. Wilmington has for many years enjoyed a sister-city affiliation with Kalmar, Sweden. Likewise, Newark, Del., is affiliated with La Garde Freinet, France, and Dover is affiliated with two foreign cities—Lamia, Greece, and Tunja, Colombia.

Mr. President, I merely wish to draw the attention of Senators to this outstanding program which is deserving of our support and our appreciation.

Recently, Dr. George G. Wynne, Information Officer at the U.S. Mission to International Organizations in Geneva, who has long been associated with the sister-city program, wrote an excellent report on the Town Affiliation Association, highlighting the association's history, its achievements, and its current worldwide activities. It is a fine article. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TOWN AFFILIATION: THE U.S. EXPERIENCE

(By Dr. George G. Wynne)

The age of mass communications has increased the possibilities of direct contact between peoples across national frontiers. A gradual rise in living standards in many parts of the world, coupled with the progressive easing of travel and currency restrictions in the twenty-two years that have passed since World War II have brought international travel within the reach of ever greater numbers of people. With particular reference to the United States, this means that during 1969 more foreign nationals (excluding Mexico, 1 million, and Canada, 9 million)—an estimated 2 million—visited the U.S. than at any time in history.

To the extent that travel and personal contact between people of different nationalities strike at the roots of fear and hostility in the relations of governments, they help bring about that wide base of international understanding to which governments, fashioned of people and limited in varying degrees by their support, need be responsive. The proposition is basic and simple: what we don't know, we begin to fear and what we fear we begin to hate. As soon as the unknown quantity resolves itself into people with the same cravings and aspirations as our own, we begin to understand each other and to tolerate what may be differences in customs and behavior. Mutual suspicions are replaced by that other widespread trait of our gregarious human family—a natural curiosity about the other fellow and what makes him tick. From this realization of common humanity flows mutual friendship, respect and compassion

With the advent of community affiliations (Sister Cities) and other organized personal contacts on a local level in the interest of international understanding, but outside the direction and control of central government, a powerful new force has entered the international arena: that of people dealing with people, directly or through the private and professional groups that claim their interest. In the future this concept may not only prove an important adjunct to conventional moves by enlightened governments in the promotion of world peace and understanding, it might actually stake out the limits of popular support for government actions detrimental to international unity.

What then is the American experience and the challenge for the future held by people to people diplomacy? This paper will confine itself to the town affiliation or sister city movement which currently links more than 350 American communities ranging in size from New York City to Oakland, Nebraska (pop. 1,400) in mutually stimulating programs of information and cultural exchange that help widen the horizon of participating communities.

THE TOWN AFFILIATION ASSOCIATION

In September, 1956, former President Eisenhower announced the People-to-People program, holding the basic concept that the citizens of this country, representing the great strength of the United States, could and should make contributions to improve the image and understanding of our country abroad. This very sound concept was to involve people at all levels of our society in "personal diplomacy." Many ideas and committee endeavors were suggested and tried as elements of the program.

Of the original committees established in 1956, the principal purpose of the Civic Committee of People-to-People was to establish town affiliation relationships. Thirteen years have passed since the program was announced, and many of the other original committees no longer exist. However, the Town Affiliation (sister city) program has proved to be one of the most viable, far-reaching and effective in its impact.

In 1957, the U.S. Information Agency asked the National League of Cities, because of its broad-based municipal membership throughout the United States, to serve as a clearinghouse and in an administrative capacity to help expand the program. Today, more than 350 American cities have established affiliations with more than 450 cities in 60 other nations of the free world. These cities are actively engaged in meaningful international relations on behalf of the 1 out of every 4 Americans represented by the combined population of more than 45 million persons in these United States cities.

In the early years of the program, no more than a dozen active affiliations existed. As the number increased, the necessity developed for some type of clearinghouse through which interested cities could obtain pertinent informatiton as to affiliation procedures, leads to foreign cities available for affiliation, receive information regarding successsful and unsuccessful programs and how to do it materials. During that same period, the USIA had established the Office of Private Cooperation, serving in an advisoy and liaison capacity, to assist those cities wishing to obtain expert knowledge or desirable project ideas and to service embassy requests from abroad.

