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LEGISLATIVE POLICY OF THE BUREAU OF THE BUDGET

GOVERNMENT
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HEARING

BEFORE THE

SUBCOMMITTEE ON CONSERVATION AND CREDIT

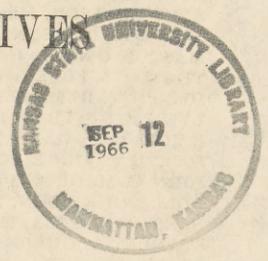
OF THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION



JULY 11, 1966

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LEGISLATIVE POLICY OF THE BUREAU OF THE BUDGET

MONDAY, JULY 11, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSERVATION AND
CREDIT OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1302, Longworth House Office Building, Hon. W. R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Poage, Gathings, Stubblefield, Callan, Harvey, Dole, and Cooley.

Also present: Christine S. Gallagher, clerk; Hyde Murray, assistant clerk, and John Heimburger, general counsel.

Mr. POAGE. The subcommittee will please come to order.

We are here today to discuss the position of the Bureau of the Budget with regard to legislation generally.

We have Mr. Phillip S. Hughes, Deputy Director of the Bureau of the Budget with us. I understand, Mr. Hughes, you have a little general statement to make preliminary to our discussion?

Mr. HUGHES. Yes, sir, Mr. Chairman.

STATEMENT OF PHILLIP S. HUGHES, DEPUTY DIRECTOR, BUREAU OF THE BUDGET

Mr. HUGHES. Mr. Chairman and members of the committee, on behalf of the Bureau of the Budget and the administration, I welcome the opportunity to appear before this subcommittee to discuss:

(1) The Bureau of the Budget's responsibilities with respect to executive branch participation in legislation; and

(2) The responsibilities of the Bureau of the Budget in the review of Public Law 566, watershed work plans.

My appearance is in response to the chairman's letter of June 20, which reflected both a general concern with regard to the Bureau's responsibilities and a more specific concern regarding our actions on H.R. 15510, a bill amending the Consolidated Farmer's Home Administration Act of 1961, to permit the Secretary of Agriculture to retain certain prepayments made by borrowers and remit them to the lender in regular installments as they become due. However, subsequent indications have been that the committee's concern is more with the broader questions of the Bureau's responsibilities in the review of legislative reports and of Public Law 566 projects. Accordingly, I am directing these prepared remarks toward the latter questions, although I will be glad to discuss H.R. 15510 and our actions regarding it should the committee wish.

First, with respect to the role of the Bureau of the Budget in the Federal legislative process, something like the existing clearance arrangements have been in effect since 1921. In that year, the first Budget Director took the position that, since legislation generally had some cost attached to it, it was of concern to the Bureau of the Budget. Accordingly, an early general instruction to departments and agencies called for the submission of legislative proposals to the Bureau to determine their relationship to the fiscal program of the President.

In September of 1939, Executive Order 8248 defined the responsibilities of the then newly created Executive Office of the President. The order provided that the Bureau of the Budget was "to assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to the Presidential action on legislative enactments, in accordance with past practice." The Office of Legislative Reference carries on this function for the Bureau with the assistance and cooperation of the other Offices and Divisions of the Bureau. To my personal knowledge, the legislative clearance function has been carried on under essentially the same procedures and policies since at least the late 1940's. Circular A-19, issued by direction of the President, spells out these policies and procedures for the guidance of Bureau staff and the departments and agencies. I can, if you wish, provide a copy of the circular for the record.

Mr. POAGE. We would like to have one for the record.

Mr. HUGHES. All right, sir.

(The document referred to follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 9, 1964.

CIRCULAR NO. A-19—REVISED

To the Heads of Executive Departments and Establishments.

Subject: Procedures for the coordination and clearance of agency recommendations on proposed, pending and enrolled legislation.

1. *Purpose.* This Circular contains general instructions to the agencies of the Executive Branch on the Bureau of the Budget's legislative coordination and clearance process. It supersedes Circular No. A-19 (revised June 16, 1960), which is hereby revoked. It also includes instructions on the preparation of agency legislative programs. The purpose of this revision is to clarify and amplify section 4(a) and section 4(g).

At the direction of the President, the Bureau of the Budget performs legislative coordination and clearance functions which have the purpose of assisting the President in developing his position on legislation, making known the Administration's position on particular legislation for the guidance of the agencies and information of Congress, assuring appropriate consideration of the views of all affected agencies, and assisting the President with respect to his action on enrolled bills.

2. *Definitions.* The following definitions apply herein:

a. *Advice;* Information transmitted to an agency by the Bureau stating the relationship of particular legislation and reports thereon to the program of the President or stating the views of the Bureau as a staff agency for the President with respect to such legislation and reports.

b. *Agency;* Any executive department or independent commission, board bureau, office, agency, Government-owned or controlled corporation, or other establishment of the Government, including regulatory commission or board, and also the municipal government of the District of Columbia, but not including agencies of the legislative or judicial branches of the Government.

c. *Enrolled bill;* A bill passed by both Houses of Congress and presented to the President for his action.

d. *Proposed legislation:* A draft bill with supporting documents which an agency wishes to present to Congress for its consideration, or any legislative proposal included in an annual or special report or in other written form which the agency proposes to transmit to the Congress or make available to the public.

e. *Report:* Any written expression of official views on pending bills or resolutions prepared by an agency for (a) transmittal to any committee, Member, or officer of Congress or (b) presentation as testimony before a congressional committee.

The terms "proposed legislation" and "report" do not include justifications for appropriations or proposals for reorganization plans.

3. *Agency legislative programs.* Agencies will prepare annually proposed legislative programs for the forthcoming session of Congress. These programs are used by White House, Bureau of the Budget, and other Executive Office staff in assisting the President in the preparation of his legislative program, annual and special messages, and the annual budget.

An agency's legislative program is to be developed before or concurrently with the preparation of its annual budget submission, and 10 copies of the program will be transmitted to the Bureau at the same time as the annual budget submission. If an agency has no proposals to make, it will submit a statement to this effect.

The proposed program will include all items of legislation, including proposals to repeal provisions of existing law or to extend provisions of expiring law, which an agency contemplates proposing to Congress (or actively supporting if already pending legislation) during the coming session. The decision to include an item will take into account the President's known legislative, budgetary, and other relevant policies.

The program will also include separate lists of (a) legislative proposals under intensive consideration in an agency which have not yet reached the stage of inclusion in its proposed legislative program, and (b) all laws or provisions of law affecting an agency (whether or not the agency will propose their extension) which will expire from the end of the preceding session of Congress to the end of the next calendar year. Any laws which will expire at a still later date will also be included if special circumstances warrant their extension in the forthcoming session.

Attachment A provides more detailed instructions as to the content and format of proposed legislative programs.

Submission of legislative proposals pursuant to this section does not constitute a request for Bureau advice. Such requests will be made in the manner prescribed in section 4.

4. *Coordination and clearance of agency proposed legislation and reports.* Before proposed legislation or a report (see definition of "report" for coverage) is transmitted outside the Executive Branch, the originating agency will submit it to the Bureau for coordination and advice.

a. *Copies to be furnished.* At least four legible copies of proposed legislation and supporting materials and reports on public bills will be furnished. Two copies of reports on private bills will be furnished. In cases where wide circulation or expedited action may be required, the originating agency will consult informally in advance with the Bureau as to the number of copies to be supplied. In most instances, machine-reproduced copies are necessary to assure legibility.

b. *Timing of agency requests for advice.* Reports will be transmitted to the Bureau in sufficient time (normally one month) to permit action by the Bureau to be completed prior to the date when it is necessary to transmit the reports to the Congress. Agencies will not commit themselves to forward reports or proposed legislation to Congress on a time schedule which does not allow orderly coordination and clearance to take place. Agencies will state in their letters of transmittal to the Bureau any information on congressional schedules and requirements which bears upon the urgency of their reports or proposed legislation. Where unforeseen congressional deadlines make it necessary, however, expedited handling may be requested.

c. *Certain items to be included in agency submissions.* When submitted to the Bureau, proposed legislation will be accompanied by a draft of the letter which an agency proposes to send to the Speaker of the House and the President of the Senate in transmitting the draft bill. In addition, an agency will furnish background information, such as an analysis of the provisions of the proposed legislation, comparison with existing law, a statement of other agencies' interests, etc., which will be helpful in acting on its proposal. Similarly, a letter requesting advice on a report on pending legislation will identify previous related bills and set forth any relevant comments not included in the report itself.

In cases where a legislative proposal, either proposed or pending, would carry out a Presidential recommendation, the report or letter transmitting proposed legislation to the Congress will include a statement identifying the recommendation and indicating the degree to which the legislation concerned will carry it out.

d. *Personnel and cost information.* The Act of July 25, 1956, 70 Stat. 652 (5 U.S.C. 642a) requires that in certain cases agency reports on pending legislation and agency proposals for new legislation include estimates of additional expenditures and manpower which would result from enactment of the legislation. In order that agencies will have these requirements readily at hand for careful compliance, this statute is set forth as Attachment B.

In addition to the above requirements, an agency will include in its letter transmitting proposed legislation or in its report on pending legislation its best estimate of the appropriations (for each of the first five years) which will be needed to carry out its responsibilities under the legislation. Similarly, if the legislation would effect savings in appropriations, increase or decrease Federal revenues, or affect the receipts or expenditures of a trust or special fund, an agency will include its best estimate of these savings or changes. These estimates will be on a fiscal year basis.

e. *Bureau action on agency submissions.* Upon receipt of an agency's proposed legislation or report, the Bureau will undertake the necessary coordination with other interested agencies. If congressional committees have not requested reports from all of the interested agencies, the Bureau will request additional agency views within specified time limits, which must be carefully observed. The Bureau will consult with the President, when appropriate, and undertake such staff work for him as may be necessary in cooperation with other Presidential staff. It may call on the originating agency for additional information or arrange interagency meetings to exchange views, resolve differences of opinion, or to clarify the factual situation.

When coordination has been completed, the Bureau will transmit advice to the appropriate agencies, either in writing or by telephone. In transmitting advice, the Bureau will indicate any considerations which it believes the originating agency should or may wish to take into account before submitting its proposed legislation or report to the Congress.

f. *Agency action on receipt of advice from the Bureau.* To make the record clear and to prevent misunderstanding, an agency will state in its report or letter transmitting proposed legislation to the Congress the advice which it has received from the Bureau.

In the case of reports on pending legislation, receipt of advice contrary to the views expressed by an agency does not require the agency to modify its views. In such cases, however, the agency will review its position in the light of the advice received. If it decides to modify its views after consideration of the advice received, it will consult with the Bureau informally to determine what change, if any, in the advice previously received would be appropriate. If the agency's views are not modified, the advice received from the Bureau will be incorporated in full.

In the case of proposed legislation, the originating agency will incorporate in its letter of transmittal to the Congress the advice received from the Bureau. However, an agency will not submit to Congress any proposal which it has been advised is in conflict with the program of the President.

When an agency, upon receipt of advice, transmits its proposed legislation or report to the Congress, it will furnish a copy to the Bureau.

g. *Agency action where prior clearance has not been effected.* If congressional time schedules do not permit an agency to transmit its proposed report on pending legislation for the customary clearance and advice, the agency will consult informally with the Bureau as to the advice to be included in the proposed report. Where time limitations preclude other action, the agency will state in its report that time has not permitted securing advice from the Bureau of the Budget as to the relationship of the pending legislation or the report to the program of the President. Four copies of the report will be transmitted to the Bureau at the same time that transmittal is made to the Congress. Where appropriate, the Bureau will subsequently furnish advice, which the agency will transmit promptly to the Congress.

In cases where an agency has not submitted a report for clearance and its views on pending legislation are to be expressed in the form of oral testimony, the Bureau will undertake, upon request by the agency, such coordination and give such advice as the circumstances permit. In presenting its oral testimony, the agency will indicate what advice, if any, has been received from the Bureau. If none has been obtained, the agency will so indicate.

Agencies will not submit to Congress, on their initiative or with their endorsement, proposed legislation which has not been coordinated within the executive branch in accordance with the provisions of this Circular. However, agencies need not submit for clearance draft bills which are prepared as a drafting service for a congressional committee or Member of Congress, provided no commitment is made with respect to the position of the President or the agency. A copy of such draft bill and any accompanying letter will be furnished to the Bureau.

h. *Transmittal of agency communications to the Congress.* All agencies will observe the explicit instructions of House Rule XL and Senate Rule VII and forward proposed legislation or various reports required to be made under statutory provisions to the Speaker of the House and the President of the Senate.

These instructions do not require that reports which have been requested by committee chairmen on bills and resolutions pending before their committees be sent to the Speaker of the House and the President of the Senate. Such reports will be transmitted directly to the requesting committees.

i. *Interagency consultation.* In carrying out its legislative functions, each agency is encouraged to consult with other agencies concerned in order that all relevant interests and points of view may be considered and accommodated, where appropriate, in the formulation of the agency's position. Such consultation is particularly important in cases of overlapping interests, and intensive efforts should be made to reach interagency agreement before proposed legislation or reports are transmitted to the Bureau.

Interagency committees and other arrangements for joint consultation may often be useful in reaching a common understanding. However, in order that the President may have the individual views of the responsible heads of the agencies, any proposed legislation or reports so coordinated will be transmitted to the Bureau by the individual agencies involved with appropriate reference to the interagency coordination which has taken place.

As an additional means of effecting interagency coordination, the Bureau will from time to time furnish the agencies with lists of the liaison officers who have been designated by their agencies to handle the coordination of legislative matters. An agency will promptly notify the Bureau of a change in its liaison officer.

j. *Reclearance requirements.* The advice received from the Bureau generally applies to all sessions of each Congress, but does not carry over from one Congress to the next. Accordingly, an agency does not need to seek reclearance of a report on which it has already received advice before making the same report on identical bills introduced in the same Congress, unless changed conditions indicate that reclearance is appropriate. It will, however, include in its subsequent reports appropriate reference to the advice received on its original report. It will also transmit one copy of any subsequent report to the Bureau at the same time that it is transmitted to the Congress.

If an agency wishes to request reclearance of a draft bill or report, identical or substantially identical to one cleared for transmittal to a previous Congress, its request should be transmitted in a form similar to that illustrated in Attachment C. Submittal of lists of bills or reports for this purpose is discouraged because each item must be handled separately in the Bureau.

Clearance of written testimony before a congressional committee on pending legislation is not necessary if an agency has already received advice on a written report on the same legislation and the testimony simply enlarges on the report and raises no new issues. Similarly, clearance of a report is not necessary if an agency has already received advice on written testimony on the same legislation and the report simply confirms the testimony. A copy of the report or testimony will be furnished to the Bureau.

k. *Use of no comment reports.* As a general rule, an agency will submit a no comment report only when it has no interest in the pending legislation or nothing to contribute by way of informed comment. An agency will submit such a report for normal clearance, unless a different procedure is informally arranged with the Bureau. In either event, one copy of each such report will be furnished to the Bureau at the time it is transmitted to Congress.

5. *Enrolled bills.* Under the Constitution, the President has 10 days (including holidays but excluding Sundays) to act on enrolled bills after they are presented to him. To provide the fullest possible opportunity for Presidential consideration, enrolled bills must be accorded top priority.

a. *Initial Bureau action.* The Bureau will obtain facsimiles of enrolled bills from the Government Printing Office and immediately forward one facsimile to

each interested agency, requesting the agency's views concerning the bill and its recommendation for Presidential action.

b. *Agency action.* Each agency receiving such a request will immediately prepare a views letter and transmit it in duplicate to the Bureau not later than 48 hours (excluding Sundays) after receipt of the facsimile. Because of the definitive nature of Presidential action on enrolled bills, agency views letters will be signed by a Presidential appointee. The letters will be delivered by special messenger to the Bureau staff member indicated in the request for views.

Agency views letters on enrolled bills are transmitted to the President and will be written with the objective of assisting him in reaching a decision. Each letter will therefore be complete in itself and will not incorporate by reference earlier reports.

The letters will contain (1) an analysis of the features of the bill (this is primarily the responsibility of the agency having the principal interest), (2) where appropriate, a comparison of the bill with Administration proposals on the same subject, (3) such comments, criticisms, analyses of benefits and shortcomings, or special considerations as will assist the President in reaching a decision, (4) identification of factors which make it necessary or desirable for the President to act by a particular date, (5) an estimate by any agency responsible for operations under the bill (or if there are no operations by the major interested agency) of the first-year and recurring costs or savings under the measure, and (6) a specific recommendation as to action by the President.

Letters recommending disapproval must be accompanied by a proposed veto message of memorandum of disapproval, in quadruplicate, prepared on legal-size paper and double-spaced. Such a message or memorandum will be a finished product in form and substance which can be used by the President without further revision.

Agencies may wish, in exceptional cases, to recommend issuance of a signing statement by the President. Letters so recommending must be accompanied by a draft of such statement, in quadruplicate.

Letters on private bills will cite, where appropriate, precedents which support the action recommended by the agency or which need to be distinguished from the action so recommended.

Views letters on enrolled bills are treated as privileged communications and agencies will be guided accordingly in determining their content.

c. *Subsequent Bureau action.* The Bureau will transmit to the President the agency letters, together with a covering memorandum, not later than the fifth day following receipt of the enrolled bill at the White House.

