

ADMINISTRATION IN THE FEDERAL GOVERNMENT

23 August 1956

CONTENTS

	<u>Page</u>
INTRODUCTION--Brigadier General F. E. Calhoun, USAF, Deputy Commandant, Industrial College of the Armed Forces.....	1
SPEAKER--Mr. Roger W. Jones, Assistant Director for Legislative Reference, Bureau of the Budget.....	1
GENERAL DISCUSSION.....	14

Publication No. L57-7

INDUSTRIAL COLLEGE OF THE ARMED FORCES

Washington, D. C.

0000

Mr. Roger W. Jones, Assistant Director for Legislative Reference, Bureau of the Budget, was born in New Hartford, Connecticut, 3 February 1908. He was graduated from Cornell University in 1928 and subsequently did graduate work at Columbia University from 1930 to 1932, receiving his Master of Arts degree in 1931. He entered the Federal service in 1933 and served in a series of posts with the Central Statistical Board before joining the staff of the Bureau of the Budget in 1939. When the United States entered World War II, Mr. Jones was Administrative Officer of the Bureau of the Budget. He was ordered to active duty as a Captain in the Officers Reserve Corps in March 1942, assigned to duty with the Combined Chiefs of Staff, Munitions Assignment Board. He was released to inactive duty in December 1945 with the rank of Colonel and served in several capacities in the Bureau of the Budget until his appointment as Assistant Director for Legislative Reference in January 1949. He was awarded the Legion of Merit and the Order of the British Empire, and was commended by the Army Service Forces. Mr. Jones has been a guest lecturer at the School of Business and Public Administration at Cornell University and at the Littauer School at Harvard. This is his second lecture at the Industrial College.

## ADMINISTRATION IN THE FEDERAL GOVERNMENT

23 August 1956

GENERAL CALHOUN: Gentlemen: The explosive growth of the Federal Government, which was discussed for us yesterday by Professor Schattschneider, has resulted in a number of major organizational and administrative problems in the executive branch.

Our lecture today is entitled "Administration in the Federal Government," which is a very broad subject indeed. You will recall that yesterday's speaker devoted the biggest part of his time to the problems of the legislative. Rather than attempt to cover all aspects of our subject today, our speaker will devote the greater part of his time to the problems of adjusting the executive branch to the enlarged management tasks and also to the related matter of relieving the President of those duties which need not necessarily be performed personally by the President.

You have seen the biographical sketch of our speaker and are aware of his outstanding qualifications to discuss this subject. It is a pleasure to welcome back to the College for the second time one of the hardest working men in Government it has been my pleasure to know--Mr. Roger W. Jones of the Bureau of the Budget.

MR. JONES: Thank you very much, General Calhoun. General Hollis, General Calhoun, Members of this year's Class of the Industrial College of the Armed Forces: I was deeply honored to be asked to come back here for the second time, and particularly impressed by the fact that I would have to be more on my mettle than I was last year by reason of the fact that the Budget Bureau this year, for the first time, has a member of its staff in the class. He is a good and long-time friend of mine, but I am sure that he will not be easy on me if I get off base.

I am going to do something that I have rarely done in semipublic appearances before. I am going to stick for the first part of this presentation pretty much to prepared text. I don't like to do it, but last year I got wound up in some of my thoughts and did not do as concise a job as I should have done. For your sakes, and for the sake of the reporter, I will follow the text, leaving it only to discuss a few things that I would like to discuss more informally.

Alexander Hamilton, in "The Federalist No. 70," begins his discussion of the Executive with the following three sentences:

"There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government."

A little later, he sums up his thesis in two additional sentences:

"A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government."

This concept of an energetic Chief Executive has had great impact in recent years on administration in the Federal Government, as I shall try to demonstrate in my remarks this morning.

Four main headings were suggested to govern the scope of my discussion with you:

1. Federal organization and management problems resulting from expansion of economic and international responsibilities during the past generation.
2. Problems of adjusting the executive branch to the enlarged management task.
3. Evolution of the Executive Office of the President.
4. Recent developments and current trends.

It is difficult to fit these within the confines of about 45 minutes without appearing either to paint with too broad a brush or to be completely superficial. Therefore, it seems to me wise to organize my remarks around the apex of all executive action in the Government-- the Office of the President of the United States.

The basic authorities which are vested in the President are those enumerated in the Constitution. All the statutory authorities of the President are consistent with his constitutional powers. Article II of the Constitution begins with the words, "The Executive Power shall be vested in a President of the United States." Thereafter, the catalog becomes specific.

The President shall be the Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States.

He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices.

He shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have the power, by and with the advice and consent of the Senate, to make treaties.

He shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, the Courts of Law, or in the Heads of Departments.

The President shall have power to fill up all vacancies which may happen during the recess of the Senate.

He shall from time to time give the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.

He may convene both Houses or either of them and may adjourn them in the event of disagreement between them with respect to the time of adjournment.

He shall take care that the laws shall be faithfully executed.

He shall commission all the officers of the United States.

And, reverting to Article I,

Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approves; he shall sign it, but if not, he shall return it.