This combination proved to be most effective in the early years of the program; there were not too many cities then affiliated, and communication with them was relatively easy. However, as more cities heard about the program, more joined and requests doubled and tripled. The oroginal informal working relationship began to prove confusing, and efforts were initiated to give a more formal structure and policy to the entire national movement.

In 1965, the first efforts were made along these lines at a Western Regional Sister City Conference, held in Portland, Oregon, at which the delegates unanimously recommended the establishment of a national association. Following this action, the League of California Cities and the League of Oregon Cities adopted resolutions supporting the idea during their annual meetings. The Executive Committee of the National League of Cities took identical action at its meeting late in 1965. An interim Board of Directors was named, so that Article of Incorporation and By-Laws could be drafted and other procedures established to accomplish this organization. At the 10th Anniversary Conference of the Town Affiliation Program held in Washington in September, 1966, delegates unanimously supported this idea, and the incorporation was completed. Additional meetings were held to formalize the structure of the organization, a fund raising drive was launched, and the association finally became a reality on June 12, 1967, in the District of Columbia.

The National League of Cities and many State Leagues of Cities wholeheartedly support the Town Affiliation Association. However, town affiliations are basically citizen-oriented.

They should be citizen-directed and involve widespread citizen participation. It is the consensus of the leadership of the NLC that its role, and that of any organization of city officials, should be one of participation and support, rather than one of policy-making and administration. Therefore, at the will and direction of the cities currently involved, the Town Affiliation Association of the United States, Inc. was founded in 1967.

A RECORD OF ACHIEVEMENT

The joining of forces in the U.S. over the past three years of national and civic organizations for a nation-wide promotion of community affiliations has pushed the number of active information and cultural exchange programs in effect between American and foreign cities to a historic high at the time of this writing. These have been recognized as a promising new technique in intercultural relations at the local level designed to bring the talents and resources of private citizens to bear on the problem of eliminating sources of intolerance, prejudice and suspicion among nations.

Even though negotiations aimed at establishing specific affiliations normally take six months or more, involving as they sometimes do local legislative action in both communities, the organization of committees and action programs, international correspondence and the scaling of language barriers, new affiliations are now coming into being at the rate of one every six days.

Efforts are now under way to strengthen the content and impact of existing programs through an exchange of views, program ideas and case studies of successful projects in a monthly newsletter designed to serve as a vehicle for the exchange of information between participating American communities.

The significance of this combined effort in the initiation of international relations at the city level has been recognized in feature articles appearing in such nationally noted magazines as The Reader's Digest and Look Magazine. Leaders of American thought and action, including Presidents Eisenhower, Kennedy, Johnson, and Nixon, legislators, judges, scientists and educators, have hailed the achievements of the program in establishing enduring friendships between America and their neighbors on this shrinking planet. Introduced on a number of occasions on the floor of Congress and reported in the Congressional Record, these remarks have added their weight to the scores of positive evaluations by the nation's leaders on both sides.

As the type of activities undertaken by American Cities in their exchanges with foreign affiliates generally fall into the same categories, no attempt will be made to single out or evaluate the projects of specific cities. The scope of this paper does not permit such project summaries. The highlights presented below are grouped rather according to functional areas in which sister city programs have already advanced the cause of international friendship and cooperation while giving evidence to progressively increasing the scope and depth of their contribution.

RAPPROCHEMENT BETWEEN VITAL WORLD AREAS

Eighty Japanese communities with a combined population in excess of 30 million are now linked with an equal number of American cities in a massive rebirth of sympathy between the citizens of two nations locked in mortal struggle within the memory of the present generation. The movement has spread so rapidly in Japan that city governments have made it a point of municipal policy to be the first in their area to obtain an American affiliation. Unlike the programs of American communities which are financed almost entirely by private and voluntary contributions, Japanese municipalities often underwrite the affiliation activities out of city funds as a project in the public interest.