By direction of the President:

KERMIT GORDON, *Director.*

Attachments.

ATTACHMENT A

Circular No. A-19—Revised

INSTRUCTIONS RELATING TO THE PREPARATION OF AGENCY LEGISLATIVE PROGRAMS

1. An agency's proposed legislative program will be divided into two parts:

PART I—PRESIDENT'S PROGRAM, PROPOSALS

Those items which an agency believes are of sufficient importance to be included in the President's legislative program and given specific endorsement by him in one of the regular annual messages, such as the budget message, or in a special message.

PART II—ALL OTHER PROPOSALS

2. Within each Part, the items will be listed in order of relative priority.
3. With respect to each item of proposed legislation, the following information will be provided:
 - a. A brief description of the proposal, its objectives, and its relationship to existing programs. Agencies are encouraged to include greater detail on the specific provisions of their proposals in cases where the proposals are included in Part I, or where the subject matter proposes new policies or programs or raises complex issues.
 - b. Pertinent comments as to timing and readiness of drafts.
 - c. Pertinent references to bills and reports concerning the subject in current or recent sessions of Congress.

d. An estimate of (1) any appropriations which would be required during each of the first five years, (2) any savings in appropriations, (3) any changes in budget receipts, or (4) any changes in the receipts or expenditures of a trust fund or a special fund.

Each item of proposed legislation will be given a separate number for purposes of ready identification.

4. The lists of legislative proposals still under consideration and of expiring laws (see Section 3 of the Circular) will be presented separately from Parts I and II.

The following special instructions apply to them:

a. Items still under consideration will be listed in approximate order of priority and each briefly described in terms of subject matter and status.

b. Expiring laws will be described in terms of (1) the subject, (2) the citation, (3) the date of expiration, and (4) a brief explanation including the agency's views as to whether the law should be extended or permitted to expire. If an agency recommends extension, the proposal will be included in Part I or Part II (see I above), as appropriate.

5. The statement will be prepared on 8 by 10½ size paper. General conformance to the format of the attached exhibit will greatly facilitate the use of these programs.

Attachment.

EXHIBIT FOR ATTACHMENT A

Circular No. A-19—Revised

DEPARTMENT OF GOVERNMENT

PROPOSED LEGISLATIVE PROGRAM FOR THE — SESSION OF THE —TH CONGRESS

(Items in each part are listed in order of priority)

PART I—PRESIDENT'S PROGRAM PROPOSALS

1. *Alaska Omnibus Act.*—To make those changes in Federal laws which have become necessary and desirable because of Alaska's admission into the Union. Proposal would (a) make Alaska eligible to participate in a number of Federal grant-in-aid programs on a comparable basis with the other States; (b) terminate certain special Federal programs; (c) authorize Federal financial assistance during an interim period, transfers of Federal property to the State, and other measures required to facilitate orderly transition; (d) clarify the applicability of certain laws to Alaska; and (e) eliminate inappropriate references to the "Territory of Alaska" in Federal statutes.

Early enactment is required to assure continuity of a number of essential public services in Alaska and to provide for the orderly transition of Alaska to statehood. Drafting has been substantially completed and a bill will be submitted to the Bureau of the Budget shortly.

Bill will authorize transitional grants as follows: \$10.5 million for fiscal year 19—, \$6 million for 19— and 19—, and \$2.5 million for 19— and 19—. Amounts appropriated for grants for a number of activities would be offset to a large extent by elimination of appropriations for a number of activities which the Federal Government would have continued to finance had Alaska remained a territory.

2. * * *

PART II—ALL OTHER PROPOSALS

3. *Unemployment insurance for ex-servicemen.*—Would extend unemployment insurance provisions of the Social Security Act for Federal civilian employment to cover service in the armed forces. Program would be administered by States under agreements with Federal Government. Purpose is to insure individuals leaving the armed forces the same income protection enjoyed by Federal civilian employees and most industry employees.

H.R. 10000 and S. 5000 were introduced in the first session of the 8—th Congress as departmental proposals. H.R. 10000 was reported July 1, 19— (House Report No. 888). No action on S. 5000.

Benefit costs for 19— are estimated at \$50 million. There will be offsetting savings of about \$10 million since some individuals qualified under existing law will seek benefits under the new law. Administrative costs are estimated at approximately \$3.2 million in 19—. Benefit and administrative costs for the four years after 19— will be dependent on employment conditions then prevailing but are not expected to exceed the cost estimates for 19—.

ATTACHMENT B

Circular No. A-19—Revised

ACT OF JULY 25, 1956, 70 STAT. 652 (5 U.S.C. 642a)

“(a) Each report, recommendation, or other communication, of an official nature, of any department, agency, or independent establishment of the executive branch of the Federal Government (including any corporation wholly owned by the United States) which—

“(1) relates to pending or proposed legislation which, if enacted, will entail an estimated annual expenditure of appropriated funds in excess of \$1,000,000,

“(2) is submitted or transmitted to the Congress or any committee thereof in compliance with law or on the initiative of the appropriate authority of the executive branch, and

“(3) officially proposes or recommends the creation or expansion, either by action of the Congress or by administrative action, of any function, activity, or authority of any such department, agency, independent establishment, or corporation, to be in addition to those functions, activities, and authorities thereof existing at the time such report, recommendation, or communication is submitted or transmitted to the Congress or any committee thereof, shall contain a statement, with respect to such department, agency, independent establishment, or corporation, for each of the first five fiscal years during which each such additional or expanded function, activity, or authority so proposed or recommended is to be in effect, disclosing the following information:

“(A) The estimated maximum additional—

“(i) man-years of civilian employment, by general categories of positions,

“(ii) expenditures for personal services, and

“(iii) expenditures for all purposes other than personal services, which are attributable to such function, activity, or authority and which will be required to be effected by such department, agency, independent establishment, or corporation in connection with the performance of such function, activity, or authority, and

“(B) such other statement, discussion, explanation, or other information as may be deemed advisable by the appropriate authority of the executive branch or which may be required by the Congress or a committee thereof.

“(b) Subsection (a) of this section shall not apply to the Central Intelligence Agency.”

ATTACHMENT C

Circular No. A-19—Revised

Assistant Director for Legislative Reference
Bureau of the Budget
Executive Office of the President
Washington, D.C. 20503

Subject: Proposed report on -----, 8th Congress

The Department of ----- has been requested to submit a report on the subject bill, which is identical with ----- of the 8th Congress.

Will you please advise whether there is objection to submitting the same report on subject bill as was prepared on ----- and submitted to you for clearance on -----, except for the following modifications:

MR. HUGHES. Both the procedures followed and the objectives sought are relatively simple. The objectives of legislative clearance are:

1. To provide a set of institutional machinery through which agencies can become aware of one another's views on legislation, reconcile differences, and seek policy decisions.
2. To enable the agencies and the Congress to be aware of the administration or Presidential position as well as an agency position on

legislative proposals of concern to the administration and the President.

3. To facilitate executive branch and congressional consideration of potential problems that must be dealt with by the President as he approves or disapproves bills passed by the Congress.

Procedurally, Circular A-19 requires that, time permitting, bills originating with the executive agencies and reports on legislation must be submitted to the Bureau of the Budget for advice as to the relationship of the legislative proposal or report to the administration's objectives. This submission provides an opportunity for the circularization of other interested agencies, obtaining their comments and reaching agreement or decision on any issues. We strive to resolve disagreements wherever possible, but do not always succeed. Thus occasionally agency A may submit a report in disagreement with agency B on a particular piece of legislation. In any event, the agencies, whether agreeing or not, have been made aware of one another's views, and where appropriate, the relationship between their views and the position of the administration. Further, legislation which may be in conflict with administration objectives can be identified for agency, Presidential, or congressional reference.

We believe, as have a succession of Presidents of both parties, that legislative clearance type activity is essential to effective participation by the executive branch in the legislative process. In carrying on the function, we in the Bureau do our best to do for the President what he himself would do in a much smaller and simpler government. We believe that only through this kind of machinery can the 20,000 bills and resolutions produced during the course of a particular Congress be effectively reviewed and evaluated.

We welcome any suggestions for improving the usefulness of the legislative clearance process to your committee.

The Bureau of the Budget's responsibilities in the review of Public Law 566 work plans stem from section 5(3) of Public Law 566 which provides, among other things, that with respect to projects exceeding certain size or cost limitations, "the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President." Executive Order 10654 provides for the delegation of the President's responsibilities under Section 5(3) to the Bureau of the Budget.

The Bureau's review, pursuant to the Executive order delegation, is with respect to the conformity of the projects with Senate Document 97 and relevant basic statutes, and their consistency with and implications for the programs and policies of the President. As a generalization, our review of project reports submitted by the Department of Agriculture has revealed a minimum of problems.

We can fully appreciate the concern of members of this committee, sponsors, and other interested persons over the delay in transmission of plans and justifications for this year's Public Law 566 projects to the Congress. The delay has not been occasioned by specific problems with individual projects. Rather, it is the result of a general problem of legislative-executive relationships to which the President referred in his signing statement upon approving Public Law 89-298, the Omnibus River and Harbor and Flood Control Act of 1965. A copy of that signing statement is attached. Public Law 566 contains language virtually identical to that referred to by the President in his signing statement.

(The document referred to follows:)

[For immediate release—Office of the White House Press Secretary (Austin, Tex.)]

THE WHITE HOUSE,
October 26, 1965.

STATEMENT BY THE PRESIDENT ON THE SIGNING OF S. 2300, OMNIBUS RIVERS
AND HARBORS

I have today signed S. 2300—the Omnibus Rivers and Harbors Bill.

In so doing, I want to point out clearly and strongly that I cannot abide by one provision of the bill which flies in the face of the Constitution.

S. 2300 authorizes the construction of water resource projects totaling almost \$2 billion.

These projects are needed.

They will bring economic vitality to almost every region of America and thus strengthen our national economy.

They have had and will continue to have my full support—because I deeply believe in them.

However, I do not support and I do not plan to implement Section 201(a) of this legislation.

To do so would make the President a partner in the abdication of a fundamental principle of our government—the separation of powers prescribed by the United States Constitution.

Section 201(a) provides that, "No appropriation shall be made to construct, operate, or maintain any such project [certain water resource development projects] if such project has not been approved by resolutions adopted by the Committees on Public Works of the Senate and House of Representatives, respectively."

Twice this year I have vetoed bills containing similar language.

Those provisions, like this one, were repugnant to the Constitution.

I have weighed this problem very carefully.

My legal advisors tell me that insofar as our system of checks and balances is concerned, this Bill would do to the Executive Branch what neither House of Congress would want.

It would dilute and diminish the authority and powers of the Presidency.

I believe the Senate would understand my point of view if I tried to contend that the Senate had no right to advise and consent.

And the House would understand, I am sure, if I attempted to insist that revenue measures did not have to originate in the House.

This is not a personal matter, but I cannot stress too strongly the seriousness with which I view this particular section.

The people of this country did not elect me to this Office to preside over its erosion. And I intend to turn over this Office with all of its responsibilities and powers intact to the next man who sits in this Chair.

So just as I would not want to infringe upon the power of the Senate or lessen the jurisdiction of the House or disregard the decisions of the Supreme Court, I do not want the Legislative—through two committees—to encroach upon the responsibilities of the Presidency.

Absolute legal consistency would require that I veto what is otherwise a sound bill because of this one objectionable provision.

But, after counseling with legislative leaders, I have chosen not to veto—for these reasons:

Unlike the bills earlier this year, Section 201(a) permits, but does not require, the Executive Branch to use the objectionable procedure in order to carry out its responsibilities. Therefore, I believe that by refusing to use the procedure, by noting my objections to it, and by seeking its repeal in the next session of Congress, it is possible to approve the remainder of the Bill without yielding to encroachment.

A veto would have denied to the people of the various Congressional districts the desirable benefits of the improvements provided by this legislation.

And finally, I have the greatest respect for this Congress and for the tremendous accomplishments which it has realized. We have worked together for the common good of the greatest number of people. I think we have been successful.

For these reasons I have signed the Bill into law.

But I repeat, again and again, that I do not intend to accept this infringement upon the Office of the Presidency.

The section containing the objectionable provision is a grant of authority and does not require any action to be taken. The Senate and the House were divided as to the legal interpretation of the provision.

One point is clear: Enactment of the bill will not commit the Executive Branch to participate in the procedure to which I have objected. And as soon as the Congress convenes again, I will request it to repeal the provision.

In the meantime, I have instructed the Secretary of the Army to refrain from exercising the authority which Section 201(a) attempts to vest in him.

Mr. HUGHES. To meet the concern expressed by the President, the Public Law 566 procedure should be replaced with an alternative which provides opportunity for adequate congressional review of small watershed projects without impairing the President's constitutional responsibilities as Chief Executive. In the long run we believe some form of legislative action will be necessary, but we have been attempting to work out a shortrun solution which would result in early transmission of this year's projects in their present form and under present law.

We would welcome the committee's suggestions for dealing with this problem. Again, we recognize that the delay in transmittal of the projects has been a source of serious concern to the committee as well as to other Members of Congress.

Mr. Chairman, I suspect that the committee may have questions which the foregoing rather brief comments have not answered. I will be glad to respond to your questioning as best I can.

Mr. POAGE. Thank you very much, Mr. Hughes. I think you have outlined the very problems we want to discuss. I think it is important that we start with an understanding of whether you speak for the President or not. I take it from your general statement here that you do.

Mr. HUGHES. Yes, sir.

Mr. POAGE. Do we understand that each recommendation by the Bureau of the Budget is the recommendation of the President?

Mr. HUGHES. Certainly with respect to Public Law 566.

Mr. POAGE. Not talking about Public Law 566. You pass upon all kinds of legislation that comes before us. In fact, you attempt to pass on every piece of legislation that comes before us, don't you?

Mr. HUGHES. No, sir.

Mr. POAGE. You don't? I understood from your statement here—and I am not finding fault with that, with your statement, but I understood from your statement that you feel that there must be a coordination and you are in the position to pass—you said, except where pressure of time prevented it—on "all" recommended legislation. Isn't that right?

Mr. HUGHES. That is correct, Mr. Chairman. We do, on behalf of the President, and pursuant to circular A-19, have presented to us proposed reports on legislation. The action taken by the Bureau with respect to these reports varies from case to case depending on the degree of administration or Presidential interest and the nature of the issue.

In some cases the Bureau presents a clear Presidential position. In other instances the Bureau simply—and this is the normal case—states the position that there is no objection to the views expressed from the standpoint of administration objectives.

Mr. POAGE. Now, the thing that I haven't been able to understand—perhaps the other members understood it better than I, but I haven't been able to understand how we avoid conflict with the President's own views when a department will find that certain projects or a certain procedure is desirable and the Bureau of the Budget finds that it isn't.

Now, the Secretary of Agriculture and all of the other secretaries were appointed by the President, just exactly the same as the Director of the Bureau of the Budget. They are answerable to the President. I can't understand why they too don't speak for the President.

Mr. HUGHES. Mr. Chairman, I think in the ordinary circumstances they certainly do. I think the significance of the legislative clearance process I was discussing is most apparent when one talks in terms of the volumes of legislative business which the Congress does.

As I mentioned in my statement, there are roughly 20,000 bills and resolutions introduced during the course of a Congress. Perhaps a third to a half of these are considered sufficiently seriously so that there is need to evolve an agency or an administration position, depending on the nature of the issue. Given these volumes, 8,000 to 10,000 separate items of business, and the amendments which take place in the legislative process, it is, in the normal course of events, very difficult for the Secretary, for the President or one of the President's personal advisers to be intimately involved in each piece of legislation. The objective of the legislative clearance process is to provide a set of machinery under which potential differences of opinion between agencies can be brought into focus and an opportunity provided for a resolution of the difference, or a Presidential decision, if that is necessary.

Mr. POAGE. I can follow the line of reasoning that you set out as to the desirability of trying to reconcile differences between the two departments, but as I see it, you have set up a super department which does exactly the same thing as the regular departments do and obviously the President personally doesn't know about a great many of these items. He can't. We all recognize that.

I am somewhat at a loss to know why your engineers are better qualified than the engineers of the Department of Agriculture, or the Department of the Interior, or the Department of the Army. You duplicate the exact work that they do.

Mr. HUGHES. I don't believe we do, Mr. Chairman.

Mr. POAGE. If I want a flood control project—I am not talking about flood prevention now. Flood control comes under the Corps of Army Engineers. The Corps of Army Engineers has approved the project after long years of study. Before I can get anywhere with that, you have got to approve it. That is right, isn't it?

Mr. HUGHES. Yes, sir, that is right.

Mr. POAGE. And your engineers pass on it and you have an engineering department, don't you?

Mr. HUGHES. No, we do not, sir.

Mr. POAGE. You just pass upon it out of thin air?

Mr. HUGHES. No, we have a Resources and Civil Works Division in our Bureau which works closely with the Corps of Engineers, the Soil Conservation Service in Agriculture, with the Bureau of Reclamation in Interior, and we do not attempt to duplicate the expertise which they have. We obviously don't have the staff or the capability of doing that. We do, however, where differences arise among these

different agencies, endeavor to bring them together to reconcile their views in conformity with Presidential policies.

Mr. POAGE. You do turn down projects they have recommended, don't you?

Mr. HUGHES. I think at least under the 566 procedure——

Mr. POAGE. I am not talking about 566; I am talking generally—or specifically I referred to a project already approved by the Corps of Engineers.