That, with minor editing, is the constitutional catalog of Presidential duties and powers.

Added together, this language clearly supports Hamilton's thesis of an energetic Executive. It means that the President is charged with being the manager of the Federal Government. His managerial tools are many, and in using them he fills many roles. In meeting the problems of his time he serves as Chief Executive, as conductor of our foreign relations, as the protocol head of State, as Commander in Chief of the Armed Forces, and as the legislative leader of his party and its chief exemplar in the eyes of the country. Increasingly over the last generation it has become his job to define the issues, suggest the courses of action to solve them, and take the praise or the blame for our national success or failure.

Some Presidents have chosen not to exercise one or more of these functions at various times in the course of our history. The manner in which they have made the choice has led to different assessments of the Presidency and the men who have occupied the office, but with rare exceptions until World War I the choice seemed unimportant. What was important was the fact that the Constitution provided, for the most part clearly and explicitly, the full range of powers needed by any President. Under our Constitution necessity has not had to become the mother of invention. What could not be provided by the Constitution or by statutory law was leadership-- those qualities of mind, body, and spirit which transform the catalog

of constitutional powers into effective instruments for dealing with all of the affairs with which the United States must be concerned.

There can be no doubt that the spotlight of world affairs has been increasingly focused upon the United States since the end of World War I. While we as a people and as a Government have shared the stage with our allies and with our enemies, time and again the direction of world affairs has very largely become a responsibility of the President of the United States. During the same period the role of the Federal Government in domestic affairs has been spelled out. It probably could not have been fixed earlier, because it was not until many years after the Civil War that the authority of the Federal Government was firmly established.

For most of the 20 years which followed World War I we were primarily concerned with the internal problems of adjustment to the aftermath of that war and with the building of governmental power that enabled us to manage our own economy and to recover from the effects of the economic depression of 1929 to 1933. The problems were many, but they had three chief aspects.

First: Circumstances required development of regulatory activities. When you stop to consider the developments which have been made in the last 30 to 40 years in the field of communications and transportation it seems obvious that intervention by Government was required in order to assure that those developments would proceed in an orderly manner. The impact of radio and the commercial airplane provide a convincing demonstration of the reasons why the Federal Government had to find, define, develop, and then maintain its role in these regulatory fields.

We have also had to do things which the States could not do to keep the people foursquare with their peers and in proper relationship to the economy in which they live--for example, regulation of wages and hours under certain conditions, and the establishment of labor standards to govern in Federal construction contracts.

Second: It was necessary to fulfill needs and desires which the people could not satisfy locally. I think perhaps that summarizes the demands of 20 years ago to have the National Government recognize and respond to the needs and desires of the people of the United States for Federal programs in such diverse fields as social security

and welfare, housing, unemployment insurance, research in health and disease, and business aids of various kinds.

Third: There was need to foster the protection and development of our natural resources for the good of all. Conservation, as you all know, became a great public issue in Theodore Roosevelt's administration. Much was done in the early years of this century, but then, perforce, further accomplishment had to be pushed into the background while we fought the First World War.

Here were new fields of Federal action and development that were required by the growth of our economy and by the fact that our frontier had, in a geographic sense, disappeared. Only the Federal Government could successfully cope on a national scale with such major problems as soil conservation, flood control, reclamation, conservation of minerals, and the development of national parks and forests.

Thus, under these three heads we can find the major areas in which the Federal Government has faced up to its increased management problems. By and large it has met them successfully, not always without controversy, not always without considerable disagreement on the best means to be used and the effectiveness of those means once they had been invoked. But, by any standard, whether it be one of partisan politics, one of an officer of the executive branch looking back over his life work, or one of a political scientist or historian, we must all admit that there has been steady progress and that the goals have not been lost sight of.

It is my belief that in every step of the way the personality of the President and his use of the powers of his office have provided guideposts to the future and the means of assessing the past.

In my view, it was only natural that this concern with our own problems should have left us insensitive, if not actually blind, to our growing international responsibilities. I find no fault that as a Government we did not recognize in the mid-1930's the full threat of fascism and communism as political forces. It is even less reprehensible that we miscalculated the force of communism as a kind of atheistic, this-world religion of materialism with which in a few short years we should have to contend in the battle for men's minds. Neither do I think it is sound to engage in a kind of hindsight game

of sitting in judgment, trying to point out how this man's vision or that man's provincialism can be tagged as the ultimate reason for any given success or failure.

The affairs of Government do not, even in their day-to-day conduct, lend themselves to assessment of responsibility for success or failure in terms of any one single act. It suffices to say that in these brawling, tempestuous 20 years after World War I the United States of America emerged from adolescence and came into a strong and vigorous maturity which enabled us to win World War II. We moved on successfully from that victory into an effort to reestablish peace in the world. At no point did we abandon our reliance upon democratic ideals and a republican form of government as the most effective political instruments for bringing about continuing world progress.

Nevertheless, these things were not done without an almost infinite number of adjustments in our federal structure of government. Most of them, of course, were brought about by the enactment of new laws or the amendment of old laws, largely in response to Presidential recommendations.