Besides an impressive exchange of delegates and visits considering the distances involved, the program here has been characterized by the trading of permanent and dramatic tokens of goodwill between communities. These have ranged from a full-size replica of San Diego's 20-ton Guardian of the Waters statue now facing eastward across the Pacific from a waterfront shrine in Yokohama, to cast bronze temple bells and entire pagodas shipped by Japanese communities to U.S. sister cities as a symbol of their lasting friendship and goodwill. In the course of these exchanges even a San Francisco cable car, an object of local lore, representative of a vanishing era, has found its way to enshrinement in the public park of Osaka—San Francisco's sister city. Thousands of young people in both countries are corresponding with each other, school systems are cooperating in exchanges of information and exhibits and many more local officials, opinion makers, students and businessmen on both sides of the Pacific are getting to know each other in that climate of goodwill, mutual trust and local loyalties established by the sister city program, than would otherwise have been possible.

The same holds true of affiliations with German speaking communities, some of which like that of Worthington, Minnesota and Crailsheim, Germany date back to the early postwar period and have been productive ever since to student and teacher exchanges. Several affiliations have even resulted in marriages. A case in point is provided by the Hagerstown, Maryland-Wesel, Germany affiliation where former Mayor Winslow Burhans' daughter married the son of a Wesel municipal judge.

Though this paper has confined itself to the American experience, we understand that the hundreds of Franco-German twinnings of cities have contributed dramatically because of their geographical closeness and the ease of travel to a physical rapprochement between the two countries.

The day may come when such exchanges will also contribute to the lessening of East-West tensions, but such a development presupposes a workable method to limit and hold to parity the role of government in community programs.

LEARNING FROM EACH OTHER

The existence of sister city links has resulted in thousands of privately financed student and teacher exchanges instrumental in building a lasting appreciation of the overseas neighbor's society and culture among today's opinion makers and tomorrow's leaders. In obtaining personal knowledge of each other's ways, problems and aspirations, exchange visitors have time and again gained a priceless awareness that the standards of their own society are relative rather than absolute and that the essential unity of the human family is of greater significance than its manifold divisions.

Exchanges of delegations and organized group visits of local citizens in the course of their vacations, or specifically for study purposes have also contributed to this objective. These private exchanges of persons, hurdling political and language barriers, would not have come about without the sister city program. This applies in like measure to the exchanges of information in the form of exhibits, correspondence, newspaper articles, films and tape recordings, besides the more obvious exchanges of book and magazine collections which are daily bringing American cities and their foreign affiliates closer together in an appreciation of each other's culture and viewpoints.

Ingenious methods have been adopted by the program committees of sister cities in mobilizing the financial and human resources of the community in support of their worthwhile endeavors. Fund-raising devices to finance scholarships, teacher exchanges, library presentations and other program work have included trade fairs (Riverside, Cal.), fashion shows (Denver, Colo.), dances (Forest Heights, Md.), the general solicitation of contributions by local industry and the registering of sister city programs as nonprofit corporations qualifying for tax-exempt membership dues and contributions (York, Penn.; Montclair, N.J.; San Diego, Cal., etc.).

The importance of foreign language study brought home to affiliated communities in

the course of their association has resulted in accelerated language teaching efforts at the local level with built-in incentives for proficiency in place of earlier indifference. Sister Cities have in some instances been successful in obtaining the services of exchange teachers invited to the United States under government grants and local school systems in affiliated cities are making a greater effort to participate in government sponsored teacher exchanges with particular reference to the city of their choice.