Mr. HUGHES. We do not turn down in the sense, Mr. Chairman, that we fail to transmit or convey the views of the Corps of Engineers or the Bureau of Reclamation or the Soil Conservation Service as the case may be, either in the Public Works——

Mr. POAGE. You attach a statement that this project is contrary to the President's policy?

Mr. HUGHES. We do occasionally differ with them on the interpretation of factual data on the particular project and where we do we attach our own views with respect to it. That is not the normal situation, but it does happen.

Mr. POAGE. My point is that it is perfectly obvious that the President, a person, Lyndon Johnson, can't possibly have any special knowledge about each of the particular projects.

Mr. HUGHES. On the routine ones, sir, I am sure that is true. In special cases and in those instances where we are in fundamental disagreement with one of the agencies—at least in many situations—these would be brought to his attention.

Mr. POAGE. If that is true, then we don't need all of your big Bureaus. The President, whoever he may be, will know more engineering than the engineers, and he will make all decisions personally. We call that by an unpleasant name in South America.

Mr. HUGHES. Well, we don't have such a big Bureau, Mr. Chairman; at least as we see it. I believe, and I think the evidence will indicate, that we do need a set of machinery to bring to the President's attention those situations which do warrant his attention. Some way out of this large colume of legislation—and we are now not talking so much about legislation as project reports, but even here the volume is large—some way there needs to be brought out of this volume those instances that are sufficiently important, or where there are issues which warrant the President's attention.

Mr. COOLEY. I wonder if they brought to the attention of the President the one project which was going to cost \$1,400 an acre? Did you let that get by?

Mr. HUGHES. Which was the project, Mr. Chairman?

Mr. POAGE. Marsh Creek was the name of the project.

Mr. COOLEY. It was going to cost \$1,400 an acre for land worth about \$50 an acre. Did you pass on that one?

Mr. HUGHES. I can't answer on that, Mr. Chairman. Most of the larger individual projects and those where there are substantial departures from usual practice are brought to the attention of the President and also to his personal advisers.

Mr. COOLEY. I would like to know why you are holding up the Public Law 566 projects.

Mr. HUGHES. Well, Chairman Cooley, in the statement which I made I briefly referred to the circumstances under which we are holding up the projects. They have not been submitted, I pointed

out, not because of any problem with the details or the terms of specific projects and under Public Law 566 I think, as the committee is aware, we have commented on few, if any, problems with regard to particular projects. Last year's projects, I believe there were 79 of them, and all 79 were submitted, and I think in a timely fashion by the Bureau.

The problem with respect to the projects this year is the general problem of legislative-executive relationships which I referred to in my statement, and the reference point which I gave was the President's signing statement with respect to the Omnibus River and Harbors and Flood Control Act of 1965. The President's concern is that Public Law 566 has language which has essentially the same words and the same impact as that which was referred to by the President in the Rivers and Harbors and Flood Control Act and we have been seeking a solution to the obviously difficult problem of handling these in a fashion satisfactory both from the standpoint of this committee and the Congress and, of course, from the standpoint of the President himself.

Mr. COOLEY. How many projects has this committee ever approved which we should not have approved? Can you name one?

Mr. HUGHES. We have no quarrel with the committee's actions.

Mr. COOLEY. What quarrel have you got?

Mr. HUGHES. We have no quarrel, Mr. Chairman, other than the President's concern with this general problem of legislative-executive relationships which he referred to—

Mr. COOLEY. Other than the fact that he wants to reach up here and grab 44 projects and beat 44 Congressmen over the head with them, is that it?

Mr. HUGHES. I don't believe that is it.

Mr. COOLEY. What prompted him to do all this? Mr. Poage here is the most diligent worker I have ever been associated with in my life. He has given consideration to these projects in his subcommittee; they then come to the full committee and we either approve or disapprove. Now, all of a sudden comes this "grab for power." That is all it is.

Mr. HUGHES. Well, we don't—

Mr. COOLEY. You don't regard it as that, no, but we do.

Mr. HUGHES. We would like to see the problem resolved, Mr. Chairman, in some fashion which would—

Mr. COOLEY. In what kind of fashion?

Mr. HUGHES. Well, as we see it, there are at least two possibilities and we are certainly open to suggestion as to others. One possibility is the amendment of Public Law 566 in a fashion which would provide for congressional and committee oversight, but which would permit the executive branch proceeding with the project absent committee action.

Mr. COOLEY. You prefer to handle it through downtown bureaucrats rather than with this committee?

Mr. HUGHES. We would suggest language which would provide reporting to the Congress or to this committee with an appropriate waiting period, during which the committee could review the projects from the standpoint of its concerns and interest and could then communicate during this period obviously with the Secretary of Agriculture or the Bureau of the Budget or the President, as the case might be. The Congress could initiate legislative action if it wished to do something different than the executive branch—

Mr. COOLEY. Who gave you that idea? We have been operating for quite a few years now.

Mr. HEIMBURGER. It went on the statute books in 1956, Mr. Chairman.

Mr. POAGE. Mr. Chairman, if you will look at the document that is attached here, you will notice they are trying to change the rules of the House of Representatives.

Mr. COOLEY. That is what I thought.

Mr. POAGE. Not to talk about the powers of the President, but it says: "No appropriation shall be made"—in other words, it won't be in order to bring in any appropriation bill—until there has been certain action taken by the Public Works Committee, in that instance.

That interferes with the operating rules of the Congress of the United States. It is beyond me as to how this is an infringement on Presidential power, when I didn't understand that the President had the power to establish the rules of procedure in the Congress.

Mr. HUGHES. Our point, Mr. Chairman, is that while this is language couched in terms of rulemaking by the Congress, the President, as he has pointed out in various messages to the Congress, has found that this has essentially the same effect as the so-called coming into agreement arrangements to which he has objected in a number of instances and he feels that—

Mr. POAGE. The present President of the United States was a member of the Armed Services Committee, both of the House and of the Senate, I believe. How, could you point out a time when, acting in a legislative capacity, either as Representative or as Senator, he found that provision objectionable?

Mr. HUGHES. No, sir; I can only point out when he found it objectionable as a President.

Mr. POAGE. That is right.

Mr. HUGHES. There are a number of instances of that sort.

Mr. POAGE. That is right, but he was on both of those committees that exercised that power for a good many years.

Who dreamed this thing up? Evidently Lyndon Johnson didn't think about it. Lyndon Johnson was a member of the committee which exercised that power. Congressman Johnson and Senator Johnson.

Now, President Johnson comes in. Who thought that up for the President? Obviously, somebody thought it up for him. Did you folks suggest it to him?

Mr. HUGHES. No, sir; we don't have that distinction. The concept has been the subject of concern by a whole series of Presidents of both parties, starting at least with President Truman, and before that; but I am personally aware of the sequence of statements and actions by Presidents since that time.

There is a series of similar actions preceding that, antedating both my presence in the Bureau of the Budget and I think to an extent at least the Bureau of the Budget itself, so that we can't claim credit for the concern.

Mr. POAGE. I apologize to the chairman. I didn't intend to get you off the subject.

Mr. COOLEY. This is exactly what I want to talk about. Proceed further.

Mr. POAGE. I would like to go just a little bit further in that respect. About the rulemaking power of the Congress, is it your position,

speaking for the President—now, I understand you are here speaking for the President—

Mr. HUGHES. Yes, sir.

Mr. POAGE. Is it your position that the Congress does not have the power to establish rules of procedure within its own body if they in any way—I won't say limit the importance of the President, but interfere with what the President wants to do?

Mr. HUGHES. No, sir; that would not be my position. I would prefer your first choice of words.

Mr. POAGE. It doesn't limit the President's power at all when we say that this committee can't consider something until another committee has acted. That is the whole basis on which we have an Appropriations Committee. There was a time when there wasn't any Appropriations Committee and when each legislative committee formulated the appropriations that covered its subject matter. Now, we have created an Appropriations Committee and said: "You can't appropriate unless there has been an authorization by a legislative committee."

Now, is that an infringement upon the powers of the President?

Mr. HUGHES. In effect, Mr. Poage, the President has said as much.

Mr. POAGE. The whole idea of an Appropriations Committee and limiting it to appropriating where there has been an authorization by a legislative committee, do you say that is an infringement on the powers of the President?

Mr. HUGHES. The President has said, Mr. Chairman, that the procedure provided in the Rivers and Harbors and Flood Control Act of 1965, and in Public Law 566—

Mr. POAGE. I fear you are not understanding me. I am talking about the general proposition. We created an Appropriations Committee and the Congress states that the Appropriations Committee cannot appropriate money except in pursuance to the authorization by a legislative committee—an authorization act brought into the Congress by a legislative committee.

Is that basically an infringement upon the rights of the President?

Mr. HUGHES. In the terms that this is expressed in this legislation, the President said so; yes, sir.

Mr. POAGE. I am not talking about terms expressed in this legislation. I think you understood, Mr. Hughes, that I was talking about the general proposition of the existence of an Appropriations Committee with limitations on it, so that it couldn't make appropriations except when authorized by action of another committee.

Now, is the requirement that that other committee act, is that an infringement upon the rights of the President?

Mr. HUGHES. First, the Appropriations Committee does not make appropriations; obviously, that bears on the response to your question. The only answer that I can give you, Mr. Poage, is in terms of this particular situation because this is the one that the President has directed himself to—

Mr. POAGE. Mr. Hughes, I didn't ask you a thing about this particular situation. I talked about something that occurred long before this situation ever arose and I go back to it and I would like an answer on the record as to whether or not it is your opinion as the representative of the President that the limitation imposed by law upon the Appropriations Committee, that it may not appropriate except for

purposes authorized by legislation formulated by another committee, is that a limitation on the powers of the President?

Mr. HUGHES. Mr. Chairman, I am sorry to be difficult here and I don't intend to be, but the terms and language that we are dealing with here are obviously quite important.

If, in the language you express, the intent is to provide a committee other than the Appropriations Committee with authorization authority ordinarily vested in the Congress, my answer to you would be that that is an improper action and the President would so agree.

Mr. POAGE. You mean then that if we authorize any committee other than the Appropriations Committee to make appropriations—

Mr. HUGHES. Mr. Chairman, no appropriation is made by the Appropriations Committee. Appropriations are made by the Congress and it is our view that authorizations must also be made by the Congress and not by an individual committee, just as is the case with the Appropriations Committee.

Mr. POAGE. I think I follow your reasoning there.

Mr. COOLEY. You do understand the system, don't you?

Mr. HUGHES. I think I do, sir.

Mr. COOLEY. In other words, this committee authorizes and the Appropriations Committee appropriates and all action has to be approved by the Congress.

Mr. HUGHES. Mr. Chairman, this I think is the source of the problem. We don't feel that the Appropriations Committee appropriates. We feel the Congress appropriates.

Mr. COOLEY. There is no feel about it. We know the Congress puts a stamp of approval on it.

Mr. HUGHES. In the same sense, Mr. Chairman, we feel this committee should not authorize. Rather, the whole Congress should authorize.

Mr. COOLEY. If there is no authorization, it is subject to a point of order. You have to have authorization from this committee before you can get appropriation through Congress.

Mr. HUGHES. That is the effect of the present language in Public Law 566.

Mr. COOLEY. You don't object to that?

Mr. HUGHES. The President objects to it.

Mr. COOLEY. I don't care. He isn't going to change it, I will tell you that.

Mr. POAGE. You might follow that a little further. A good many pieces of legislation would be subject to a point of order were they brought before the Congress if the Rules Committee hasn't affirmatively authorized them to come before the Congress. You recognize that fact, I am sure.

Mr. HUGHES. Yes.

Mr. POAGE. Does that Rules Committee constitute an infringement upon the powers of the President?

Mr. HUGHES. No, sir. The Congress as a whole must act ultimately. That is the basic point.

Mr. POAGE. We reported out a communities facilities bill a few days ago and it is still pending. If we were to bring that bill onto the floor of the House this afternoon and Chairman Cooley were to arise and suggest to the Speaker that he wanted to call that bill up, I think if it were called up and passed it would be an act of Congress. But anybody could raise the point of order that it had no rule.

Mr. HUGHES. Yes, sir.

Mr. POAGE. Now, that is a rule of the House, that the bill must have gone to the Rules Committee, and the Rules Committee must have affirmatively approved it before we considered it.

Mr. HUGHES. Yes, sir.

Mr. POAGE. Now, in this case we say that before the Appropriations Committee can make an appropriation that this committee or the Public Works Committee, or the Armed Services Committee, or some other, must have taken certain action.

Is there anything basically different between requiring action by the Agriculture Committee and requiring action by the Rules Committee?

Mr. HUGHES. Yes, sir. As we see it——

Mr. POAGE. What is it?

Mr. HUGHES. The effect of Public Law 566 and similar language is to give the relevant committee the final say with respect to the authorization action involved; not the Congress as a whole, but the——

Mr. POAGE. To say that you can't pass an appropriations bill if there is a point of order against it—to say you can't pass an appropriations bill providing funds for that, unless this committee had approved it. By the same token, we can't pass the communities development bill unless the Rules Committee has taken action on it.

Mr. HUGHES. There are alternatives, of course, to the Rules Committee acting under the 21-day rule and so on.

Mr. POAGE. We haven't always had the 21-day rule, as you know. We have it and we don't and we have it and we don't and nobody suggests that the 21-day rule—the 21-day rule doesn't make the Rules Committee constitutional, does it?

Mr. HUGHES. That is right.

Mr. POAGE. You didn't challenge the constitutionality of the Rules Committee when we didn't have a 21-day rule, did you?

Mr. HUGHES. My point is that there are alternatives to the Rules Committee procedure——

Mr. POAGE. That happens to be true at the present moment, but there didn't happen to be a few years ago any alternatives. Nobody challenged the constitutionality of the Rules Committee and you don't challenge it today, do you?

Mr. HUGHES. No, sir; I certainly do not.

Mr. POAGE. Of course not, and I want that clearly on the record that you don't challenge the Rules Committee and you don't defend it simply because of these alternatives, do you?

Mr. HUGHES. No, sir; I don't. I think they are of material assistance.

Mr. POAGE. What is the difference then in the Congress saying that the Rules Committee must act and saying that the Agriculture Committee must act?

Mr. HUGHES. The difference, Mr. Chairman—again, as we see it—stems from the so-called coming-into-agreement problem and the impact of this kind of a rulemaking effort by the Congress upon the legislative and executive processes.

As the President has seen it, whatever the form—even though the form of the process, as in Public Law 566, is a rulemaking form—the effect is the same as the coming-into-agreement procedure——

Mr. COOLEY. What is this "coming into agreement" you talk about?

Mr. HUGHES. The "coming into agreement" procedure which the President has objected to and prior presidents have objected to.

Mr. COOLEY. What do you mean by "coming into agreement?"

Mr. HUGHES. The "coming into agreement" procedure, Mr. Chairman, is a procedure which appeared in several statutes over a period of years. I think most recently in the military construction authorization bill which I believe was last session. The language of that statute said in effect that no military installations could be closed unless the Secretary of Defense came into agreement with the Armed Services Committees of the House and the Senate upon that action. The President disapproved the bill and the Congress subsequently reenacted it without the particular language, substituting a reporting requirement.

Mr. COOLEY. That is what you mean by coming into agreement between the executive branch and the legislative branch?

Mr. HUGHES. Coming into agreement between the Secretary of Defense, I believe it was, in this case, and the Committees on Armed Services.

Mr. COOLEY. Just what are you proposing for the President. You are here to make some proposition. What is it?

Mr. HUGHES. Mr. Chairman, I am here in response to the committee's request.

Mr. COOLEY. What is the President's proposal? He has had as to the White House. He has had the Attorney General come to my office once or twice and also the Director of the Bureau of the Budget. I have not yet clearly understood what he proposes. Under the law some of these projects are approved downtown by the Secretary, are they not? They never get up to the Hill.

Mr. HUGHES. Very small ones; yes, sir.

Mr. COOLEY. You want those, too, do you not?

Mr. HUGHES. No, sir.

Mr. COOLEY. Why not? In other words, when it comes to dealing with a constitutional question, you value it in the total of so many dollars. It is all right for the Secretary to sit down there and approve little projects. We can approve other projects of a different value and the public works another group, and the President wants all of them.

Mr. HUGHES. No, sir. The Secretary approves the ones he approves, pursuant to the provisions of Public Law 566.

Mr. COOLEY. That is right.

Mr. HUGHES. As we see it, there are two alternatives. One is the combination of a reporting requirement and an appropriate waiting period which it seems to us would provide this committee and the Congress—

Mr. COOLEY. You mean this would make it constitutional?

Mr. HUGHES. As we see it the substitution of a waiting period for this language—which now has the effect of a coming into agreement provision—would make it constitutional.

Mr. COOLEY. If you argue with me that every one of these things had to be approved in this committee first and then go through the Congress, I could sit back and listen to your constitutional argument. But when you say that when the Secretary does it, it is constitutional, but it is unconstitutional for the committee to pass on these projects, I cannot follow that kind of reasoning.

Mr. HUGHES. What the Secretary does he does pursuant to a statutory authorization by the Congress which obviously went through this committee. It would be constitutional if the committee so wished—obviously, I am not asking that—to authorize the Secretary to do additional categories of projects. It would be appropriate, as we view it, for the Congress to authorize the Secretary subject to a reporting requirement and an appropriate waiting period, which would give this committee and the Congress time to review these projects.