At the same time, many of the changes stemmed either from new interpretations of the Constitution or from a more imaginative application of latent powers that had long existed in the statutes.

I have time to go into only the most summary discussion of the precise ways in which the executive branch adjusted to the enlarged task. I shall, perforce, pass over the New Deal years and refer to one more recent illustrative example. The culmination of America's recognition of Federal responsibilities is to be found in the Employment Act of 1946. Incidentally, I think that is an act which each one of you should read, if you have not. In time I believe that this statute, general though it is in its terms, will emerge as one of the great political milestones of the 20th century. It ended the process of spelling out the executive branch's role, to which I referred a few minutes ago. With farsighted political courage and statesmanship, the Congress, in section 2 of that act, brought up to date the preamble of the Constitution by declaring that it is "the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local government, to coordinate and utilize all its

plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power."

By that declaration the representatives of the people of the United States did three things: (1) They confirmed their belief in the soundness and necessity of the energetic Executive. (2) They rounded out the staff tools that had slowly been forged to assist the President in his management of domestic affairs. (3) They indicated their belief that, if the United States was to assume a position of world leadership, it must be with a house that was set in order, and under a Federal Government firmly anchored to the kind of domestic policy which would assure us some chance of success in international commitments. Almost all of the adjustments which have been made in the wide range of Federal domestic activities since enactment of the Employment Act of 1946 have reflected adherence to the basic policies of that act. Of this, you will hear more from other speakers in the course of your year's work, I am sure.

The evolution of the Executive Office of the President, although a part of my assigned topic, will be fully developed for you in a subsequent address by another speaker. I want merely to indicate that, as the Presidency has come to be more and more in the domestic and international spotlight, so it has become necessary to give the President more and better tools for the three major elements of his job. As the chief program manager of the Federal Government it has become necessary to give him authority to adjust the Federal structure to meet changing needs. By and large, this has been accomplished through a succession of reorganization acts and a substantial number of reorganization plans which have been ratified by the Congress as a result of the exercise of Presidential power under those acts. New organizations have been created by the Congress as they have been needed to carry out our national policies.

In terms of the development of tools for the second major segment of the President's job, namely, the conduct of foreign relations, important developments include better military organization, creation of the National Security Council and the Central Intelligence Agency, and the establishment and maintenance of programs for economic and

military assistance which we have provided either through our own activities or through agencies of the United Nations.

Third, the role of the President as legislative leader has been very sharply focused through the device of developing formal and extensive legislative programs. In the last decade these have been recited in considerable detail to the country and to the Congress at the start of each congressional session in the three major presidential messages, the State of the Union, the Budget, and the Economic Report. Later, even greater detail has been made available through special messages presented to the Congress and frequently reenforced by nationwide radio and television appearances.

Efforts to develop more effective functioning of the President's office have also borne a considerable amount of fruit. Not only has it been possible to delegate very large numbers of routine duties to subordinate officials, but with each year we have learned more about providing the President with the kinds of tools which enable him to take prompt and definitive action on the complex issues which daily compete for his attention.

The White House staff has been improved and expanded. The supporting organizations in the Executive Office of the President, chiefly the Bureau of the Budget, the Council of Economic Advisers, and the Office of Defense Mobilization, have been reorganized and their chief officers brought to the status of Cabinet membership. The National Security Council has been strengthened, and full-time attention to its responsibilities has been assigned to a member of the President's personal staff.

These are but a few of the important steps which have been taken to develop the Executive Office into institutional machinery capable of serving the President, whoever he may be, quickly, efficiently, and with a minimum loss of either time or momentum which may be the inevitable result of changing political direction at the top, either when a new administration takes office or when political officers change.

I should like to stop for a minute to make an aside, which I think is important. Do not fall into the trap of assuming that the presidential machinery can be so fixed by statute that it will serve any President equally well. I must very definitely indicate, after many

years of experience, my very strong conviction that any such rigid machinery would be almost useless. The purpose is to enable the President to meet his demands, his wishes as to the acceptable way of doing things. When you get to a point at which you attempt to have the machinery organize the President rather than have him organize the machinery, you fail. You are then guilty of doing the very thing which sometimes happens in our own jobs--the job runs us rather than having us control the job.

I am very much opposed to the concept that some of these things should be spelled out in statutes. For example, I am convinced it would be unsound to provide in law for a Cabinet secretariate of so many members with specific duties, or to circumscribe by statute the freedom of the President's choice to include within the scope of the Cabinet anyone he wants to include within it.

Finally, I have been asked to say something about recent developments and current trends. In my judgment, perhaps the most important of these (and one to which I referred at some length last year) is the shift in channel of communications which has taken place between the people of the country and the central Government in the last 30 years. The chief cause is the growth of the programs for which the executive branch of the Government is responsible. Within our generation the Government has come into your lives and mine in a way in which our grandfathers would not have understood and probably would not have tolerated. In the broad fields of education, health, welfare, housing, labor relations, agriculture, atomic power, business services, and a host of more specific activities, from grading of meat to maintaining the seaworthiness of vessels, the people of the United States are in daily contact with one or more agents of the executive branch and the departments and agencies which make it up.