In what is reportedly to be one of the most massive U.S. efforts of its kind, the public schools of York, Pennsylvania affiliated with Arles in southern France—are providing regular instruction in French to thousands of primary and high school students. The program uses the services of exchange teachers provided by Arles and has been in force for a number of years. Other affiliated cities are likely to follow suit with the growing interest in foreign travel, language and culture now spreading throughout the country. Local radio stations and the National Association of Educational Broadcasters are cooperating in this effort by organizing instruction programs in major world languages. Adult education programs have followed suit by offering evening classes of instruction in the languages of affiliated cities. A recent example is Downey, California where some 70 leading citizens joined an intensive Spanish language course in preparation for a group visit to Guadalajara, Mexico, their new sister city to the south.

MUNICIPAL COOPERATION

Communities linked in town affiliation programs are exchanging technical information on municipal problems such as waste disposal, traffic control, fire fighting, zoning regulations and the like. They have even started to help each other by exchanging the services of experts on requests to deal with specialized local problems. A New York traffic engineer has gone to Tokyo and port officials in Seattle and Kobe have swapped places to study their problems from a new perspective. Taking a busman's holiday and sampling life abroad in the process, the Jakobstad, Finland fire chief fought fires with the Jamestown, New York fire department and vice versa.

There are other examples of this kind, but technical cooperation at the municipal level is just beginning and it provides a challenge for international action through such organizations as the United Nations, since the costs and specialized skills involved generally exceed the resources available to single communities. Participating cities and the U.N. technical cooperation program could well afford to take a closer look at how their skills and resources could best be combined to bring the know-how of advanced municipalities to bear on the problems of urban centers now emerging from centuries of social neglect.

Also contributing to the impact of sister city programs have been technical exchanges sponsored by private industry, such as skilled craftsmen from Arles working in the Home Furniture Company of York, Pennsylvania, or a builder from Wesel employed for a year by a Hagerstown, Maryland firm. Opportunities provided by the regular exchange programs of government and private organizations have sometimes been utilized by enterprising city affiliators in providing transportation for such specialists as newspaper and radio reporters. A newsman from Rennes, France, for instance, served on the staff of the Rochester, New York Daily and a Sendai, Japan reporter has worked with the Riverside, California press.

A FRIEND IN NEED . . .

Sister cities have rallied to aid each other when stricken by disaster or faced by critical needs and sudden emergencies. Wesel, Germany residents rallied to aid Hagerstown, Maryland, faced by severe unemployment in the winter of 1961. When severe earthquakes ravaged Chile one summer, the community of Sausalito, California, affiliated with Vina del Mar, raised several thousand dollars for relief operations. Iron lungs have been flown to Japan to combat a polio epidemic, and a twin-engined plane was presented to Goiania, Brazil by Orlando, Florida to service the educational needs of Indian tribes in scattered jungle locations.

Los Angeles sent crates of medical supplies to typhoon-damaged Nagoya, Japan. Places for medical interns from Graz, Austria, where medical facilities were overcrowded in the postwar years, have been provided annually by Monclair, New Jersey; a children's health clinic established in Brest, France by Denver, Colorado, and a ward financed in the Mercara, India community hospital by Darien, Connecticut, to mention but a few examples of Sister City assistance.

MAKING BETTER CITIZENS

In helping their country by making and keeping friends abroad, Americans engaged in the program are not only gaining a sympathetic awareness of the problems of the other fellow, from the frank discussions and exchanges of views that typify the best affiliations, they are learning to see themselves as others see them. The work of the town affiliation committee, focusing the efforts of local groups and of citizens in all walks of life into a positive community objective, moreover provides a constructive experience of working together with one's neighbor for a common goal representative of man's noblest aspirations.

Their association in this relatively selfless endeavor tends to generate among participants a climate of mutual respect and appreciation. Former San Jose Mayor Robert Doerr noted in a representative evaluation of sister city committee work at the 1959 Civic Committee Conference that, "a great many things have happened in San Jose as a result of the affiliation which have contributed to what we might call an era of good feeling. Local citizens working together for the first time on a program for the good of the community and the nation found they could cooperate. When called together for other civic projects, they knew each other personally and were off to a good start." The mechanism established by city affiliators in initiating and coordinating projects involving all community service organizations, the schools, churches, city officials, newspaper, and radio station, thus provides a vehicle for obtaining community action on local issues in the public interest.