Mr. COOLEY. In other words, you say it is all right to delegate the power to a bureaucrat but the Congress has no right to make rules giving us any authority.

Mr. HUGHES. No, sir, I am trying not to say that.

Mr. COOLEY. That is what you said.

Mr. HUGHES. We think, Mr. Chairman, that a reporting requirement and an appropriate waiting period would provide your committee, Mr. Poage's subcommittee—we have no quarrel with the way he does his business, we share your admiration for the job he has done—we think that a reporting requirement and a waiting period would provide appropriate and adequate means for the committee having a desirable opportunity to look at these projects and review them, to consult with the Secretary—

Mr. COOLEY. Where did the President get such authority from the Constitution? I have studied constitutional law all my life, but I never heard that the President had a right to jump in here and do what he proposes to do. The Constitution does not seem to have any weight if you play that way.

Mr. HUGHES. No, sir. There need be no delegation of authority whatsoever to the executive branch if the Congress and the committee does not wish it. This is the other alternative.

Mr. POAGE. Mr. Chairman, while you speak of the Constitution, reading from the Constitution, it says that each House may determine the rules of its proceedings.

Mr. COOLEY. That is right.

Mr. POAGE. I always understood that to mean that each House could determine how it would consider legislation and put such limitations as it saw fit upon what it could consider and what it would not consider, and when it would consider and when it would not consider it, and what committees it required to act and what it did not require to act.

When we come along and do nothing more than say that one committee of the House cannot consider an appropriation unless another committee of the House has taken some action, I cannot for the life of me see how that gets into the field of executive power at all. It seems to me to be clearly within the limitations of the legislative branch. Yet we are told that the President feels that has the effect of denying approval of certain projects. Of course, it has the effect. If this committee does not approve the project, then Mr. Mahon's committee cannot appropriate the money for it. That is what it says, doesn't it?

Mr. HUGHES. Yes, indeed.

Mr. POAGE. How that infringes on the President's powers, I don't understand. It is true that it may mean that Mr. Mahon's committee won't have the power to appropriate for a certain purpose, but clearly

we have that all the way through our legislative system. We have requirements that certain actions be taken before the House can vote on certain pieces of legislation. We say here that before the Appropriations Committee can act, this committee has to act. Certainly that may have an influence on what projects are going to be approved and what are not. But it is certainly a procedural matter. Procedure does have an influence on the results of legislation. That is the reason you have procedural rules. But the Constitution of the United States, not the law, not the Presidential edict, clearly says that each House shall determine its own procedure. The Houses did determine this procedure in the passage of Public Law 566. It is procedural, is it not?

Mr. HUGHES. It is procedural, Mr. Chairman.

The procedure, however, has the effect which concerns the President of impairing—

Mr. POAGE. The Rules Committee is wholly procedural. There is nothing about it except procedure. But it certainly has the effect and it has had the effect this year of preventing some legislation the President wanted passed, hasn't it?

Mr. HUGHES. The session is not over, Mr. Chairman. I would rather withhold judgment for the time being.

Mr. POAGE. You are speaking for the President. It has prevented passage of something you wanted passed. You are speaking for the President.

Mr. HUGHES. I would rather wait until the end of the session, Mr. Chairman, before commenting.

Mr. POAGE. That is the frustrating thing about this. You come here and act as if you had never given any thought to shearing any of the committees of the Congress of their power except this committee, and frankly, I do not like it. I do not like to be tied down and sheared any more than a goat does.

Mr. HUGHES. Mr. Chairman, it is certainly not my intent of shearing this committee in any fashion.

Mr. COOLEY. He is not going to shear us—don't worry about that—not if I can help it.

Mr. DOLE. As I understand it, the question is the separation of powers and what may amount to a legislative veto.

Mr. HUGHES. A committee veto, Mr. Dole.

Mr. DOLE. Or a legislative veto.

Mr. HUGHES. Yes.

Mr. DOLE. In 1961, the administration asked authority on price adjustment programs for all the agricultural commodities. Under that bill the administration sent to our committee H.R. 6400, these proposals would have been submitted to Congress. If the Congress failed to disapprove the proposed program in 60 days, the proposal would go into effect and be subject to a referendum. Both the House and the Senate rejected this requested authority. But during the debate on the bill the General Counsel of the USDA submitted a brief in support of the bill's constitutionality and cited the Small Watershed Act, Public Law 566, as a precedent. If the Small Watershed Act was constitutional in 1961 why is it unconstitutional now?

Mr. HUGHES. First with respect to the procedure which you refer to, Mr. Dole, that is the so-called Reorganization Act procedure.

Mr. DOLE. Is the Reorganization Act constitutional?

Mr. HUGHES. Yes, as we regard it. It is a different procedure and requires different kinds of action than we are talking about here. I am not familiar with the brief that the Department of Agriculture submitted.

Mr. DOLE. Can you submit for the record a copy of any court decision sustaining your action?

Mr. HUGHES. I can certainly submit you a series of Attorney General's opinions.

Mr. DOLE. Are there any court decisions?

Mr. HUGHES. To the best of my knowledge there are none four-square on this point. There are many opinions but as far as I know, no court decisions. This is obviously a difficult and controversial area of legislative-executive relationships. Opinions differ as between the Congress and successive Chief Executives. Obviously opinions differ among specific Presidents as well. The lines are very fine here. This is one of the reasons that we are having difficulty.

Mr. DOLE. Has the Bureau of the Budget questioned this legislation prior to 1966?

Mr. HUGHES. Yes, indeed. So have prior Presidents going well into the past, predating the Bureau of the Budget.

Mr. DOLE. Will you provide for the record what specific questions have been raised with respect to 566?

Mr. HUGHES. With respect to 566 or similar procedures?

Mr. DOLE. Public Law 566, since 1954, since the time of its enactment.

Mr. HUGHES. I will try to do that.

Mr. DOLE. Will you also submit for the record a copy of any court decisions which would indicate that your position is justifiable, and also reference to any specific statutes which would support the contention of the President and the Bureau of the Budget which says what we are doing violates the constitutional principles involved. Could those be made a part of the record?

Mr. HUGHES. Surely.

(The information follows:)

JULY 2, 1966.

CONSTITUTIONAL ISSUES RAISED BY PROVISIONS SIMILAR TO THOSE IN PUBLIC LAW 566

P.L. 566.—Section 1(a) of P.L. 566 of the 83d Congress, as amended (16 U.S.C. 1002), provides that no appropriation shall be made for any flood prevention or watershed protection plan developed under that Act which involves an estimated Federal contribution to construction costs in excess of \$250,000 or which includes any structure which provides more than 2500 acre-feet of total capacity unless such plan has been approved by resolutions adopted by the appropriate committees of Congress. The Act designates the appropriate committees for plans involving single structures providing more than and less than 4000 acre-feet of total capacity.

Constitutional issues.—The constitutional issues raised by provisions such as those in P.L. 566 are that:

1. They endeavor to empower the legislative branch, or a part of it, to participate in the execution of the laws in violation of Article II, section 1, of the Constitution which vest "the executive Power" in President.

2. They represent an unauthorized delegation of the power of Congress to its committees in violation of Article 1, section 1, of the Constitution which vests all legislative powers in "a Congress of the United States."

Both issues relate to a principle which is fundamental to our system of Government—the principle of the separation of powers.

Court decisions—First Congress.—At an early date in our history Chief Justice Marshall stated the basic principle in these words:

"The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law." *Wayman v. Southard*, 10 Wheat. 1,46.

About a century later, the Supreme Court explained what is meant by legislative and executive functions:

"Legislative power, as distinguished from executive power is the authority to make laws but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions." *Springer v. Philippine Islands*, 277 U.S. 189, 201-202.

It was realized during the earliest days of the Republic that under our constitutional doctrine of the separation of powers the functions of Congress end with the enactment of a statute, and that any attempt to control its enforcement is incompatible with the basic plan of the Constitution. During the debates in the First Congress, which resulted in the Decision of 1789, viz., that the power to remove officers rested with the President alone, Madison emphasized that—"if there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is just that which separates the Legislative, Executive, and Judicial powers."

From this "sacred principle" it followed that upon the enactment of a statute "the Legislative power ceases." 1 Annals of Congress 581-582.

Presidential statements—Attorney General opinions.—There have been numerous Presidential statements and Attorney General opinions on specific provisions of law and legislation which, like P.L. 566, require the approval of Executive action by, or the "coming into agreement with," committees, subcommittees, or their chairmen.

A classic statement on the subject is to be found in President Wilson's Message of May 13, 1920, vetoing the Legislative, Executive, and Judicial Appropriation Act for 1921 on the ground that one of its provisions subjected the printing of all Government publications to the control of the Congressional Joint Committee on Printing:

"The Congress has the right to confer upon its committees full authority for purposes of investigation and the accumulation of information for its guidance, but I do not concede the right, and certainly not the wisdom of the Congress endowing a committee of either House or a joint committee of both Houses with power to prescribe 'regulations' under which executive departments may operate." 59 Cong. Rec. 7026.

In 1933, President Hoover disapproved a similar provision (H. Doc. 529, 72d Cong., 2d session), attaching to his veto message an opinion by Attorney General Mitchell which stated:

"Attempting to have committees of Congress approve executive acts, or execute administrative functions, or participate in the execution of laws is not a new idea. Carried to its logical conclusion it would enable Congress, through committees or persons selected by it, gradually to take over all executive action, not by legislation withdrawing authority, but by action of committees, or of either House acting separately from the other." (37 op. A.G. 56, 62.)

In his opinion, Attorney General Mitchell ruled that a bill which would have required the approval by the Joint Committee on Internal Revenue Taxation of any tax refund in excess of \$20,000 was unconstitutional because if the matter of making refunds—

"be an executive or judicial function, clearly a joint committee of Congress may not execute it, and if it is a legislative function it is equally clear that a joint committee may not perform it. Action by a committee is not legislation and a committee of the Congress cannot legislate (37 OP. A.G. 56, 60-61) *** because a joint committee has not the power to legislate, and legislative power cannot be delegated to it." *Id.* at 93.

In more recent years, Attorneys General Brownell and Rogers have come to the same conclusion in analogous situations. 41 OP. A.G. 230, at 234; *id.* 300, at 303.

The latter, in his opinion, stated:

"Legislative proposals and enactments in recent years have reflected a growing trend whereby authority is sought to be vested in congressional committees to approve or disapprove actions of the executive branch. Of the several legislative devices employed, that which subjects executive department action to the prior approval or disapproval of congressional committees may well be the most inimical to responsible government. It not only permits organs of the legislative branch to take binding actions having the effect of law without opportunity for the President to participate in the legislative process, but it also permits mere handfuls of members to speak for a Congress which is given no opportunity

to participate as a whole. An arrangement of this kind tends to undermine the President's position as the responsible Chief Executive."

President Eisenhower vetoed a bill which contained committee approval provisions on the ground that—

"* * * while Congress may enact legislation governing the making of Government contracts, it may not delegate to its members or committees the power to make such contracts, either directly or by giving them a power to approve or disapprove a contract which an executive officer proposes to make." 100 Cong. Rec. 7135.

President Kennedy, on January 8, 1963, sent a memorandum to the Administrator of the Agency for International Development in which he stated—

"The Foreign Aid and Related Agencies Appropriation Act, 1963 contains a provision which states that program changes involving funds for economic assistance carried forward from prior years may be made only if the Appropriations Committees of the Congress are notified prior to such changes and no objection is entered by either Committee within 60 days.

"I have been advised by the Attorney General that this provision is unconstitutional either as a delegation to Congressional committees of powers which reside only in the Congress as a whole or as an attempt to confer executive powers on the Committee in violation of the principle of separation of powers prescribed in Articles I and II of the Constitution. Previous Presidents and Attorneys General have objected to similar provisions permitting a Committee to veto executive action authorized by law."

President Johnson has also stated his position on the matter of committee approval of executive actions on a number of occasions including his statement on signing the Public Works Appropriations Act on December 31, 1963. Most pertinent, however, was his veto message on the Pacific Northwest Disaster Relief Act of 1965 in which he objected to a provision requiring committee approval for a public work as a condition for an appropriation. He stated then that:

"The Attorney General advises me that this provision is clearly a "coming into agreement" with a congressional committee requirement. This device requires an executive official to obtain the approval of a committee or other unit of Congress before taking an executive action. It is not only an undesirable and improper encroachment by the Congress and its committees into the area of executive responsibilities—it also leads to inefficient administration. The executive branch is given, by the Constitution, the responsibility to implement all laws—a specific and exclusive responsibility which cannot properly be shared with a committee of Congress.

"The proper separation of powers and division of responsibilities between Congress and the executive branch is a matter of continuing concern to me. I must oppose the tendency to use any device to involve congressional committees in the administration of programs and the implementation of laws." * * *

A similar provision in the Omnibus Rivers and Harbors Bill of 1965 prompted the signing statement already supplied in testimony. Numerous other examples can be provided.

Mr. COOLEY. I would like to ask one more question. Has the Bureau of the Budget stopped the Secretary from approving the small projects?

Mr. HUGHES. No, sir.

Mr. COOLEY. The Secretary has gone right on.

Mr. HUGHES. Yes, sir.

Mr. COOLEY. Just as usual.

Mr. HUGHES. Yes, sir.

Mr. COOLEY. The President just objects to the committees of the Congress having anything to do with these projects?

Mr. HUGHES. No, sir; not to having anything to do. He is objecting to this particular procedure.

Mr. COOLEY. Alternative approaches he has no problem with and has in fact proposed alternatives in other similar situations.

Mr. POAGE. You have used the word, and I think correctly, of this procedure.

Mr. HUGHES. Yes, sir.

Mr. POAGE. It is procedural, and the Constitution says the procedure set out by the respective Houses. How do you reconcile your claim to fix the procedure of the two Houses?

Mr. HUGHES. Because this procedure, the President feels, impairs his ability to carry out his responsibility.

Mr. POAGE. Doesn't all procedure limit substantive legislation? Doesn't all procedure have that effect?

Mr. HUGHES. No, sir. I think most procedures facilitate action on legislation. This particular one presents problems from the President's standpoint.

Mr. POAGE. It does not present any problems to him. You just said it did not. You just said we haven't done anything that was wrong. But that he felt we were doing something and he wanted us to stop doing it. But it was not wrong, what we were doing; but he did not want us to do it.

Mr. HUGHES. The Bureau of the Budget has, and as far as I know the President has, no objection to what the committee has done, to the way that the committee has carried out its responsibilities.

Mr. POAGE. This committee has never approved a project that the Bureau of the Budget disapproved of, has it?

Mr. HUGHES. No, sir; we have not disapproved of any, at least in recent years.

Mr. POAGE. You must not have done much of a job, if you saw nothing to disapprove.

Mr. HUGHES. We think we have.

Mr. POAGE. You think they all should have been approved.

Mr. HUGHES. No, sir. But we have worked with the agencies to reconcile the problems among the agencies and between the agencies and ourselves, and generally to bring them to you in as good shape as we can.

Mr. POAGE. The chairman asked you about Marsh Creek earlier, in which there would have been required an expenditure of \$1,400 for every benefited acre and the land was at that time worth \$50 to \$75 an acre at the outside. You approved that project.

Mr. HUGHES. I am not familiar with the project again, Mr. Chairman, but I certainly accept your assessment of the situation and I gather we did. We forwarded a project.

Mr. POAGE. It came to us with your recommendation. Do you think that you should have approved every project that has come up here?

Mr. HUGHES. I think we would have to rest on our record, Mr. Chairman, and say that we approved the ones that we thought should be approved.

Mr. POAGE. That has been every one.

Mr. HUGHES. It was every one in 1965 and as far as I know, we have no quarrel with the specific ones this year. I am not familiar in detail with the situation prior to 1965. I think the law, Mr. Chairman, requires the transmittal of all projects and we obviously do so.

Mr. POAGE. The law requires transmittal but it allows you to express disapproval.

Mr. HUGHES. I think we have from time to time commented on aspects of projects.

Mr. POAGE. I wonder if you would put in the record a list of those projects where the Bureau of the Budget has pointed out that there were questions or defects about them or a probability that they should not be approved by this committee.

Mr. HUGHES. I surely will.
(The list follows:)

PROJECTS ON WHICH THE BUREAU OF THE BUDGET RAISES QUESTIONS

A. Comments to the Congress on individual P.L. 566 watershed work plans.

1. Rock Creek Watershed, Maryland—transmitted April 3, 1963.

2. On 9 occasions between July 23, 1959, and August 15, 1960, the Bureau transmitted reports with letters which included comments with respect to cost sharing policy. A total of 80 work plans were transmitted to the Speaker of the House and the President of the Senate on these 9 occasions. In these letters the Bureau suggested deferral until the Congress had an opportunity to act on uniform cost sharing legislation.