Furthermore, these Federal activities are now carried on, not exclusively in Washington, but in the States, cities, and towns. Ninety percent of all Federal employment is outside the seat of Government. In the same way in which we have always gone to the local post office to dispatch a letter, we now go to the local social security office to find out about grandfather's retirement, to the local employment service office to find out about unemployment compensation, to the local office of the Veterans' Administration to obtain hospitalization for a disabled veteran, to the local office of the Small Business Administration to get a loan to put a flooded-out store back in business. So it goes through a host of other examples.

It is the executive branch of the Government and not the Congress which has come into the daily lives of the people. It is only natural that the channel of day-to-day communication should have shifted in very major part from the legislative branch to the executive branch. I think this trend will continue and government will inevitably become more quickly sensitive to the popular will. This change in the channel of communications is in no small part responsible for the emergence of the President and his office as the symbol of America, the apex of its government, and the exemplar of its policies and philosophy before the world.

It also means that more and more of the Presidency is shared by each of us who is an officer or employee of the executive branch. We may pass the buck up the line but, even if it goes all the way to the President, his ultimate decision or action will rest upon the work that each of us in the chain has performed.

That is the pattern of administration for today and tomorrow in the Federal Government. That is the reason why I am convinced Hamilton was right when he said that feeble execution is bad execution, and bad government.

A second significant development in the Federal administrative process in recent years is in some ways a reflection of the changed focus of communications. As the Federal structure of interlocking, and sometimes overlapping, programs has become more complex, administrative control has become more difficult, and congressional surveillance much less easy. Similarly, control through appropriations has become less precise for a variety of reasons, the most important of which are the long lead time needed for procurement and the necessity for enough flexibility to permit the moneys to be expended effectively. Naturally, the Congress has been concerned lest the grants of power given in authorizing law be too broad and the discretion to spend be too great.

Two courses of action appeared to be open: (1) to tie both authority and appropriations down in precise detail, thus destroying the opportunity for administrative option and ingenuity and creating the need for more and more precise detail, or (2) to find new means of asserting congressional prerogatives of surveillance.

The first alternative obviously was impractical and unattractive. Legislation spelling out in precise detail exactly what could be built,

location by location, in a military public works program, for example, would be self-defeating and set restrictions impossible of performance. The same rule held for appropriations, for example, when a finished item might not come off the production line for 24 months after a contract was signed.

Therefore, the Congress has sought to find new devices to assure proper legislative oversight of executive programs. Generally, three such devices have been tried. The first has involved the granting of executive authorizations subject to their termination by concurrent resolution of the Congress, or in some cases by simple resolution of either House. For example, a number of the emergency programs may be terminated by concurrent resolution, and disposal proposals of the Rubber Producing Facilities Disposal Commission may be subject to disapproval by resolution of either House.

The second has involved intricate and sometimes exasperatingly cumbersome requirements for advance reporting of proposed actions to the Congress or to committees of the Congress 15, 30, 60, or even 90 or more days before executive action is made final.

Both of these courses of action are fraught with serious administrative dangers. While they may not involve constitutional objections of circumventing veto or interfering with the ultimate exercise of Executive power, they provide a potential means for delaying action which the President may believe should not be delayed or for arbitrary and unilateral termination of some executive program. So far neither device has created major problems, and it is to be hoped that future use of either will be responsible and met with good will in execution at both ends of Pennsylvania Avenue.

The third device, that of requiring executive agencies to come into agreement with specific committees of the Congress before proceeding to carry on an authorized activity, is so clearly unconstitutional that Presidents Truman and Eisenhower both have vetoed bills seeking to impose such restrictions.

It is too early to say whether this conflict between the legitimate and equal and separate powers of the executive and legislative branches can be quickly and effectively solved. It is a problem of current administration and one which cannot be solved by permitting the legislative branch to interfere with Executive powers or by Executive demands for the grant of authority to do whatever it chooses without any restraint

except its own interpretation of the policy laid down by the Congress. Since the United States is governed by laws and not by men I have confidence that a proper and effective solution will be found. Nevertheless, I point out the problem in order that you may be aware of it and because you may well hold the kinds of executive branch jobs most likely to be affected by it.

Finally, I cannot close even this brief consideration of current trends in Federal administration without some word of hope and encouragement to those who believe that administrative processes are improving. All of the evidence supports the belief that they are. I am sure that the trend for the future in administration will continue to be that of the open, receptive, and flexible mind. Administration no longer is a static thing. Its progress cannot be stopped by ridicule or by refusal to acknowledge its needs and accomplishments. This institution itself bears testimony to that fact. As late as 1936 I heard this College (then the Army Industrial College) criticized as being "a refuge for lazy quartermasters, and useless to the Army." Even as recently as two months ago, a man of influence and responsibility told me that, in his judgment, "no rated officer of the Air Force should be permitted to know much about procurement." Neither of these points of view can be tolerated in any government which supports the concept of the energetic Executive. Neither view is in accord with the needs of any Federal agency today. Neither view is in accord with the needs of the President of the United States today. The well-trained staff officer is an absolute essential of economical and effective administration. His importance to the success of our constitutional concept of the executive will continue to increase. Thus, it seems to me that each of you has the responsibility to examine the patterns of the past to see whether they suit the cloth of the present and the future as it is woven in your own careers.