A well-rounded sister city committee is a truly representative group that often provides a more accurate cross-section of community interest, occupations and concerns than the men officially charged with the city's affairs. As such, it can help channel community feelings into constructive endeavors and respond quickly to local, national and international challenges.

With the depth and the impact of sister city programs constantly on the increase, this widening experience in local action for international goals cannot help but produce more internationally conscious and thoughtful citizens across the length and breadth of America. This may well be on an age of national inter-dependence.

SOME CAUTIONS

While this power has so far confined itself to the positive aspects of town affiliations a number of definite cautions need to be observed by the committees operating the program to insure that it takes advantage of the opportunity to improve international relations. If these common sense cautions are consistently ignored, an affiliation can lead to more harm than good in the sum total of frayed tempers, irritations and mutual recriminations it will generate.

The author believes that the national organizations promoting the program as a pathway to peace and international cooperation are aware of the dangers inherent in projects not carefully planned and thought through. As will be shown in the succeeding section, their assistance to local committees is of a type specifically designed to avoid these pitfalls.

THE SUPERFICIAL APPROACH

If groups in a community embark on an international program without concern for a lasting and serious relationship, paying attention only to the local and transitory rewards of publicity, their foreign counterparts will soon come away disenchanted from a relationship that provides only the means to an essentially selfish end. A lasting affiliation cannot be built on a lavish one-time spectacle, nor on a drawn-out but empty ritual of contact which fails to deal in meaningful terms with mutual problems and curiosities substituting mere form and motion for the content of human relations.

Conversely, sincere but overly-enthusiastic approaches by American community groups steeped in the pragmatic tradition that in an age of salesmanship tends to get deafened by the sound of its own voice, may frighten and put on their guard overseas communities used to more formal and low-keyed approaches.

UNREQUITED AFFECTION

If repeated demonstrations of goodwill and suggestions of affiliation encounter only silence, if so to speak, the hand proffered in friendship is ignored by the prospective partner, people soon turn away with irritation and injured pride from their unsuccessful international experiment. They may become more parochial and less tolerant in their outlook than they were before. Equally as bad is the acquiescence of an uninterested city, too polite to refuse the insistent advances of a foreign community, but unwilling to live up to the foreign relations responsibilities it has acquired by following the line of least resistance. More perishable than most commodities, the tender shoots of municipal friendship need friendly care and protection during the planting period to insure they will thrive in the soil that receives them.

POLITICAL EXPLOITATION

Like the Olympic Games, city affiliations are intended to match the talents of skilled amateurs, in this case amateurs in the field of international relations. Participants in sister city activities work at the enjoyment of friendship across national frontiers as an avocation, a rewarding hobby in addition to their full-time pursuits. If governments, which are supposed to stay out of these private associations, infiltrate and exploit them for their own political objectives by dispatching trained "professionals" in the guise of "amateurs," the contest is likely to turn into an unequal propaganda exercise. Privately financed community efforts are no match for a government project able to absorb the travel costs of centrally available revenues.

MEETING THE PROBLEM

By intensive servicing of present and prospective town affiliations with information, advice and study guides, the organizations active in coordinating the program on a national level are seeking to avoid superficial or thoughtless approaches to experiments in international communication on the part of local communities. The Town Affiliation Association provides information on foreign countries, on customary procedures employed in establishing affiliations and on the tried and tested projects of other American communities. Affiliation committees are referred to program aids such as pertinent books or services available from private or public organizations and the experiences of other American cities in exchange programs with the country of their choice. There is much room for improvement in this field.