B. In addition to the foregoing comments to the Congress, our files reveal intra-executive branch discussions extending over periods of several months, in some cases, involving a number of additional projects:

1. Upper Rock Creek Watershed, Maryland—4/3/63*

2. Marsh Creek Watershed, Kentucky and Tennessee—5/24/60*

3. Swan Quarter Watershed, North Carolina—9/20/65*

4. Home Supply Watershed, Colorado—8/14/64*

5. Shoal Creek Watershed, Illinois—5/25/59*

6. Sulphur Creek (Supplement) Watershed, Texas—4/30/59*

Mr. DOLE. Mr. Hughes, if we provided a 60-day waiting period as provided in H.R. 6400 with reference to commodity programs, would that meet the objection of the Bureau of the Budget and the President? In other words, if we failed to disapprove any project within 60 days, does that satisfy your objection?

Mr. HUGHES. If the language provided a reporting requirement to the Congress or the committee, and a 60-day waiting period during which the committee could do whatever it wished, but with no specific authority for committee approval or disapproval, there would be no problem. The problem is with committee action which we regard as an authorization action of a sort which should be taken by the Congress as a whole.

Mr. DOLE. So that would not be a suitable alternative, then.

Mr. HUGHES. If the language provided for a committee veto, in effect, we would not regard that as suitable.

Mr. DOLE. That would have the same effect of taking away from our committee the project. What would happen if we just proceed—Mr. Cooley has indicated we may—approving these projects even without the approval of the Bureau of the Budget. What would happen if our subcommittee and the full committee, as we have done for the last 12 years, would act upon pending projects favorably or unfavorably, then what would you do?

Mr. HUGHES. First, Mr. Dole, as I indicated in the statement, it would be my hope that it would not come to that. Apart from whatever is done with respect to future years—we recognize the time problem this year and the concern and embarrassment that our wrestling with this problem has caused to the committee—it would be our hope that we could get these before the committee in the very near future and, as I indicated, handle them under existing law and under existing procedures.

*Date transmitted to the Congress.

Mr. DOLE. Just like we have done in the past?

Mr. HUGHES. Yes. With respect to future years, I suggested to Chairman Cooley, the possibility of a reporting requirement and waiting period. The other alternative or another alternative—there may be still more—may be in effect either individual bills or an omnibus authorization bill similar to the rivers and harbors bill.

Mr. HEIMBURGER. I would just like to point out, Mr. Dole, that the House of Representatives has in effect approved these projects now and appropriated money for them. The 1967 agriculture appropriation bill has passed the House of Representatives. These projects have been approved by the Department of Agriculture, submitted to the Bureau of the Budget, and presumably included in their 1967 budget. The point of order has not been raised on the floor. Therefore, Mr. Chairman, presumably the House has already approved these projects in effect by appropriating the blanket appropriation for this work in 1967. Is this not correct, Mr. Hughes?

Mr. HUGHES. The funds are in the bill, that is certainly so.

Mr. HEIMBURGER. That is correct. We have already done it.

Mr. DOLE. I just want to have one other thing for the record. I ask permission at this time to include the opinion of the general counsel with reference to H.R. 6400, that specific provision which indicated Public Law 566 was constitutional. I have also asked Mr. Hughes if he could provide for the record a copy of any opinion from the Attorney General with reference to the specific question involved here this morning. In other words, any court decisions, any opinions, any statutes, which you based your action on.

Mr. POAGE. Would you ask to include the provision of the Constitution?

Mr. DOLE. Yes, most definitely. Including anything in the Constitution which might be justification for your action.

Mr. HUGHES. Surely.

Mr. DOLE. Not the whole thing.

(The information follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., May 8, 1961.

To: Harold D. Cooley, Chairman, Committee on Agriculture, House of Representatives.

From: John C. Bagwell, General Counsel.

Subject: Constitutionality of Title I of H.R. 6400, 87th Congress, 1st Session.

At the recent hearings with respect to H.R. 6400, 87th Congress, 1st Session, questions were raised with respect to the constitutionality of Title I of the bill. Accordingly, we believe that it is appropriate to set forth our views as to the constitutional issues which may be presented in connection with Title I of the bill.

The provisions in Title I of the bill with respect to regulatory programs for agricultural commodities are based on the provisions in the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. § 601 *et seq.*), and the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. § 1281 *et seq.*). Title I of the bill authorizes regulatory programs which would be comparable to the programs now in effect under those Acts, except that programs could be made effective for additional commodities. The statutory standards as to the formulation of programs under Title I of the bill are generally similar to the statutory standards in those Acts. Hence the decisions sustaining the constitutionality of the Agricultural Marketing Agreement Act of 1937, as amended, and the Agricultural Adjustment Act of 1938, as amended, are particularly significant.

COMMERCE CLAUSE OF THE CONSTITUTION

The Agricultural Adjustment Act of 1938, as amended, has been sustained as a valid exercise of the power of Congress to regulate commerce. *United States v. Haley*, 358 U.S. 644 (wheat quotas); *Wickard v. Filburn*, 317 U.S. 111, 118-129 (wheat quotas); *Mulford v. Smith*, 307 U.S. 38, 47-48 (tobacco quotas); *Rodgers v. United States*, 138 F. 2d 992, 994 (C.A. 6) (cotton quotas); *Troppy v. La Sara Farmers Gin Co.*, 113 F. 2d 350, 351-352 (C.A. 5) (cotton quotas). In sustaining the Act, as applied to the regulation of wheat which was fed to livestock on the farm where it was produced, the Court held in *Wickard v. Filburn*, *supra*:

"We believe that a review of the course of decision under the Commerce Clause will make plain, however, that questions of the power of Congress are not to be decided by reference to any formula which would give controlling force to nomenclature such as 'production' and 'indirect' and foreclose consideration of the actual effects of the activity in question upon interstate commerce" (317 U.S. at 120).

* * * * * *

"But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect'" (317 U.S. at 125).

* * * * * *

"The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial" (317 U.S. at 127-128).

In *United States v. Butler*, 297 U.S. 1, 62-78, the Court invalidated the processing tax under the Agricultural Adjustment Act of 1933 on the ground that Congress attempted to control agricultural production under the taxing power. However, in *Maneja v. Waiialua Agricultural Co.*, 349 U.S. 254, 259, the Court held that it is "not necessary now to consider the vitality of *United States v. Butler*, *supra*, for that decision expressly reserved the question of whether the regulation of agriculture was within the commerce power, and *Wickard v. Filburn*, *supra*, decided the question in favor of the congressional power." See also, *Curriu v. Wallace*, 306 U.S. 1, 9-13, sustaining the validity of the Tobacco Inspection Act (7 U.S.C. § 511 *et seq.*).

The Agricultural Marketing Agreement Act of 1937, as amended, has also been sustained as a valid exercise of the power of Congress to regulate commerce. *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 118-129 (Chicago milk marketing order); *United States v. Rock Royal Co-op.*, 307 U.S. 533, 568-571 (New York milk marketing order); *H. P. Hood & Sons v. United States*, 307 U.S. 588, 595 (Greater Boston milk marketing order); *Whittenburg v. United States*, 100 F. 2d 520, 521-522 (C.A. 5) (Texas citrus fruit marketing order); *Wallace v. Hudson-Duncan & Co.*, 98 F. 2d 985, 993 (C.A. 9) (Oregon walnut marketing order); *Edwards v. United States*, 91 F. 2d 767, 780-782 (C.A. 9) (California and Arizona citrus fruit marketing order).

ADEQUACY OF LEGISLATIVE STANDARDS

The standards set forth in the Agricultural Marketing Agreement Act of 1937, as amended, are in sufficient detail so that the Act does not unlawfully delegate legislative authority to the Secretary. *United States v. Rock Royal Co-op.*, *supra*, 307 U.S. 533, 574-577; *H. P. Hood & Sons v. United States*, *supra*, 307 U.S. 588, 595; *Whittenburg v. United States*, *supra*, 100 F. 2d 520, 522 (C.A. 5); *Wallace v. Hudson-Duncan & Co.*, *supra*, 98 F. 2d 985, 994 (C.A. 9); *Edwards v. United States*, *supra*, 91 F. 2d 767, 785-788 (C.A. 9). In sustaining the validity of the Agricultural Marketing Agreement Act of 1937, as amended, in this respect, the Court held in *United States v. Rock Royal Co-op.*, *supra*, 307 U.S. 533, 574:

"From the earliest days the Congress has been compelled to leave to the administrative officers of the government authority to determine facts which were to put legislation into effect and the details of regulations which would implement the more general enactments. It is well settled, therefore, that it is no argument against the constitutionality of an act to say that it delegates broad powers to executives to determine the details of any legislative scheme. This necessary authority has never been denied. In dealing with legislation involving questions

of economic adjustment, each enactment must be considered to determine whether it states the purpose which the Congress seeks to accomplish and the standards by which that purpose is to be worked out with sufficient exactness to enable those affected to understand these limits. Within these tests the Congress needs specify only so far as is reasonably practicable. The present Act, we believe, satisfies these tests."

The Agricultural Adjustment Act of 1938, as amended, has also been sustained with respect to the contention that the standards in the Act are inadequate. *Mulford v. Smith*, 307 U.S. 38, 48-49; *United States v. Stangland*, 242 F. 2d 843, 848 (C.A. 7); *Blatner v. United States*, 223 F. 2d 468 (C.A. 3); *Rodgers v. United States*, *supra*, 138 F. 2d 992, 994 (C.A. 6).

The fact that there is a "zone for the exercise of discretion by the * * * [administrative agency] is no more fatal here than in other situations where Congress has prescribed the general standard and has left to an administrative agency the determination of the precise situations to which the provisions of the Act will be applied and the weight to be accorded various statutory criteria on given facts." *Bowles v. Willingham*, 321 U.S. 503, 514-516. Statutes containing broad standards have frequently been sustained. *Yakus v. United States*, 321 U.S. 414, 422-427; *Bowles v. Willingham*, 321 U.S. 503, 514-516; *Curran v. Wallace*, 306 U.S. 1, 16-18; *N.Y. Central Securities Co. v. United States*, 287 U.S. 12, 24-25; *United States v. Chemical Foundation*, 272 U.S. 1, 11-13; *Avent v. United States*, 266 U.S. 127, 130; *Allegheny Airlines v. Village of Cedarhurst*, 238 F. 2d 812, 816-817 (C.A. 2); *Charles Hughes & Co. v. Securities and Exchange Com'n.*, 139 F. 2d 434, 436 (C.A. 2), certiorari denied, 321 U.S. 786. See, also, *Robinson v. United States*, 334 U.S. 282, 286; *Federal Power Comm'n. v. Hope Gas Co.*, 320 U.S. 591, 600-602.

The "judicial approval accorded these 'broad' standards for administrative action is a reflection of the necessities of modern legislation dealing with complex economic and social problems." *American Power & Light Co. v. Securities & Exchange Commission*, 329 U.S. 90, 105. In holding that the term "excessive profits" is a sufficient expression of legislative policy and standards to render the Renegotiation Act constitutional, the Court stated in *Lichter v. United States*, 334 U.S. 742, 786:

"The following, somewhat comparable, legislative specifications are among those which have been held to state a sufficiently definite standard for administrative action:

"'Just and reasonable' rates for sales of natural gas, *Federal Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 600-601; 'public interest, convenience, or necessity' in establishing rules and regulations under the Federal Communications Act, *National Broadcasting Co. v. United States*, 319 U.S. 190, 225-226; prices yielding a 'fair return' or the 'fair value' of property, *Sunshine Coal Co. v. Adkins*, 310 U.S. 381, 397-398; 'unfair methods of competition' distinct from offenses defined under the common law, *Federal Trade Comm'n v. Keppel & Bro.*, 291 U.S. 304, 311-312, 314; 'just and reasonable' rates for the services of commission men, *Tagg Bros. & Moorhead v. United States*, 280 U.S. 420, 431; and 'fair and reasonable' rent for premises, with final determination in the courts, *Levy Leasing Co. v. Siegel*, 258 U.S. 242, 243, 248-250."

The statutory standards in Title I of H.R. 6400 are the same in basic respects to the statutory standards which have previously been sustained in the cases arising under the Agricultural Marketing Agreement Act of 1937, as amended, and the Agricultural Adjustment Act of 1938, as amended. Also, the standards in Title I of H.R. 6400 are more specific than the standards in other statutes which have been sustained.

In the light of the foregoing decisions, the standards in Title I of H.R. 6400 are sufficiently explicit so that the Act would not be held invalid for lack of standards as was the National Industrial Recovery Act (see *Schechter Corp. v. United States*, 295 U.S. 495, 529-542) or the Bituminous Coal Conservation Act of 1935 (see *Carter v. Carter Coal Co.*, 298 U.S. 238, 310-312).

PRODUCER REFERENDUMS

Provisions for producer referenda to determine whether regulatory programs under the Agricultural Marketing Agreement Act of 1937, as amended, would become effective have been sustained against the contention that the Act unlawfully delegates legislative authority to producers. *United States v. Rock*

Royal Co-op., *supra*, 307 U.S. 533, 559, 577-578; *Edwards v. United States*, *supra*, 91 F. 2d 767, 788-789 (C. A. 9). In the *Rock Royal* case, *supra*, the Court held (307 U.S. at 577-578):

"The objection is made that this is an unlawful delegation to producers of the legislative power to put an order into effect in a market. In considering this question, we must assume that the Congress had the power to put this Order into effect without the approval of anyone. Whether producer approval by election is necessary or not, a question we reserve, a requirement of such approval would not be an invalid delegation."

Provisions for a producer referendum under the Tobacco Inspection Act (7 U.S.C. § 511 *et seq.*) were sustained in *Curran v. Wallace*, *supra*, 306 U.S. 1, 15-16. The Court held (306 U.S. 15-16):

"So far as growers of tobacco are concerned, the required referendum does not involve any delegation of legislative authority. Congress has merely placed a restriction upon its own regulation by withholding its operation as to a given market 'unless two-thirds of the growers voting favor it.' Similar conditions are frequently found in police regulations. *Cusack Co. v. Chicago*, 242 U.S. 526, 530. This is not a case where a group of producers may make the law and force it upon a minority (see *Carter v. Carter Coal Co.*, 298 U.S. 238, 310, 318) or where a prohibition of an inoffensive and legitimate use of property is imposed not by the legislature but by other property owners (see *Washington ex rel. Seattle Trust Co. v. Roberge*, 278 U.S. 116, 122). Here it is Congress that exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required favorable vote upon the referendum is one of these conditions. The distinction was pointed out in *Hampton & Co. v. United States*, 276 U.S. 394, 407, where, in sustaining the so-called 'flexible tariff provision' of the Act of September 21, 1922, and the authority it conferred upon the President, we said: 'Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be effected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district.'"

ADVISORY GROUPS

In *Whittenburg v. United States*, *supra*, 100 F. 2d 520, 522-523 (C.A. 5), involving a citrus fruit marketing order, it was contended that legislative authority was invalidly delegated to industry advisory groups. The Court held, however, that there is no invalid delegation inasmuch as the advisory groups "can never force action" (100 F. 2d at 522). The Court held (100 F. 2d at 523):

"Action taken is always that of the Secretary. These others gather and present information to give him a broader view of the situation. * * * But they have no actual power."

The use of industry groups which serve in an advisory capacity to administrative agencies has frequently been sustained. In *Sunshine Coal Co. v. Adkins*, 310 U.S. 381, 388-389, 399, the Court held that there was no invalid delegation of legislative power under the Bituminous Coal Act of 1937. Pursuant to that Act, industry boards proposed minimum prices pursuant to prescribed statutory standards, subject to approval, disapproval, or modification by the National Bituminous Coal Commission. The Court held (310 U.S. at 399):

"Nor has Congress delegated its legislative authority to the industry. The members of the code function subordinately to the Commission. It, not the code authorities, determines the prices. And it has authority and surveillance over the activities of these authorities. Since law-making is not entrusted to the industry, this statutory scheme is unquestionably valid."

The use of industry advisory groups has also been sustained in *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 142-146; *R. H. Johnson & Co. v. Securities & Exchange Com'n.*, 198 F. 2d 690, 695 (C.A. 2), certiorari denied, 344 U.S. 855. See also, *St. Louis & Iron Mountain Ry. v. Taylor*, 210 U.S. 281, 285-287; *Butte City Water Co. v. Baker*, 196 U.S. 119, 122-127; *Buttfield v. Stranahan*, 192 U.S. 470, 496-497; *United States v. Grady*, 225 F. 2d 410, 414 (C.A. 7), certiorari denied, 350 U.S. 896; *Prime Securities Corporation v. United States*, 119 F. 2d 939, 940 (C.A. 6), certiorari denied, 314 U.S. 654.

Title I of H.R. 6400 provides for industry advisory groups, but the Secretary is required only to consult and advise with such groups, and the Secretary has the authority to determine the details of the programs to be established pursuant to Title I of H.R. 6400. Hence the provisions in Title I of H.R. 6400 are not analogous to the provisions in the Bituminous Coal Conservation Act of 1935 held invalid in *Carter v. Carter Coal Co.*, *supra*, 298 U.S. 238, 310-312.