Chief Justice Marshall in "Marbury vs. Madison" stated a rule of law which bears repeating over and over again. I quote:

"By the constitution of the United States, the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience."

It behooves each of us, no matter how far down in the President's chain of command, to see to it that his discretion, his conscience, and

00 4

even his political character reflect no shortcoming which it was our duty to prevent.

Thank you very much.

MR. NIKLASON: Mr. Jones is ready for your questions.

QUESTION: Mr. Jones, in connection with your remarks about the permanence of the Executive Office of the President, I just wondered what would be the extent of the personnel changes in the event of a change of administration.

MR. JONES: Well, the President has around him three kinds of people--the members of his personal staff, who, of course, change with him; the career members of the staff, both in the White House and in the rest of the Executive Office, like the chief usher, the Secret Service, the executive clerk, the Budget Bureau staff, and others of that sort, who go on from administration to administration, and a rather sizable number they are. For example, I would hate to think what would happen to presidential files if you had to turn over the job of setting up the presidential filing system to a completely new set of people every time the administration changed. Third, there is the subordinate-level staff who, although career officers themselves, are on the borderline between career status and the political officers within the framework of the Executive Office of the President. These people have to follow the dictates of their own consciences and good sense.

I would count myself as that kind of person. As an Assistant Director of the Budget Bureau, charged with broad legislative responsibilities for a sort of surveillance over the President's legislative program, I think I would know very quickly whether it was the desire of a new Budget Director and a new administration to have somebody else doing my job. If I felt it was, I would very quickly get out of the way, regardless of the fact that I am a civil servant and not a political officer.

By and large the institutional career element stays, the personal staff, of course, changes, and the intermediate folks, who are a bridge between political offices and the career staff, of which they are a part, go or stay, as circumstances permit or dictate.

Does that answer your question?

STUDENT: Yes, sir.

QUESTION: Mr. Jones, do you consider that the President has in the Executive Office anyone who acts in the same capacity as a Chief of Staff would in the military, and do you consider that this is desirable?

MR. JONES: It is a good question. It has two parts and an implied third part. I will take them in order, but I want to take them in reverse order. I would say it is desirable to the extent that the President wants it. If he does not want a Chief of Staff he certainly should not have one.

Think back over history, gentlemen. How long do you think a Chief of Staff in a nonmilitary sense would have lasted under FDR or under Calvin Coolidge? I just don't believe that the personality of either man was such that a Chief of Staff could possibly have provided effective service for him. Contrariwise, to a man of President Eisenhower's training and experience, "Chief of Staff" is the most natural concept in the world. He does have one in Governor Adams, and the functions of Governor Adams are the functions which all of you, even the civilians among you, would, I am sure, immediately understand. They follow much of the military concept of a Chief of Staff.

The office is sound when the President wants it. It is a tremendous saver of presidential time, and it is a tremendous force for good in the screening of certain kinds of problems, in terms of whether they really belong to the President or whether they do not.

Now, it does have some disadvantages. In the first place, the existence of a Chief of Staff is an open invitation to anybody to take anything that he wants to the White House, in the hope that maybe it will make the grade, maybe it will get by, and he will have a chance to talk to the President about it. That, of course, has some disadvantage.

There is also the disadvantage that you may sometimes have a Chief of Staff whose judgment is perhaps not quite what it should be, and who does screen out something that should go to the President. You all know what the almost inevitable result has been when that has happened in military situations.

389

I think any reply to your question also has another facet, and that is, can the Chief of Staff effectively operate as the President if circumstances demand? I don't want to put words in your mouth, but it seems to me that the way in which you phrased your question you were asking that question by implication. There I think I would have to answer, "No." The Chief of Staff is not the President and could never be the President. If you had a Chief of Staff who attempted to step in and take over, I am very sure that the popular response would be unfavorable, immediate, and would have its effect.

QUESTION: Sir, going back to your words on surveillance, authorization, and appropriations, and the consideration that every one realizes that lead times are getting longer and longer, we have seen in the past a reluctance on the part of Congress to grant an appropriation in a particular fiscal year that might reflect an acceptance or a concurrence on a program for the following year. However, in the last two years, we see examples of advance procurement and planning money appropriations for the next year. Doesn't that method give Congress an additional means of surveillance, and has the Bureau of the Budget given any consideration to the annual presentation of a long-range plan for appropriations, instead of the small part for the fiscal year? Isn't that a method that could help us in taking into consideration this long-planning time we now have to consider?