At present, only a handful of people are working nationally on this vital problem of servicing an information exchange, while

the number of affiliations keeps increasing at an accelerating pace. The danger of affiliations going sour because they lack sustained initiative, guidance and information calls for a considerably greater servicing effort than is now being expended. The disproportionately positive influence on foreign relations wielded by the sister city program in terms of national cost and effort more than merits such an increase in the scope and depth of professional servicing.

THE INTERMEDIARY

To avoid embarrassing rebuffs and the need for future disentanglements of one-sided affiliations that have become a liability rather than an asset to the international standing of a community, the Town Affiliation Association took its role as an intermediary between U.S. and foreign communities very seriously. In cooperation with foreign municipal and other organizations and with resident Americans abroad, the initial reaction of foreign city governments and local organizations to a proposed affiliation is carefully searched out.

If the answer is "no," be it because of other commitments, the pressure of more urgent projects, or just plain lack of interest, the middleman technique employed by TAA avoids hurt feelings at this point and the city looks elsewhere for a partner. Acting as a buffer between communities before they establish contact, the TAA approach on behalf of a member city permits an unwilling prospect to bow out more gracefully than would be possible after direct contact is established between the cities. The impersonal role of TAA as a broker allowed cities to react realistically rather than politely and avoids problems later.

KEEPING PROGRAMS OUT OF GOVERNMENTAL CONTROL

In order to maintain town affiliations on a non-political level, outside of domination by power structures opposed to free information exchange and the principles of representative government embodied in the municipal structure of U.S. communities, the Town Affiliation Association and other cooperating members in the western hemisphere decided to work only with the professional and non-political organizations affiliated with the International Union of Local Authorities in the pursuit of sister city programs.

American communities favor exchanges of persons and information with all countries but prefer, according to TAA, that these be carried on informally in cases where there is danger that an official city affiliation could be exploited for its own purposes by a hostile central government acting through local administrators.

A SISTER CITY PLAN

An outline of the process by which an American community establishes and operates a sister city program normally includes these steps:

An individual or a group becoming aware of the purposeful nature of town affiliations seeks to obtain community support through the Mayor's office by means of a steering committee including to the extent possible a cross-section of community leaders and organizations.

The committee reviews the human and physical resources of the community from the standpoint of starting and carrying through a successful affiliation program. The mayor usually serves as honorary chairman of this committee, which decides on the country and, in some cases, even the city or cities desired as prospective partner(s). Historical ties, ethnic composition of the community, factors of size and economy, cultural interests should have some bearing on the choice.

The committee will consult the list of foreign cities already affiliated with American communities to avoid duplicate efforts and secure information on existing programs and techniques from the Town Affiliation Association of the United States.

When the choice is narrowed down to a country or a particular city, the committee transmits its wishes to the Director of Town Affiliations at the Town Affiliation Association, together with background information, pamphlets, photos and other available graphic and visual material on the community to help TAA and its foreign affiliates in effecting a proper "introduction" to the prospective partner overseas.

The Town Affiliation Association working with local resident Americans or government officials overseas assures itself of reciprocal interest by local authorities in the proposed foreign city. When that interest is established, direct contact ensues between the two cities who will have established counterpart committees to carry on exchange projects.

The first such project is the official act of affiliation, in the form of a resolution passed by the city council, which is exchanged with the municipal government of the sister city at ceremonies in both cities by representatives of the foreign city or its national government.

While these first contacts between sister cities are made at the municipal level, the next contacts take place on a continuing basis between organized counterpart groups in each community—the schools, service clubs, Chambers of Commerce, labor unions, professional associations, women's clubs, veterans, youth and hobby groups. From these official and organizational relations comes the people to people contacts that alone assure the success and continuity of a sister city program.

The scope and nature of the privately-sponsored exchanges of ideas, persons and objects, which form the core of a continuing town affiliation, is limited only by the imagination and resources of participating communities. Information on the types of successful projects undertaken by U.S. communities is available without charge from the Town Affiliation Association of the United States, 1612 K Street, N.W., Washington, D.C.