FIFTH AMENDMENT TO THE CONSTITUTION

The regulatory programs pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and the Agricultural Adjustment Act of 1938, as amended, do not violate the Fifth Amendment to the Constitution. *Wickard v. Filburn*, *supra*, 317 U.S. 111, 130; *United States v. Wrightwood Dairy Co.*, *supra*, 315 U.S. 110, 129-131; *United States v. Rock Royal Co-op.*, *supra*, 307 U.S. 533, 571-573; *H. P. Hood & Sons v. United States*, 307 U.S. 588, 595; *Shafer v. United States*, 229 F. 2d 124, 129 (C.A. 4), certiorari denied, 351 U.S. 931; *Blattner v. United States*, *supra*, 223 F. 2d 468 (C.A. 3); *Wallace v. Hudson-Duncan & Co.*, *supra*, 98 F. 2d 985, 989-993 (C.A. 9); *Edwards v. United States*, *supra*, 91 F. 2d 767, 783 (C.A. 9). See also, *Curran v. Wallace*, *supra*, 306 U.S. 1, 13-14. These cases involve the contentions that the regulatory programs violated the Fifth Amendment to the Constitution because they (i) resulted in inequities in particular cases, (ii) violated the person's freedom to contract, or (iii) involved a taking of property or a deprivation of liberty without due process of law.

ARTICLE IV, SECTION 2, OF THE CONSTITUTION

The Agricultural Adjustment Act of 1938, as amended, has been sustained in cases in which it was alleged that the wheat program is not applied uniformly and, therefore, does not afford equal privileges to all citizens as required by Article IV, Section 2, of the Constitution. *United States v. Stangland*, *supra*, 242 F. 2d 843, 848 (C.A. 7); *Blattner v. United States*, *supra*, 223 F. 2d 468 (C.A. 3).

CIVIL PENALTIES

It was held in *United States v. Stangland*, *supra*, 242 F. 2d 843, 848 (C.A. 7), and in *Rodgers v. United States*, *supra*, 138 F. 2d 992, 994 (C.A. 6), that the marketing penalties imposed pursuant to the Agricultural Adjustment Act of 1938, as amended, are penalties and not taxes and, therefore, that the imposition of such penalties does not violate the provisions in Article I, Section 2, clause 3, and Article I, Section 9, clause 4, of the Constitution.

CONGRESSIONAL REVIEW

The foregoing cases, we believe, dispose of the constitutional questions which may be presented with respect to Title I of H.R. 6400, except for a question as to the provisions in Title I of the bill for congressional review of administrative programs formulated pursuant to Title I of the bill. It is provided in Title I of H.R. 6400 that the President shall transmit to the Congress a statement describing the basic features of a program formulated pursuant to Title I of the bill, and such program shall not be undertaken if within the sixty-day period following the date on which the statement is submitted to the Congress, either the House of Representatives or the Senate has adopted a resolution stating in substance that the Senate or House of Representatives, as the case may be, does not favor such a program.

We do not believe that there is any case squarely in point with respect to the validity of such provisions, but Congress has enacted statutes from time to time with similar provisions. See, *e.g.*, the Reorganization Act of 1949 (5 U.S.C. § 133z-4); the Reorganization Act of 1945 (59 Stat. 613, 616); the Reorganization Act of 1939 (53 Stat. 561, 562-563); the Trade Agreements Extension Act of 1958 (19 U.S.C. § 1364(c)); the Immigration and Nationality Act (8 U.S.C. § 1254b)); and the Watershed Protection and Flood Prevention Act (16 U.S.C. §§ 1002 and 1005).

In the report of the House Select Committee on Government Organization with respect to the Reorganization Act of 1939, which provided for congressional disapproval of reorganizations pursuant to the Act (53 Stat. 561, 562-563), the Committee stated (H.R. Rep. No. 120, 76th Cong., 1st Sess., p. 6):

"The failure of Congress to pass such a concurrent resolution is the contingency upon which the reorganizations take effect. Their taking effect is not because the President orders them. That the taking effect of action legislative in character may be made dependent upon conditions or contingencies is well recognized.

The latest pronouncement of the Supreme Court on the subject is in * * * [*Currin v. Wallace*, 306 U.S. 1, 15-16]. That case upheld the validity of a referendum of farmers which determined whether the Secretary of Agriculture could exercise the authority given him by the statute to designate a market as one at which tobacco was required to be inspected and certified by Department representatives prior to its sale. It seems difficult to believe that the effectiveness of action legislative in character may be conditioned upon a vote of farmers but may not be conditioned on a vote of the two legislative bodies of the Congress.²⁷

The programs transmitted to the Congress pursuant to Title I of H.R. 6400 would be the administrative programs formulated under the congressional standards in Title I of H.R. 6400. The constitutionality of the congressional review provisions in Title I of H.R. 6400 is supported, we believe, by the rationale of the cases referred to in this memorandum upholding the constitutionality of provisions for producer referenda. This is not an indirect attempt to bypass the power of the President under Article I, Section 7, of the Constitution inasmuch as the President must transmit such programs to the Congress.

Similarly, the provisions in Title I of H.R. 6400 do not provide an indirect method for passing the power of Congress to legislate. If H.R. 6400 is enacted, the Congress will have exercised fully its legislative function. The standards set forth in Title I of the bill provide adequate guidelines for the formulation of administrative programs to carry out the congressional purpose. As we have explained in this memorandum, the standards set forth in Title I of the bill meet all constitutional requirements. While under the review procedure set forth in Title I of H.R. 6400 the Congress cannot alter or amend the programs as submitted by the President, the Congress would have the power to pass additional legislation which could require the Secretary to carry out programs different from the programs submitted to the Congress. Congress would be free at any time to enact additional legislation relating to the subject matter of H.R. 6400.

In short, we believe that the provisions in Title I of H.R. 6400 can be sustained against any attack based on constitutional grounds.

JOHN C. BAGWELL.

(The following is title VI, subtitle E, of H.R. 6400, 87th Cong., 1st sess.):

SUBTITLE E—CONGRESSIONAL REVIEW AND MISCELLANEOUS PROVISIONS

SEC. 141. (a) Notwithstanding any other provision of law, if a program is formulated for any commodity, other than for the 1962 wheat crop, under which—

(1) a marketing order is proposed for such commodity under the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, which would be applicable to all production or marketing areas of any commodity or product thereof, or which would provide for individual producer allotments or quotas, or

(2) a marketing quota is proposed for such commodity under part VII, subtitle B of title III of the Agricultural Adjustment Act of 1938, as amended, or

(3) a price or income stabilization operation is proposed for such commodity under title VI of the Agricultural Act of 1949, as amended, the President shall transmit to the Congress a statement describing the basic features of such program, and any such marketing order, marketing quota or stabilization operation shall not be issued, proclaimed or undertaken if within the sixty-day period following the date on which such statement is submitted to the Congress, either the House of Representatives or the Senate has adopted a resolution stating in substance that the Senate or House of Representatives, as the case may be, does not favor such a program. In the computation of the sixty-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain or an adjournment of the Congress sine die.

(b) Any program for any commodity or product thereof not disapproved by the Congress as provided in subsection (a) of this section shall be and remain in effect until superseded by another program for such commodity or product submitted pursuant to the provisions of this Act, or until such program terminates in accordance with its provisions, but as to basic commodities except corn, no such program shall terminate until so superseded by another program.

(c) Disapproval by the Congress of any program pursuant to subsection (a) of this section, or the submission of a program pursuant to such subsection which is disapproved by the Congress, shall not affect the operation of any other program authorized or required by law.

Mr. DOLE. Then maybe if you could tell me for the record the difference between what we know as an item veto and the President's action refusing to enforce specific provisions of any statute, as pointed out in this attached memorandum. What is the difference in effect between an item veto and what the President did with reference to S. 2300?

Mr. HUGHES. Which bill is that?

Mr. DOLE. That is the omnibus rivers and harbors. He did not veto anything.

Mr. COOLEY. Didn't he say it was unconstitutional?

Mr. DOLE. He said it was not necessary to veto.

Mr. COOLEY. He signed the bill anyway.

Mr. POAGE. He did not veto last year's military construction bill or any item in it, but he has given instructions that no money shall be spent for a great many of the items in the bill. I have not made a point that was unconstitutional, but if, Mr. Hughes, we are simply to rely upon anything that has the effect of preventing the President from putting something into effect, if that is unconstitutional, then surely any actions by the President prevents the Congress from carrying out its expressed will is also unconstitutional and how do you defend the constitutionality of the President's action in refusing to implement the specific authorizations and appropriations made by both Houses of the Congress and signed by the President? Surely his action becomes, in effect, an item veto which is prohibited by the Constitution.

The effect of what it does is to violate what the Constitution provides, that is, to negate the constitutional provision that he shall approve or veto the bill as a whole.

Mr. DOLE. It also diminishes the power of Congress, the very thing the President complains of, the operation of our committee with reference to Public Law 566 projects. Once he signs the bill, I think it should be enforced in total and not to refuse to implement a portion of it, because by doing that, then the President, whoever it may be, is in effect diminishing the powers of Congress and we do not have much power left anyway.

Mr. POAGE. Even if you do not go far enough to say that he should implement every appropriation made by the Appropriations Committee I want you to tell us right now what is the difference between the President exercising those powers and the Congress exercising its rulemaking power which is clearly granted under the Constitution. You object to us exercising the rulemaking power. You say that some of the rules we make will affect or influence what the President can do. Doesn't the President's action affect or influence the validity of legislation or the effectiveness of legislation?

Mr. HUGHES. It surely does. The Constitution gives the President veto authority.

Mr. POAGE. That is right, for the whole bill, but not for an item. Let us get that clear in the record. You agree that the Constitution does not give the President an item veto, don't you?

Mr. HUGHES. I surely do.

Mr. POAGE. He has been asking for it for a long time. But it is clear he does not have it. The effect of what he has done is exactly the same as if he had the item veto, isn't it?

Mr. HUGHES. No, sir; I do not believe it is.

Mr. POAGE. What is the difference?

Mr. HUGHES. Under the Constitution—you were talking of defense and the Presidents of various parties over the years not spending moneys for defense—this has been justified and supported, I think, in a variety of contexts, particularly on the basis that the President has responsibilities as Commander in Chief for the disposition of the Armed Forces and for the defense of the Nation which entitle him to take the actions which he has taken.

Mr. POAGE. Mr. Hughes, I know we are getting way off our subject—

Mr. HUGHES. I agree with you.

Mr. POAGE. It fascinates me and you lead me into it. The power granted the President under our Constitution as Commander in Chief does not relate, if I understand the Constitution, to the civilian powers which he also has. He is also civilian head over the Secretary of Defense. But the Secretary of Defense is not a commander in chief. The Secretary of Defense controls the functions of construction and budgeting and financing, but he does not control the order ordering the armies into conflict. As Commander in Chief the President of the United States has the power to order the 4th Army to march into Mexico, order them camping at Atlanta, Ga. He has that power as Commander in Chief. As President of the United States, he is civilian head of the Department of Defense. But it is as head of the Department of Defense, not the Commander in Chief, that he exercises his civilian powers to determine whether he shall build a post here or whether he shall construct a submarine or whether he shall go on with certain aviation experiments. Those do not come under his powers as Commander in Chief. The commanders in chief of the armies do not have any such powers as that. The commander in chief of the Army and Navy of the United States has the power to move those component parts where he pleases.

Mr. HUGHES. That is correct. The ability to open or close installations, for instance, or to add to or to subtract to the equipment of the Armed Forces, is a Commander in Chief type power, at least as successive Presidents have looked at it.

Mr. POAGE. Then you do not leave anything to civilian authority. Certainly the Consolidation Act, of which nobody questions the constitutionality, involved the civilian components.

Mr. HUGHES. Both military and civilian, as far as I know, Mr. Chairman.

Mr. POAGE. Of course, that power was granted by the Constitution. Certainly as to the powers on the civilian side, the experiments with the big planes, it is not the duty of the Commander in Chief, but as President of the United States—in other words, as civilian head of the Defense agencies, but not as Commander in Chief of the armed services.

Mr. HUGHES. Mr. Chairman, as you indicated, we are far afield from the purpose for which I am here. But I do not believe the line between civilian and military authority is quite that distinct, at least as I understand the organization of the Department of Defense and the disposition of the Armed Forces and the President's Commander in Chief responsibilities.

Mr. POAGE. Nobody denies that the President as Commander in Chief has the disposition of the Armed Forces. I am ready to agree with that. But I am not ready to agree that the determination of whether we build battleships or whether we build airplanes is a func-

tion of the Commander in Chief. That is a civilian decision, separate from the military powers of the Commander in Chief.

Mr. HUGHES. It is not that clear to me.

Mr. POAGE. Do you believe that the Commander in Chief as Commander in Chief has the right to levy and collect taxes? The Army has got to be supported. That is an essential part of maintaining the Army. You have to levy taxes to do it.

Mr. HUGHES. That is right.

Mr. POAGE. The Commander in Chief does not in civilized nations—it has in barbarian nations carried the right to levy and collect taxes, it has not been done in any civilized land in the world that I know of. Do you?

Mr. HUGHES. It does not here.

Mr. POAGE. Certainly it does not. It does not carry with it the power to determine expenditure of those tax moneys, either, except in the case of a dictatorship which I do not believe we either have or want.

Mr. HARVEY. If the gentleman would yield, I think that one of the points that ought to be emphasized in this connection is in the Bill of Rights; it was specifically set forth as one of the concerns of the original Congress that they were not going to be permitted to house troops arbitrarily upon civilians. It seems to me that this must have been a very cognizant point in their thinking to differentiate between the Commander in Chief's powers to deploy troops and his authority to spend tax moneys to support them, which, in my opinion, is distinctly a civilian function.

Mr. HUGHES. It is a congressional function.

Mr. POAGE. The levying of the taxes is a legislative function.

Mr. HUGHES. Indeed so.

Mr. HARVEY. The deployment of troops is what I said is a Commander in Chief's function.

Mr. HUGHES. That is right. As you point out in terms of the Bill of Rights there are limits on what the President can do in the housing of troops. On the other hand—again, I am afield here—he has obviously considerable authority to deploy troops. I believe, and I think the legislative and statutory record supports the fact that the establishment or termination of installations is a part of the deployment of troops.

Mr. POAGE. Mr. Hughes, I want to make it clear that I did not open this up for the purpose of condemning or criticizing the President's action in the military field. But if he is going to claim that we cannot pass rules—although the Constitution says we can—that we cannot pass rules of procedure, because they have some substantive effect, then I think the same coat would fit when the President undertakes to deny the expenditure of funds that have been appropriated by the Congress. I am not attacking the President on that. I am just saying let us apply the same rule both ways.

Mr. HUGHES. I do not think it is the same rule, Mr. Chairman. I am sorry, I wish I could find a little common ground on this subject. I just do not think it is the same kind of situation.

Mr. POAGE. No, it is your ox now and of course it is not the same as when our ox is being gored. That is the difference. It is just a question of whether it is yours or whether it is mine. That is all. I know it is not the same.

Mr. HUGHES. I believe there is more difference than that, Mr. Chairman. I have been trying to indicate it. With respect to rule-making, I am sure we would agree there are some rules that the Congress could not make, rules in clear violation, by mutual agreement, of the provisions of the Constitution.

Mr. HEIMBURGER. Such as?

Mr. HUGHES. Conceivably a rule could be passed that bills approved by both Houses should not go to the President for his approval or veto.

Mr. HEIMBURGER. That would not be a House and Senate rule. That would have to be a law signed by the President.

Mr. POAGE. What we are talking about are the rules of procedure within the House. All we are talking about here is whether we can make a point of order against a bill that is brought in by the Appropriations Committee under certain conditions.

Mr. HUGHES. I am having trouble enough with executive-legislative relationships without getting into substantive committee—Appropriations Committee relationships.

Mr. POAGE. That is all our rule relates to.

Mr. HUGHES. No, sir; we do not see it that way.

Mr. POAGE. Our rule just says what can be brought before the House without a point of order.

Mr. HUGHES. The effect of the rule, Mr. Chairman, as we see it, is the same effect as coming into agreement language.

Mr. COOLEY. Are you going to send up these 40 projects or not?

Mr. HUGHES. My hope is that we will. Pretty obviously I would have liked them to be sent up before I appeared before this committee.

Mr. POAGE. Mr. Chairman, may I put this on the record unless you send them up immediately my hope is that you will not send them up. I think it is grossly unfair to this committee that you send them up here in the dying days of the Congress. We need a great deal more time than you are going to give us on those projects.

Mr. HUGHES. I do apologize for the timing. I could not but wish, particularly under present circumstances, that the reports were up here. You are under pressure because of the delay in the submission. There is no question about that. I have no difference with you on it. I will do my best to arrange for their transmittal up here.

Mr. HEIMBURGER. Mr. Chairman, may I ask this?

Mr. Hughes, I am John Heimburger, counsel of the committee.

Mr. HUGHES. I think we have talked on the phone.

Mr. HEIMBURGER. We have talked several times. I was counsel when Public Law 566 was enacted into law. I would like to review a little of the history of the act to see how we got to where we are. When this bill was passed in 1954, the gentleman who is presiding at this session offered an amendment on the floor which was identical with the language in the various defense bills, which said that the Department of Agriculture must come into agreement with the appropriate House and Senate committees before a project could be activated.

The Department of Justice and various people in the executive branch raised the constitutional question at that time. Let me say this language was adopted on the floor of the House. The constitutional question was raised, and I think all of us up here agreed that

this was probably an unconstitutional assumption of power by the legislative branch.