MR. JONES: In a word, Captain, "Yes," but that yes needs expansion. I think the Budget Bureau has tried, and tried hard at times, to convince agencies of the desirability of giving us a longer range look. Our success has not been exactly startling to date, for the simple reason that people are always afraid that they are going to be committed. The Congress feels the same way--that it cannot and should not make advance commitments, even from year to year in the same Congress, without the most urgent reasons for doing so.

I do think, however, that that is inevitably going to come. We started with the concept in the field of public works when we first called for a six-year-forward program. Now, actually, particularly in making up the budget for the military services, more and more of that kind of advance planning and programming is being done. I am sure those of you who have participated in it in recent years have seen some of the phasing out that we are trying to do in terms of, we will say, a weapons system, or a given type of aircraft X number of years in the future. We try to project what will happen to this type of plane or guided missile when a new type comes in fiscal year 1958 or 1959, and so on.

We are going to have much more of it, because our whole society is built on that kind of concept. You have to do it not only in budget field planning, but you have to do it in personnel planning. Again, to take a military example, today we have certain operational units which are equipped with certain types of weapons. We know that the weapons will soon be replaced. What are we going to do with those people? You can't wait until replacement happens before you start retraining the personnel of those units.

I am sure that such advance authorization is a device that in time will gain public acceptance and acceptance by the Congress, and will be recognized as a very adequate kind of substitute for what we called contract authority during World War II, authorizing commitments without appropriating the money except to liquidate obligations entered into in accordance with a time schedule after the fact.

That may be a somewhat rambling answer, Captain. Is it satisfactory for your purpose?

STUDENT: Yes, sir. Thank you.

QUESTION: Mr. Jones, occasionally in the newspapers we have read of objections to the Vice President assuming duties for the President in the last few years. Are these objections entirely political or are there any moral or legal reasons for those?

MR. JONES: Do you mean, Colonel, during a period of Presidential inability, or otherwise, or both?

STUDENT: Both.

MR. JONES: Well, of course, the Constitution is silent on what the precise duties of the Vice President shall be, except in terms of his job of presiding over the Senate and casting a ballot when it is necessary to break a tie. Nowhere else are the duties of the Vice President defined. Until we face a situation in which a President in all probability will not recover his ability to serve, I doubt whether we can answer the disability question. Over the course of our history the Vice President has tended not to be very important, and has not been permitted to become very important in terms of executive-branch management. In large part I believe this has been because of the belief, long held, that the minute you let him become important he then became, in effect, an adversary or competitor of the President. Under our political system that has not been palatable.

The Vice President has very frequently been chosen, and deliberately chosen, as representing another wing of the President's party that was not entirely in sympathy with the President's own philosophy; that was done in order to give a rallying ground for all elements of the party to come together. And occasionally he has been chosen deliberately because he was expected to be a figurehead--a kind of nonentity. All those have been things that have tended to derogate the role of the Vice President.

However, the experience which Mr. Truman had before he assumed the Presidency, and his insistence that at least so long as he was President it would never happen again, met a great deal of popular response. I think the people now believe that the Vice President should be groomed, insofar as it is appropriate to groom him, to succeed to the Presidency. The old truism about being separated from the Presidency by only a heart beat is certainly correct. I, myself, would be most unhappy if I ever thought we were going to revert to the old concept of the Vice President, well, in the aphorism of get them young, treat them rough, and tell them nothing.

I think he has got to be acquainted with the problems of the Presidency, and should be used wherever the President feels that his talents are most effective. Certainly President Eisenhower has expressed faith and confidence in Vice President Nixon's ability in a variety of regular assignments and numerous special missions. But he cannot share either the authority or the responsibility of the Presidency. Hence he cannot assume the President's duties; he can merely represent the President in any given situation.

STUDENT: Thank you.

QUESTION: I wonder if you would care to comment on the rather recent rigid and difficult problem between the executive branch and the legislative branch, which has received some publicity. That is the problem of making available to Congress certain documents of the executive branch.

MR. JONES: Yes, I will comment on it gladly. May I say that I assume that two recent documents on the subject are in your library? This subject has been very fully treated in two recent compilations, one a report of a Committee of Congress--I have forgotten whether it is the House or the Senate Committee on Government

Operations--on the right of the Executive to withhold information from Congress; and the second a long mimeographed treatise by the Attorney General treating the same subject from the point of view of executive-branch history, the history of every President from Washington down to Mr. Eisenhower, in refusing documents to the Congress. The quotation with which I closed my formal address this morning is very centrally pertinent. "By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country, in his political character, and his own conscience."

If we accept, as we have to accept, the concept of three coordinate, equal branches of government, each with its powers, insofar as they are defined, consistent, equal, and separate, we have to accept the concept that the President is free to withhold information from the Congress when he believes it is in the public good to do so. To accept any other thesis is to accept the thesis of the possibility of domination of the Executive by the Congress, the subservience of the Executive to the Congress.

I do not think that was ever intended by the Constitution. It is certainly nowhere implicit in anything Hamilton says or in the records of the Constitutional Convention. The fact that the Congress has never yet, even though it has been unhappy at times, carried through an attempt to cite for contempt an executive branch official for refusing to give information when directed by the President not to give it, I believe is proof of the pudding.