A survey by the Town Affiliation Association of existing town affiliation conducted by questionnaire has clearly established that the most active sister city programs are those supported to the greatest extent by the mass media of the community. To insure that the program filters down to the third and most important level of sustained people-to-people contact, it is essential that exchange projects, fund-raising drives and local events connected with the sister city receive frequent and extensive coverage by the newspaper, radio/TV stations and the public service advertising of the commercial community.

The elements of continuing personal contact and wide community participation constitute in the American experience the only basis of a town affiliation that lives up to its promise of passing on to the next generation a heritage of improved relations on a very small planet.

MAN'S INHUMANITY TO MAN—HOW LONG?

HON. WILLIAM J. SCHERLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mr. SCHERLE. Mr. Speaker, a child asks: "Where is daddy?" A mother asks: "How is my son?" A wife asks: "Is my husband alive or dead?"

Communist North Vietnam is sadistically practicing spiritual and mental genocide on over 1,600 American prisoners of war and their families.

How Long?

LET'S BUILD A SPACE SHUTTLE

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 19, 1971

Mr. TEAGUE of Texas. Mr. Speaker, Industrial Research, one of the leading technical-managerial journals of today regularly conducts polls among its readers on significant national issues. The development of a low cost space transportation system, I am convinced, is not only essential for a strong national space program but also for our national security and the long-range economic well-being of our Nation. The November 1971 issue of Industrial Research asked its readers a number of significant questions about our national space program and particularly the development of a low cost transportation system—the space shuttle. The results of that poll overwhelmingly support the need for a space shuttle program. I am including this poll in the CONGRESSIONAL RECORD because of its significance in the decisions that will have to be made by the Congress in the near future.

The poll follows:

OPINION POLL RESULTS—LET'S BUILD A SPACE SHUTTLE

A significant majority, more than 83%, of respondents to the August "Opinion Poll" questionnaire favor a continued emphasis on space exploration via the space shuttle.

Forty-one percent of the survey respondents thought the space shuttle program will provide the most economical approach to future space exploits now that the Apollo flights are nearing completion. Only a few respondents felt that employment, national security, and our position in space were important factors in considering the shuttle project.

Little concern was evidenced, only 17%, that the space shuttle program would siphon money away from purely scientific space projects.

Tabular results of the August poll are presented below:

Q. 1: Do you favor the proposed space shuttle project?

	Percent
Yes	83
No	17

Q. 2. Which one of the following arguments cited by shuttle supporters do you think is most significant?

	Percent
It is the most economical approach to future exploits	41
It will aid employment and national security	8
Without it the U.S. will become a second-rate power in space	6
It is critical to the survival of NASA	4
All of the above	35
None of the above	6

Q. 3. Which of the following arguments cited by shuttle opponents do you think is most significant?

	Percent
It will take funds away from needed social problems	42
The economies proposed are unlikely	8
There is little application for such a vehicle	5
Now that we've reached the moon, there is no need for further space involvement	2
All of the above	6
None of the above	37

Q. 4. Some scientists oppose the shuttle program because they fear it will take dollars away from purely scientific space projects. Do you agree?

	Percent
Yes	17
No	83

Q. 5. If the shuttle program is defeated, NASA will have no major projects following the Apollo flights. In your opinion, what should be the future of NASA?

	Percent
Continue to seek other major space projects	56
Exist as smaller organization for limited space work	21
Conversion to work on other national priorities	19
Disbandment after completion of current programs	4

Q. 6. Why is the space program—the glorious offspring of the 1960s—now fighting for its life in the 1970s?

	Percent
Public now is more concerned with social problems	25
Involvement in Vietnam has drained funds and interest	11
A growing dissatisfaction with science and technology	16
Goal of being first on moon was accomplished	6
All of the above	38
None of the above	4

SENATE—*Wednesday, November 24, 1971*

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. ELLENDER).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal God, ruler of men and nations, at this festival of thanksgiving our hearts are warmed and our minds uplifted as we think of Thy goodness and mercy to our Nation and to each of us.