Therefore, in the conference between the House and the Senate on the bill which became the public law we are discussing, a provision was adopted which provided for the procedure you are now suggesting, a mere submission to the Congress of the proposal and a waiting period of, I believe, it was 45 days in the original act, before the project could be commenced, on the assumption this would give Congress time to pass a joint resolution or take some other action if it did not like a particular project that much. This was accepted by the Congress after much discussion with the executive branch, on the assumption that the budget which was submitted to the Congress would contain a detailed list of the projects which had been approved and for which appropriations were being requested. To our surprise the budget was not presented in this form. It was presented in a lump sum for upstream watershed projects, without any mention of the projects which were involved. Therefore, there was no opportunity for the Congress to oppose a certain portion of the appropriation request on the basis which it had assumed would exist, that it would have the detailed proposal for each project and that it would be able to go to the Appropriations Committee or to the floor of the House and take intelligent action to ask that the appropriation for certain projects be held up. By the choice of the Department of Agriculture and the Bureau of the Budget, the budget was not submitted in this manner. It was submitted in lump sum, just for the general purpose. Therefore, in 1956, the Congress enacted the legislation to which you are now objecting. It has worked well all during these years as far as I am aware. The Bureau of the Budget has proceeded in this formula with no great pain to itself.

As far as I am aware a point of order has never been raised against an item in the appropriation bill on this basis. But it is still a matter of House and Senate rules, merely saying that a point of order may be raised on the floor if this blanket appropriation which you send up here includes money for projects which have not been approved by the appropriate committees. The whole appropriating process is a limitation on the powers of the President, is it not?

Mr. HUGHES. Surely, the whole legislative process.

Mr. HEIMBURGER. Now, you are complaining about a detail of the appropriating process which concerns itself with nothing except the rules of the House of Representatives. The practical effect has been to have a program which has worked exceedingly well to everyone's satisfaction. Nobody's toes have been stepped on, until somebody sold the President the bill of goods that this was somehow infringing on his powers to put the final OK on projects.

Mr. HARVEY. Would you yield?

Mr. HEIMBURGER. I am finished unless Mr. Hughes wants to reply to that.

Mr. HUGHES. I would like to at some point, either now or later.

Mr. HARVEY. I would like to pursue that just a bit further and then I would be happy to listen to your answer. It ought to be pretty good.

Mr. HUGHES. I will make it as good as I can, Mr. Harvey.

Mr. HARVEY. I would be interested to know just who actually was the person who raised this point.

Mr. HUGHES. Mr. Harvey, the point is in a sense an historic point.

Mr. HARVEY. Answer the question, please, Mr. Hughes.

Mr. HUGHES. I am sorry, I just cannot answer the question because I do not know who first raised the point, Mr. Harvey. I can show you a long succession of Attorney General's comments, opinions and so on. I can show you a succession of Presidentially signed statements on veto messages all with this point in them.

Mr. HARVEY. That is history and we know that history is there.

Mr. HUGHES. That is right.

Mr. HARVEY. I am asking you who raised the particular point with regard to Public Law 566 as it relates to your action with regard to the Bureau of the Budget.

Mr. HUGHES. The point with respect to 566 was that the language of Public Law 566 is similar to the language of other statutes to which the President has objected.

Mr. HEIMBURGER. Mr. Chairman, at this point I would like to say that this committee completely agrees that the coming into agreement language is unconstitutional. We do not agree—I, as committee counsel, do not agree—that the language in 566 is unconstitutional. We have distinguished this in our reports and our conference reports for years and it has been accepted by the executive branch.

Mr. HUGHES. Mr. Heimburger and Mr. Harvey, the President has made his own point here in his signing statement and in prior messages of disapproval, one of them on the Northwest Floods Act; another on the Panama Canal legislation.

Mr. HARVEY. You speak of the President and that is in the broad sense. Who actually drafted that message? That is what I want to know.

Mr. HUGHES. My answer is that I do not know. We participated in work on it. The message as it finally evolved, I am sure, contained a lot of the President's thoughts, the thoughts of his special counsel, the thoughts of the Department of Agriculture. You would almost have to consider it word by word.

Mr. HARVEY. Somebody had to actually formulate it, regardless of who talked about it. Who formulated it?

Mr. HUGHES. If your question is whether the Bureau of the Budget raised the point that the message addresses itself to, it certainly did. In the light of what the President had done in other messages and on other legislation, we would have been remiss in our responsibilities if we had not done so.

Mr. HARVEY. In other words, you are saying that the responsibility rests directly and absolutely with the Bureau of the Budget?

Mr. HUGHES. No, sir; I am saying we raised this point and so did others.

The Attorney General would have to raise the same point.

Mr. HARVEY. Did the Attorney General write this message or did the Bureau of the Budget, that is what I want to know.

Mr. HUGHES. Both of us participated in it.

Mr. HARVEY. No, you keep evading the issue.

Mr. HUGHES. I am not evading the issue, Mr. Harvey. I cannot answer the question any differently. The message is a drafted message in which many people participated in one way or another.

Mr. HARVEY. I think you answered it a while ago. Now it seems to me you are trying to back off from your original answer when

you said obviously that the Bureau of the Budget accepted responsibility for the message.

Mr. HUGHES. I do not believe I said that.

Mr. HARVEY. If you accepted responsibility for it, obviously you must have drafted it.

Mr. HUGHES. I think what I said, Mr. Harvey, was the Bureau of the Budget raised the point to which the message is addressed.

Mr. HARVEY. If you read back the record, I think you will find you said they accepted responsibility for drafting the message.

Mr. HUGHES. I do not believe I said that, Mr. Harvey, but I will be glad to have the record read if you would like it read.

Mr. HARVEY. Let us go back and read it. I think this is an important point.

Mr. HUGHES. The Bureau certainly raised the point. As I indicated, I think we would have been remiss not to raise the point, but the message was the product of several drafters.

Mr. HARVEY. Will you read, Mr. Reporter.

The REPORTER. Yes, sir. [Reading:]

Mr. HUGHES. If your question is whether the Bureau of the Budget raised the point here that the message addresses itself to, it certainly did. I think we would have, in the light of what the President had done in other messages and on other legislation—we would have been remiss in our responsibility if we had not done so.

Mr. HARVEY. All right. In other words, you did.

Mr. HUGHES. We certainly did raise the point, Mr. Harvey.

Mr. HARVEY. Which was what the message was about.

Mr. HUGHES. That is correct.

Mr. HARVEY. All right. Then we have established that. I want to say this one thing to you. This is a policy matter and not particularly a constitutional procedural thing we are talking about. I think that ought to be clearly understood. By the way, the President himself, when he was a Member of the Senate and the House both, to my knowledge never raised this issue. It comes, it seems to me, with ill grace to have it coming at this point when he happens to be serving on the other side of the fence.

Regardless of that, I want to say as one who participated in the drafting of this legislation originally and who has been on the subcommittee most of the intervening years—and I believe Mr. Poage has been the chairman of this particular subcommittee during the entire intervening years, and he spoiled a good many of my holidays going around trying to carry out what we felt was the intent of Congress in implementing this legislation—that it has been at least our idea that we were trying to assist the Department of Agriculture and, incidentally, of course, the White House in the early stages of this program, in determining by approval or disapproval the intent of Congress with regard to its policy in the legislation.

In other words, my concept and I think the concept of practically all the Members, at least of the subcommittee, was that we were trying to carry out the intent of the Congress as drafted in the bill.

Mr. HUGHES. Mr. Harvey, I certainly accept that and do not question in any way either your good faith or the committee's or the Congress.

Mr. CALLAN. Do I understand, then, you are going to bring these projects up in the near future for this year and you are saying in substance here, that unless we amend Public Law 566 to set up some-

thing similar to the flood project bill or an oversight system, next year you will not bring these projects before this committee.

Mr. HUGHES. With respect to the first part of your statement, I hope, Mr. Callan, we do get the reports up, and soon. The delay is occasioned by the nature of the problem and it is, I hope you will agree, a difficult one for both of us. The delay has been occasioned by the nature of the problem.

With respect to next year, I think the choices are either an amendment of Public Law 566 along the lines you talk about or an omnibus small watershed bill. The latter, Mr. Callan, would not necessarily require any amendment of Public Law 566.

Mr. POAGE. May I again put in the record, as the chairman of this subcommittee, that I hope you will bring those projects before us promptly or that you do not bring them at all. I do not want to see any flood control projects killed, but this subcommittee simply cannot digest 44 projects between now and the adjournment of Congress. I hope you do not bring all 44 of them to us this year.

I would like to make this sidebar comment, if I might, that if these projects are unconstitutional next year, they are unconstitutional now. If it is unconstitutional for you to send them to us next year you ought not, as one sworn to support the Constitution, to send them now. If they are going to be unconstitutional next year, you know they are unconstitutional now. I do not believe that they are unconstitutional. I believe our procedure is perfectly constitutional now and in the past and in the future. But if you believe it is going to be unconstitutional next year, you are stultifying your oath if you send them up here this year.

Mr. HUGHES. Mr. Poage, I think, as you have pointed out, the form of this language is the rulemaking form, and the problem we have been discussing is the impact of this form on the President's responsibilities and his ability to carry them out. We have been trying to evolve some means of recognizing the difficult situation in which this places this committee in particular and the sponsors of the projects, to evolve some way satisfactory to all parties concerned of handling the matter.

This, at least as we see it, would be the desirable course of action because of the time problem of the committee and the relatively late date at which the committee was acquainted with the existence of this problem, to work with the committee and to evolve some means of dealing with the problem long run, but as far as this year's projects are concerned, to handle them under the present procedure. It would be my hope we could do that, and soon.

Mr. HEIMBURGER. I suppose in my discussion with Mr. Hughes I should state the conclusion of the trend of the discussion, which is, it seems to me, that under the circumstances which exist of the Bureau of the Budget submitting lump-sum appropriations for this work rather than line item appropriations for each project, that the proposal which has been advanced that we go back to a system where projects are submitted to Congress some period of days before they are activated would be completely ineffectual, since the committee and the Congress would have no specific appropriation item to act on, even though they disapproved a particular project, since appropriation bills come before the House only once a year and these projects, presumably, would be coming up intermittently in between.

The only solution, if the committee wants to take any action that would be effective under the lump-sum appropriation provision, would be to prohibit lump-sum appropriations and to provide that appropriations could not be made until specific projects had been authorized.

Mr. POAGE. That would be a procedural rule of the House and, according to Mr. Hughes, it would be unconstitutional.

Mr. HUGHES. No, sir.

Mr. HEIMBURGER. As Mr. Callan said, the thing we probably would have to go to would be an omnibus watershed authorization bill each year, and delay these projects until all projects could be considered and the bill formulated and acted on by the House and Senate and signed by the President.

Mr. HUGHES. Mr. Poage, apropos of Mr. Heimburger's comment, if a listing in some form, either in statute or in budget justification or in an accompanying listing to this committee of the projects for which funds were being requested in the agricultural appropriation bill, offers in any context a solution or even a partial solution to this problem, we in the Bureau of the Budget would be glad to work with the counsel to see what we might work out. I think we would need to explore it.

Mr. POAGE. You have to explore it with the Department of Agriculture, but these items are relatively small and they carry over on the average of 5 years. If one is authorized for \$1 million, we do not spend a million dollars the first year. We spend about \$200,000, and go over a period of approximately 5 years before it is all spent. Some projects are completed in less time than that. Some go over the 5 years.

I just attended the dedication of one of these projects the other day, one of the original 54 demonstration projects. I attended the dedication of it last week out in my district. That thing has been going 14 years before completion.

Therefore, if you are required to itemize these projects, it tends to freeze, I fear, the Department of Agriculture so it does not have the freedom of action it should have to speed these projects wherever they can. When they get the rights-of-way on a project, they act. If this one is held up and they do not get easements, they delay it a while, but they ultimately work it out.

It seems to me we have a much more workable program. In other words, we have a program which has been doing real well over the Nation, and you folks come up here and say: "We think we can find some theoretical way in which we suggest this thing not directly but somehow indirectly affects the powers of the President, so let's destroy this and set up something new."

I like to see developments and something new, but I hate to destroy something which is doing as well as this is doing.

Mr. HUGHES. Mr. Chairman, we certainly would be glad to explore this with Mr. Heimburger. On the authorization side, if the nature of the project listings or the timing of project listings would in any way be a matter of help or provide a basis for dealing with this problem, we would be glad to work with the committee staff.

Mr. POAGE. Before we bring this to a close, Mr. Hughes, let us get this clear in the record, if I am right. This is entirely theoretical, is it not? There has not been one case in which the President has been hurt by this procedure, has there?

Mr. HUGHES. We have no objection and have expressed none to individual projects.

Mr. POAGE. Has the President or the administration suffered one embarrassment or injury as a result of this?

Mr. HUGHES. I do not know of any.

Mr. POAGE. If there is, I ask you to place it in the record, because you talk about a practical proposition. You want to get real practical. You know that the Constitution says each House shall establish its own rules of procedure. You admit it is procedural, but you say somehow or other it has some practical effect on the President. I want to know what that practical effect is, because I do not recall one single instance in which any President has been embarrassed or has been interfered with as a result of this procedure. If there is no such instance, then it is a rather strained proposition to come here and tell us you are going to violate the plain letter of the Constitution because our procedure has some practical effect on the President. What is the practical effect?

Mr. HUGHES. Mr. Chairman, and apropos of Mr. Heimburger's earlier comment, the President, as his messages have indicated, is definitely not addressing himself specifically and solely to this particular legislation and this particular committee's problem. He is concerned with a complex of related legislation and bills going to various committees dealt with in various ways by the Congress, which in their entirety do, he feels, present problems to him in carrying out his responsibilities. One we have referred to is the River and Harbor and Flood Control Act. We talked briefly about the military construction authorization bill. I believe I mentioned the Northwest Flood Control Act. There are others, as well, that I can furnish for the record, if you would like.

The point I was trying to make here is that we have no problem with this particular committee but, rather, are dealing with what the President considers to be a general problem of executive-legislative relationship. Admittedly, with respect to this committee, the net result has been to the satisfaction of both parties, but the President must concern himself with the general problem and with this broader matter of executive-legislative relationships. This is the point and the problem to which he has addressed himself in the messages.

Mr. POAGE. It is not the legislative-executive relationship, technically. Technically, it is a rule of the House.

Mr. HUGHES. The form is certainly that of a rule of the House, that is correct.

Mr. POAGE. But you say somehow or other it influences the President's prerogatives, that it has some practical effect on the President's prerogatives. I want to know what the practical effect has been specifically of Public Law 566. I have talked in generalities, but now I am talking about Public Law 566. Where has Public Law 566 interfered with either this or any other President?

Mr. HUGHES. The practical effect of Public Law 566, Mr. Chairman, as we look at it, is that it places a single committee of the Congress in the position of acting in an authorization capacity, whereas the Constitution charges the whole Congress with acting.

Mr. POAGE. That is clearly legislative. It is not any of the affairs of the President. That is clearly something which is subject to raising a point of order here in presenting it to the Speaker or the Vice President.

Mr. HUGHES. It seems to me the President must concern himself with this kind of action.

Mr. POAGE. With the question of the internal operation of the House of Representatives?

Mr. HUGHES. It seems to me the President, as Chief Executive, Mr. Chairman, must consider——

Mr. POAGE. He is just the Executive. He is not a legislative officer under our Constitution. There are governments where the head of state is the legislative as well as the executive.

Mr. HUGHES. The President does have legislative responsibilities, and I think he has a concern——

Mr. POAGE. The Constitution says the legislative power is vested in a Congress.

Mr. HUGHES. The Constitution also says the President has the authority to disapprove laws, that he shall make recommendations from time to time——

Mr. POAGE. That is right.

Mr. HUGHES (continuing). That he can receive the recommendations of his department heads.

Mr. POAGE. Let us read the Constitution. It does not say recommendation power. It says, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." It says "All legislative powers herein granted." It does not say that any of them are conferred upon the President. I am reading the book. I am reading what the Constitution says, not what you or the Attorney General have said.

Mr. HUGHES. I have read the book, Mr. Chairman. The same book, however, delegates or gives specifically legislative powers to the President.

Mr. POAGE. To veto.

Mr. HUGHES. Yes.

Mr. POAGE. The veto power is given to the President.

Mr. HUGHES. That is right.

Mr. POAGE. That is not legislative. That is contralegislative. That is not a legislative power, and you know it.

Mr. HUGHES. No, sir; I do not. I think that is a legislative power. I would buy that distinction, Mr. Chairman, if you will accept the fact that contralegislative power has legislative impact.

Mr. POAGE. It has legislative impact. Of course it does. And our rules have impact upon everybody in the United States, including the President and the Supreme Court and everybody else. But we still have the right to make the rules because the Constitution gave us that right, and it did not give the President that right. It did not give the President any part of "all the legislative powers" or the sum total of the legislative powers.

Mr. HUGHES. I think, Mr. Chairman, the President must concern himself with what he thinks is an unwarranted delegation of legislative power by the Congress to a portion of itself or, on the other hand, an unwarranted delegation of executive power by the Congress to a part of itself. That is what we are here talking about.

Mr. POAGE. We are setting up our rules and he is saying, "I don't like your rules, so I am going to veto your rules."

Mr. HUGHES. No, sir. He is saying he thinks this particular rule—

Mr. POAGE. Yes. "This particular rule I don't like."

Mr. HUGHES (continuing). Has implications or has an effect which is an encroachment upon his responsibilities.

Mr. POAGE. We think a good many of his rules are an encroachment upon our responsibilities.

Mr. HUGHES. Yes, sir; I understand that.