On the other side there are those who say that the Constitution and Statutes are specifically silent on the right of the Executive to withhold information, and, since they are silent on the subject, it means that there exists no right to do so. Well, the Constitution is silent on a good number of other matters, too, which have been settled over the years by case law, by precedent, by administrative or judicial or legislative action of one sort or another. This is the kind of an issue which I do not believe you could ever effectively bring to a court test. Therefore I do not think you can build up a body of precedent except insofar as it relates to what the Executive has done and what the Congress has done, on the other hand, in response to what the Executive has done.

We have an unbroken succession of responsible Presidential refusals. I guess perhaps as many as half of our Presidents have, at

one time or another, refused information to the Congress on the ground that it would be contrary to the general public interest to give it to them.

There the matter has stopped. I don't know whether that answers your question.

QUESTION: There is one concept that two Vice Presidents could be used, one to carry on the present duties, the second to work with the President. Do you have any opinion on that?

MR. JONES: Yes, I have an opinion. I don't know how much it is worth. There is also the concept that we might have two Presidents, one to be the protocol head of State, in the sense that parliamentary governments have a constitutional head of State, and the other to be the general manager--you know, the city manager, if you will. That certainly is most effectively refuted and put to rest in the discussions in the Federalist Papers and elsewhere as to the impossibility of having a multiheaded executive. I think a little of the same kind of thing exists on the basis of just common sense with respect to the Vice President. They could never be equal.

Are you going to call them First and Second Vice Presidents? Well, what then happens to the duties of No. 2 as opposed to No. 1? Could you subordinate the legislative Vice President to the public-greeter Vice President? Aren't you creating more problems than you solve by any attempt to do so? I think so.

The Constitution makes provision, of course, for succession to the Presidency in the event of inability of the President and the Vice President. The Congress has done that by statute. So, to all intents and purposes, I believe that we really have a No. 2 Vice President available today, but we have not used him formally. He is the Speaker of the House, who now is the No. 2 man in line of succession.

There is a great deal to commend that theory, because, after all, the Speaker of the House in our original constitutional concept represents what we must recognize as being an officer of all the people. He is the man chosen by a majority of the Representatives, who in turn have been elected by the people, and must be accorded some considerable stature by virtue of his occupying that post.

So I would not myself favor the concept of two men who carried the title of Vice President. I think it would be a contradiction in terms and would not work well for the country.

QUESTION: I wonder, Mr. Jones, if you will comment to us on the communication channels that exist between the executive department and the legislative, particularly in areas that seem to come up, such as the Suez Canal. What discussions were held? Were they bipartisan? Did Congress give its tacit consent to the course of action taken?

MR. JONES: I will be delighted to comment on channels, not on issues. Well, again, you people seem today to put me in the position of taking the last part of the question first.

With respect to the Suez Canal, I know no more about that than has been in the papers; that the President called a bipartisan conference as soon as the situation, in somebody's judgment--I assume it was his or the Secretary of State's--appeared to be of such gravity that it required consultation with the legislative branch and briefing Congress on the matter before instructions were given to Mr. Dulles for the London Conference. Of course the timing, politically, was unfortunate, but could not be governed, in the sense that you had to pull the Democratic leaders out of Chicago at the start of their Convention. Had I been a Democratic leader, I probably would have been just as critical as some of them apparently were, from the kind of growling that was reported in the papers. By the same token, you had to find the Republican leaders, who were widely dispersed over the country, and get them all together here. So I think the one offsets the other.

However, I do say this. I think there the method of communication which was used not only was appropriate but reflected the very highest concept of the President's discharge of his responsibility, to give the Congress or their officers, in the absence of the Congress, information on the state of the Union. He used the only device he could. He summoned the leaders of both parties to be advised of a very grave international situation which might involve the utilization of his full powers for the conduct of our foreign affairs.

I think it is a little bit similar to the kind of thing he did on the Formosa issue when the Congress was in session, and so on.

Now, to take the first part of your question, the channels of communication are very varied. They run all the way from the formal message, in the constitutional sense, to the very extensive use of the telephone, which certainly has been the habit rather than the exception in the administration of the last three Presidents--day-to-day contact by the President with members of the Congress of both parties. Then, going back step by step from that, there are the meetings with the legislative leaders, usually of his own party, but occasionally with the others coming in. Next there are the more extensive meetings with the leaders of the party, plus the ranking members of the committees, which the President has done each year in December--well, except for this last year--there he had a very much shorter meeting after his return from Gettysburg--but both in 1953 and 1954 the President had meetings in December with the legislative leaders and the chairmen of the committees.

Moving back from that there is day-to-day contact at many levels with the President all the time supervising and directing the departments. Finally, there are the departmental legislative programs which it is the Bureau's responsibility to coordinate. Each of these channels of communications becomes more formal as you move forward in the chain, until the culmination in the messages of the President.

There have been suggested from time to time various alternatives for improvement of these communications, but all such suggestions, insofar as I have seen them, have involved a kind of splitting of responsibility, which I think you cannot justify.