We thank Thee for home and family; for children, for their brave play and startling frankness; for youth, and their high idealism, their irreverence for worn-out values; their search for freedom and their solemn vows.

We thank Thee for growing up and growing old, for wisdom deepened by experience.

We thank Thee especially for this good land which Thou hast given us for our heritage; for freedom under Thy rulership; for institutions created and illumined by Thy Spirit; for Thy guiding hand on our pilgrimage through the years that are past; and for a place of honor and service among the nations.

We thank Thee for the bright hope of a world of justice and righteousness and for every advance which brings nearer the day of Thy kingdom.

We thank Thee for all that has been done to eliminate poverty and disease and to provide a better life for all the people.

We thank Thee especially for reduced combat, for diminishing bloodshed on faraway battlefields and for the hope of peace with justice and security.

We thank Thee for leaders who put their trust in Thee and for all workers whose motive is service to all mankind.

Come upon us afresh to make us new with Thy divine spirit that we may "be strong in the Lord and in the power of His might."

Send us to our homes and our churches with thanksgiving in our hearts and praise to Thee on our lips.

We pray in the Redeemer's name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, November 23, 1971, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination in the Geological Survey, under New Reports.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. The nomination on the Executive Calendar, in the Geological Survey, under New Reports, will be stated.

GEOLOGICAL SURVEY

The second assistant legislative clerk read the nomination of Vincent E. McKelvey, of Maryland, to be Director of the Geological Survey.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed; and without objection, the President will be immediately notified of the confirmation of the nomination.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

MAJOR GENERAL SHOUP—A MARINE'S MARINE

Mr. MANSFIELD. Mr. President, Newsweek magazine for November 29, 1971, contains an article entitled "A Marine's Marine."

It refers to the former Commandant of the Marine Corps, Maj. Gen. David Monroe Shoup, who, incidentally, happened to be born in a place called Battleground, La.

I ask unanimous consent to have the article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHERE ARE THEY NOW?—A MARINE'S MARINE

In the fall of 1959, when Maj. Gen. David Monroe Shoup was catapulted over the heads of nine senior officers to become the 22nd commandant of the U.S. Marines, divided leadership and controversy over hard-nosed training methods had driven the fabled morale of the Corps to an all-time low. Almost from the day he took charge, however, the bespectacled, barrel-chested Shoup—a Medal of Honor winner for his gritty leadership of the marines' bloody victory at Tarawa—began to revive the Corps' sagging esprit. In the process, he pointedly defied many of the most cherished Marine traditions, overhauling the training program, replacing obsolete landing craft with helicopters and even abolishing the swagger stick. But Shoup also insisted upon strict adherence to the old-fashioned personal virtues and ramrod discipline that had made him the epitome of a marine's marine.

Ironically, it was not until several years after his retirement in 1963 that the general public first learned about the maverick side of Shoup's character. Shoup's widely reported observation that "the whole of Southeast Asia is [not] worth the life of or limb of a single American" severely jolted the nation's military brass in 1966. And later, the increasingly dovish ex-general shocked the entire military-industrial complex by asserting that the U.S. should "keep [its] dirty, bloody, dollar-crooked fingers out of . . . these [exploited] nations."

DOOMED

Today, although he seems less eager to enter the verbal arena than in years past, Shoup believes that his criticisms of the Vietnam war effort have long since been confirmed. "I was among the first," he recalls somewhat wearily, "to say we could not win because we were not permitted to go to the heart of the war—to North Vietnam." For the same reason, he believes, President Nixon's Vietnamization program is also doomed to failure. "As soon as we get out," the peppery, white-haired grandfather of four asserts, "North Vietnam will be able to move right in and take over." Sadly, he adds: "After all that killing—it is frustrating, frustrating."

At 66, Shoup and his wife, Zola, live in a hilly, wooded enclave of Arlington, Va., just