Mr. POAGE. Unfortunately, most of the people think that, too.

Mr. HUGHES. They have the say, Mr. Chairman. The people vote.

Mr. POAGE. Yes, I know. Our Constitution established a representative democracy and that is the kind of democracy I want to see continued.

Mr. HUGHES. At least on that, Mr. Chairman, we agree. I am with you.

Mr. POAGE. It seems to me this whole thing gets to the proposition that you are claiming for the President not only Executive powers but also legislative powers.

Mr. HUGHES. I do not believe so, Mr. Chairman. I was trying not to do that.

Mr. POAGE. When you get onto this proposition of the practical effect, do not your recommendations on legislation have the practical effect of influencing legislation? I am not saying there is anything wrong with that, but it does have the practical effect of influencing legislation, does it not?

Mr. HUGHES. It certainly does, Mr. Chairman.

Mr. POAGE. Certainly it does. So, you are giving the President the practical power to influence legislation.

Mr. HUGHES. The Constitution gives him that practical power.

Mr. POAGE. It gives him the power to make recommendations; yes.

Mr. HUGHES. Surely.

Mr. POAGE. That is what it does. I think it gives him a practical influence over legislation. I think the President has more influence on legislation than any other person, of course, but the Constitution limits what he can do. It just seems to me that you come here and ask us to preside at our own funeral. I will send flowers but I will be blamed if I will preach the sermon.

Mr. DOLE. I have asked permission to have included in the record the opinion of the general counsel of the USDA delivered to the chairman on May 8, 1961, and call the committee's attention to one short paragraph which I would like to read to be certain it is in the record. Talking about the right of congressional review, I quote from the opinion:

We do not believe that there is any case squarely in point with respect to the validity of such provisions, but Congress has enacted statutes from time to time with similar provisions. See, for example, the Reorganization Act of 1949 (5 U.S.C., Section 131-4); the Reorganization Act of 1945 (59 Stat. 613, 616); the Reorganization Act of 1939 (53 Stat. 561, 562-563); the Trade Agreements Extension Act of 1958 (19 U.S.C., Section 1364 (c)); the Immigration and Nationality Act (8 U.S.C., Section 1254(b)); and the Watershed Protection and Flood Prevention Act (16 U.S.C., Sections 1002 and 1005).

Mr. HUGHES. Is that the opinion to which you referred before?

Mr. DOLE. Yes, of Mr. Bagwell, office of general counsel, dated May 8, 1961.

Mr. DOLE. I think if the question were on the omnibus bill, the question of who has jurisdiction, our committee or the Public Works Committee, we would have a real Donnybrook then.

Mr. POAGE. We probably would.

Mr. HARVEY. I would like to suggest, Mr. Hughes, because I happen to have been one of the authors of the Reorganization Act of 1949, that the hearings on that bill be reviewed by your staff, because at that time we went very thoroughly into the question, as you can well understand, and our present Speaker was chairman of the subcommittee that handled that bill in the House. I think you will find not only the proceedings in the House but also the hearings in the committee will be very enlightening, because at that time we dealt very thoroughly upon this question of division of power.

You have said, and I think quite frankly and commendably, that this area in which we are involved is not black or white. It is gray.

Mr. HUGHES. That is right.

Mr. HARVEY. As these matters have proceeded through the years, there always has been a struggle for power in the gray area. It seems to me right now is a time the executive is trying to move into this gray area and establish a precedent. I think possibly we have to accept that as being their intent. Certainly I think we as Members of Congress would be remiss in our duty, too, if we did not also insist that in trying to delineate proper power within this gray area, the prerogatives of the Congress are adequately protected.

Mr. HUGHES. Mr. Harvey, I appreciate your comment. I might say we have looked very carefully into the Reorganization Act hearings and the legislative history and the similarities and differences between this and other pieces of legislation related to this particular procedure we are discussing.

Mr. POAGE. Mr. Hughes, speaking for the President, what would you do if this committee, the subcommittee or the full committee, called on the Secretary of Agriculture for a copy of these reports now pending in your possession? I do not know what the Secretary of Agriculture would do, but suppose he gave us a copy, what would you do about it?

Mr. HUGHES. I guess, Mr. Chairman, the question really is what will the President do or what does the President want us to do——

Mr. POAGE. You are speaking for the President. That is what you are here for this morning. You are the President as far as what you are telling us this morning is concerned. What are you, Mr. President, going to do about it?

Mr. HUGHES. The only answer I can give you, Mr. Poage, right now is that I do not know.

Mr. POAGE. Are you going to advise the Secretary of Agriculture not to give us these reports?

Mr. HUGHES. I think the law says quite clearly the reports are to go through the President.

Mr. POAGE. To be submitted to Congress through the President is what it says. I know that. We call on the Secretary of Agriculture for a good deal of information, and we believe we are entitled to it. If we call on the Secretary of Agriculture not to send them up to Congress through the President but simply to send us copies of these reports, are you going to advise him not to send them to us?

Mr. HUGHES. I do not know, Mr. Chairman. I think he would have to seek the advice of his own counsel on the statute.

Mr. POAGE. I am not asking about the advice of counsel. The counsel is the one that Mr. Dole was quoting there.

Mr. HUGHES. This is a little different point, Mr. Chairman. You are suggesting now that you might——

Mr. POAGE. His counsel would suggest this was a valid act of the Congress. His counsel would suggest that this was valid and would cite the authority for other acts of this kind. So, I am not too much afraid of his counsel. I am asking what you are going to do about the advice that you may gratuitously extend to him.

Mr. HUGHES. I would think he would not seek our advice on this at all. At least I would not if I were he. This is a question of what he is entitled to do under the law. The law is quite explicit, and this is a different point than the counsel of the Department was talking about. The law is quite explicit as to how the report shall be submitted.

Mr. POAGE. I understand that. I am not questioning that. We cannot make him submit them. I understand that. I am merely asking, if I want to read them, to study them, if I want to know what is in those reports, can I get them or can't I?

We have passed a bill and the President has signed it, saying a lot of these documents are open to the public. Am I a part of the public?

Mr. HUGHES. The law is quite clear, Mr. Chairman, that the reports are to be submitted——

Mr. POAGE. I understand that. I am not questioning that. They are going to be submitted to you, the President. I am not questioning that at all. I am not asking that they be submitted. But I am asking that I get a copy of them.

Mr. HUGHES. I cannot answer that. You would have to ask the Secretary of Agriculture.

Mr. POAGE. Would you recommend to the Secretary that he not give me a copy?

Mr. HUGHES. I do not think I would recommend anything to the President right now, Mr. Chairman. I think he would have to make up his own mind as to what the law says.

Mr. POAGE. I did not say the President. I said the Secretary.

Mr. HUGHES. I do not think I would recommend anything to the Secretary at this point. I think he would have to make up his mind.

Mr. POAGE. You are going to keep your mouth shut and give me time to ask for them? You are not going to volunteer any suggestions to the Secretary, is that right?

Mr. HUGHES. I do not think I would volunteer a suggestion to the Secretary. The thought had crossed my mind that you might know something about some of these projects already.

Mr. POAGE. Let us call the Secretary right now. Go call the Secretary right now, Mr. Murray, and ask him to send us copies of all of these reports.

That is not submitting them. I understand that. I would just like to see copies of them.

Is there anything further? If not, we are very much obliged to you, Mr. Hughes. We do recognize this is a matter on which there are sharp differences of opinion.

Mr. HUGHES. I recognize it, too.

Mr. POAGE. We are glad to have you submit your viewpoint, because we have been trying to get a viewpoint from the Bureau of the

Budget. I think you have submitted that viewpoint, and we appreciate it.

Mr. HUGHES. Thank you, Mr. Chairman. I have tried to lay it on the line. I felt you were entitled to as straightforward an expression of position as I could make.

Mr. MURRAY. This is Mr. Rothenbach of the Secretary's liaison office. I told him about your request. I am sure he will proceed in an appropriate manner.

Mr. POAGE. You understand we want copies. We are not asking you to submit them to the Congress, but as chairman of this subcommittee I want to see copies of all of the watershed reports that are now in your office awaiting submission to the Congress.

Mr. HARRY ROTHENBACH. Will do, Mr. Chairman.

Mr. HARVEY. I would like to say, Mr. Hughes, that if I seemed unduly severe, I did not aim to. I realize and recognize that you are here in a very difficult capacity. I want to say I think you have deported yourself for the Executive very successfully.

Mr. POAGE. Yes. I want to join in that statement. I think you have done a splendid job here, and we appreciate it.

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. POAGE. You have been much more frank with us than many witnesses under similar circumstances. We appreciate that.

Mr. HUGHES. Thank you very much. I hope in one way or another we can resolve the problem to our mutual satisfaction.

Mr. POAGE. It has been called to my attention that Mr. McDonald is here and wishes to testify on this issue. The hearing today was for the purpose of talking with the Bureau of the Budget, and was not intended to be a general inquisition, but if Mr. McDonald wants to testify, I think we would be glad to hear him.

STATEMENT OF ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. McDONALD. Mr. Chairman, I hope you will not think I am presumptuous in appearing here on this highly technical matter. I did not realize your hearing was to be confined to these projects under Public Law 566. However, when I heard about this hearing I thought of the many frustrations we have had in the Farmers Union office over a period of some years in regard to the Bureau of the Budget.

In the normal course of pursuing and trying to carry out the resolutions adopted at our convention, we make representations to this committee and to other committees, and I might say that we have been very fortunate to have this wonderful committee handle our agricultural program. But frequently after we have followed legislation from its inception through this committee, through the Appropriations Committees of both Houses—the Senate committee, I might say, is a very fine committee, too, and has cooperated very greatly with the Farmers Union program, we think—we have found when the Congress acted on these programs and the bills were signed by the President, appropriation bills for the Rural Electrification Administration, for example, that the Bureau of the Budget refused to spend the money which the Congress said should be spent for these programs.

I have formulated here a brief statement which I would like to put in the record. I have copies for the Members. I also have a copy of a press release offered by James G. Patton, our previous president, in

regard to a policy article published in the Saturday Review of June 9, 1965, in regard to the farm program. I would like this press release to be incorporated in the record.

(The statement and press release follow:)

STATEMENT OF ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. Chairman and Members of the Committee, the hearing on this matter comes at a very appropriate time. It appears to us, although we do not pretend to be authorities on the subject, that the Bureau of the Budget over a long period of years and particularly in recent months, has attempted to usurp the powers and prerogatives of the Congress. Our attention has been repeatedly called that the Bureau of the Budget, after funds had been duly authorized and appropriated by the Congress, has, in a dictatorial and arrogant fashion refused to permit agencies to use these funds.

The Rural Electrification Program has suffered severely because the Bureau of the Budget refused to allow funds urgently needed to be used. For example, Congress made available \$402 million for fiscal 1966. The Bureau of the Budget cut this down to \$270 million and later revised it up to \$307 million. The \$37 million increase represented Rural Electrification Administration funds carried over from fiscal 1965. In fiscal 1966 Congress made available \$365 million. The Bureau of the Budget actually allowed the Administrator to loan only about \$311 million. Money was held back and released little by little. Thirty-seven million of it was released on the last day of the fiscal year June 30, 1965.

This accounts for the \$37 million which was carried over into fiscal year 1966. In other words, the Bureau of the Budget, by holding up funds appropriated by the Congress and releasing them on the last day of the fiscal year, made it impossible for the administrator to dispose of funds which Congress intended should be made available.

Turning to fiscal 1967, Congress authorized \$365 million of which \$72 million 500,000 was earmarked as contingency funds. The new budget for fiscal 1967 called for a \$270 million new loan program of which \$220 million consisted of new money and \$50 million of money which Congress had intended to be spent in previous years. The Bureau of the Budget has consistently ignored not only Congress but the needs of the Rural Electric Loan Program. The Administrator indicated to the Senate Appropriations Committee that he needed \$510 million in electric loan funds for fiscal 1967. This, I understand, is the approximate amount which the National Rural Electric Cooperative Association estimated would be needed.

Interested organizations have repeatedly worked over a period of months in an attempt to un-freeze funds which the Bureau of the Budget had said might not be used. More often than not, the work of the National Rural Electric Cooperative Association, the Farmers Union and other groups have borne fruit after weeks and weeks of activities which included representations to the White House, activities by our Congressional friends on Capitol Hill, and pressures brought to bear from the grass roots.

It is our opinion that the policies and activities of the Bureau of the Budget tend, in some instances, to be unconstitutional in that they infringe on the "Separation of Powers" doctrine which is implicit in the Constitution of the United States. It has been suggested that the Executive may have overstepped his authority in dictating legislation which the Congress might have been reluctant to accept. A recent example may be the Participation Sales Act, which it was charged was steam-rolled through congressional committees without hearings. We suggest that the "Founding Fathers" meant what they said when they wrote into the Constitution provisions which provided that the Congress formulate policies and pass laws and that the Executive Department carry them out. We do not suggest, of course, that the Executive Department may not make recommendations or formulate programs and policies. These functions are set forth clearly in the Constitution. However, it is also clear that the Executive may not make laws or intrude into areas strictly reserved for the legislative body.

History may provide lessons for us in that democracies have been greatly weakened by the appropriation of powers of legislative assemblies. We do not, of course, suggest that we are confronted by such a situation at this time. However, the Congress as well as this great committee should be jealous of its rights and powers and apprehensive of any infringement. We are aware that a strong Executive Branch, of course, is in the best interests of the country. We must

have leadership if we are to progress and not stagnate. We must have an Executive Department that has the courage and foresight to make decisions. Therefore, we hope that this statement will not in any way suggest that executive powers should be diminished. However, as indicated, a strong Congress which faithfully carries out its functions as set forth in the Constitution is just as necessary to the welfare of our country as a strong Executive.

[Press release]

NATIONAL FARMERS UNION,
Washington, D.C., January 22, 1965.

WASHINGTON, D.C., January 22.—James G. Patton, President of the National Farmers Union, today denounced as misleading an article by Kermit Gordon, Director of the Budget, which was published in the January 9 Saturday Review of Literature. "The wolfish Committee for Economic Development which sponsored this article, is now wearing the sheep's clothing of the Administration, whose avowed objective is to get rid of poverty," he said.

"Kermit Gordon's plan would throw 2,500,000 farmers off the land and create ten times as much poverty as the modest proposals of the President would eliminate," Patton said. "The Director of the Budget should come down out of the stratosphere of dream laissez-faire economics and go out on a farm and find out what is actually going on before writing out prescriptions to cure economic ills based on CED philosophy.

"Mr. Gordon should know that many farmers, completely mechanized and efficient, who are grossing \$20- or \$30- or \$40-thousand dollars a year are not even making \$9500 net. Mr. Gordon should take a look at the cost of farm machinery. He should know that farm prices are 12% below the 1947-1949 period and that farm expenses are up as much as 100%. One would think the Director of the Budget, apparently obsessed by a desire to save dollars, no matter how great the human cost, would look up a few elementary figures before he attacks agriculture with a broad ax," Patton continued.

"Lumping together all farmers who gross over \$10,000 a year is complete nonsense. According to the 1960 census, only about 20,000 farmers in the U.S. grossed more than \$100,000. These accounted for only 16.9% of total farm production. It is obvious that family farmers are producing the bulk of food and fibre for the American people and people around the world.

"Mr. Gordon, bookkeeper for our national Government, should take a look at the bookkeeping of other western nations. No country in the world except the United States charges as expenses funds appropriated for investment, such as Rural Electrification, Soil Conservation, forestry practices and resource projects which conserve the Nation's resources. Farmers currently receive a benefit from only 1/3 of the items in the Department of Agriculture budget.

"Kermit Gordon, in one fell swoop, would do away with our great Reclamation Program which has made the desert bloom, has created cities and towns and has produced billions of dollars in farm commodities in areas where nothing would grow before. By fallacious reasoning, he concludes that alfalfa, which displaces surplus wheat production in North Dakota, would aggravate the farm surplus problem.

"In regard to Mr. Gordon's stricture on subsidies to large farmers, he should know, as every Congress has known for many years, that the National Farmers Union has consistently advocated the family farm 'cut-off,' which would take away price supports and other assistance from any crop in excess of that contributed by a farm family.

"It is ironic that, with the greatest election victory since 1936, the Director of the Bureau of the Budget has come out for the Goldwater Program which we thought was defeated and discredited last November," Patton concluded.

Mr. McDONALD. In this particular instance, we had gone through a presidential campaign in the fall of 1964. I might say parenthetically that the Farmers Union is not a partisan organization that endorses political parties or platforms. We went through that campaign and we were pleased with the representations made by the Democratic candidate, and we were displeased by the representations in regard to agriculture made by Mr. Goldwater.

Then on January 9, here comes this article in the Saturday Review by the Director of the Bureau of the Budget, adopting the Goldwater program. You can imagine the reaction in Farmers Union circles.

I would like to add to what has been said here today, it seems to us that the Bureau of the Budget not only intrudes itself in regard to the spending of money authorized by the Congress, but also into policy matters which are directly opposite, it appears, to the President's policies as he has stated them and to the policies of the Congress.

This is all I have to say.

Mr. POAGE. Thank you very much, Mr. McDonald. We appreciate your appearance.

Is there anything more to come before the committee? If not, the committee will stand in recess until the call of the Chair.

(Whereupon, the subcommittee recessed at 12:10 p.m., subject to the call of the Chair.)