For example, it has been suggested that communications between the executive and legislative branches would be very much more effective if, in connection with making up the budgets, we had members of the staff of the Appropriations Committees sit in with the members of the Budget Bureau staff in the first go-around. Well, that essentially negates the concept of the executive budget right there. You cannot have the committees of the Congress taking part in the decisions which lead up to presentation of an executive document. A democracy is perhaps inefficient at times, and a republican form of government is inefficient at times, but nevertheless the people who thought out our Constitution designed a system of ultimate and separate responsibility for the actions in each branch. Therefore I am not concerned about these charges that we could be a little more efficient if we permitted participation by the legislative in our operations or vice versa. I don't think it would be more efficient in the long run, because

you would inevitably dilute responsibility; you would inevitably have someone emerge as the superior and someone tend to become the inferior. Which way it would go, of course, is a matter of conjecture.

Does that help at all?

STUDENT: Yes, sir.

QUESTION: I would like to hear your comments regarding the constitutional aspects of impounding appropriated funds by executive action.

MR. JONES: The Constitution says that no money shall be expended except in accordance with an appropriation authorized by law. The Constitution always says that the President shall take care that the laws be faithfully executed.

The first has been cited as evidence of the intent of the framers of the Constitution that once an appropriation has been made it is available and its expenditure cannot be interfered with except by the individual to whom it is appropriated.

I don't agree. The Congress can revoke an appropriation or change it. The President can control its expenditure. Not only does the President have the responsibility to see to it that the laws be faithfully executed, but all executive power rests in him. The action of his subordinates are the actions of the President. They are his appointees. He cannot divorce himself from responsibility for their actions.

Therefore, I think it is perfectly appropriate and perfectly and certainly within the spirit and text of the Constitution for the President, in his discretion, at times to direct the nonexpenditure of funds. An authorization to spend is not a directive to spend.

Now, there again, how often does a President step in? Of course, that involves matters of human judgment. Certainly a President who attempted irresponsibly or often to set aside the express will of the Congress as to the size of programs or the extent to which they are to be supported from public funds would be very sharply brought to the bar of public opinion, and I do not think he would persist in that course of action very long. If nothing else dramatized the issue, the people who had responsibility for expending funds would resign and take their case to the public.

Contrariwise, suppose, for example, we should make one of these great scientific breakthroughs tomorrow in the field of atomic propulsion, and should discover a cheap, safe, and very effective means of, in say 2 or 3 years, putting atomic propulsion into merchant vessels. Would not the President be justified in saying to the Maritime Administration, "I want you to suspend construction and withhold contracts for any more merchant vessels with standard types of propulsion?" I think he would be entirely justified in doing that and notifying the Congress when they come back of what he had done and why he had done it.

QUESTION: With emphasis on the return of responsibility to the States, do you foresee in the near future the return to the States of some of the responsibilities which the President now has under his control?

MR. JONES: No, I do not. For example, President Eisenhower has espoused with great conviction, great clarity, and great sincerity the partnership concept on public works. There may be developments, but they will not come overnight. The current still runs the other way, apparently.

Recently the President, in taking action on one of the bills that went through this Congress, expressed concern and disappointment that the Congress had seen fit to decrease the hitherto required degree of local participation in small upstream flood control projects. In time, I believe his view will prevail, but at the moment there are a lot of reasons why the bill came out as it did. I think there are forces at work which will ultimately result in a repeal of the provision which increased the amount of Federal participation and decreased local participation.

QUESTION: Sir, my question has to do with organization in the executive department. In the past and in recent reading I have observed the tendency to create agencies and offices under the President directly rather than to place them in one of the existing Cabinet departments.

MR. JONES: Would you illustrate what you have in mind?

STUDENT: Well, there are certain things like communications, and sometimes they create an agency rather than, say, put it in the

Department of Commerce. There are many other cases, too. They have disappeared greatly now, but during the war, particularly, that was true.

MR. JONES: Yes, during the war it was, and I think there was a certain amount of rationale behind it; namely, the clearer, the simpler, and the more direct the lines were to the President, the more certain you would be that you would have a consistent overall policy for the direction of the war effort.

However, I think I would take issue with you to this extent. I do not believe that it has been the tendency of the Congress, or of the executive branch, either, to advocate proliferation of independent organizations. The tendency has been, I think, quite the reverse, growing out of operations of both Hoover Commissions, the reorganization acts, and other developments, all supporting the concept of grouping like things together and putting them under a departmental head so that you could have consistency of policy and reduction in the number of officers reporting to the President. I believe this trend will continue.

In the field of transportation, for example, there are many people who believe that we are not going to solve some of our very complex problems of relationship between automobiles, railroads, trucks, airplanes, and inland waterways until we get all the transportation functions into some one department. So I don't think it is quite accurate to say that there has been a tendency to create more and more independent agencies. I think the reverse is probably so.

MR. NIKLASON: Thank you, Mr. Jones, for a very interesting and helpful lecture and discussion.

MR. JONES: Thank you, Mr. Niklason.

(10 Oct 1956--3750)O/sgb