Secretary Vinson

Mr. Luxford

As I advised you on Saturday, there are some factors which make it doubtful whether the several bills awaiting the President's signature will become law if the President does not sign them until after his return. Therefore, it appears wise to send the bills to the President for signature. This memorandum will amplify that opinion.

It is my understanding that the original decision not to send the bills to the President was based upon an opinion of the Attorney General that the 10 days which the President has in which to consider bills does not begin to run until bills have been physically presented to the President. I have not had the benefit of examining the Attorney General's opinion, but from my examination of the authorities, there appear to be certain problems in connection with such a conclusion that raise doubts which might provoke litigation.

An examination of the cases reveals that neither the SuprememCourt of the United States nor any other court has construed the words "presented to the President of the United States" which appear in article I, section 7, clause 2 of the Constitution.

As a matter of practice bills have not been physically presented to the President by the Congress or by a representative of the Congress, but have merely been delivered to the Executive Mansion. Mr. Hatton Summers appearing as amicus curiae on behalf of the Committee of the Judiciary of the House of Representatives in the Pocket Veto Case (1929) 279 U.S. 655, indicated in his argument (reported at p.666) that it has been the practice of the President to receive bills "through an appropriate agent, even though he himself be absent from his office". Similarly, Chief Justice Hughes stated in Wright v. United States (1938) 302 U.S. 583 at p. 590, "There is no greater difficulty in returning a bill to one of the two Houses when it is in recess during the session of Congress than in present-

ing a bill to the President by sending it to the White House in his temporary absence. Such a presentation is familiar practice". It is clear that on some occasions delivery to the White House has been considered an adequate presentation to the President and that, therefore, there has been no specific rule requiring physical delivery to the President to start the ten-day period running.

It is true that a different factual situation exists when the President is known to be absent from the White House for an extended period of time which may justify the view that delivery to the White House does not constitute a presentation to the President. However, even in that instance, the argument may be made that the Constitutional provision was designed to insure speedy approval or disapproval of legislation and may not be circumvented by the President's prolonged absence.

Moreover, if the President may revoke the authority of any other persons to receive bills for him while he is absent from the White House for an extended period of time, he could take similar action while he is temporarily absent or even while he is at the White House. If this be so, then the presentation of bills to the President by Congress would be comparable to the service of process on an individual. The President, by avoiding service, could greatly delay enactment of a measure or even deprive Congress of an opportunity to pass the bill over his veto by preventing presentation until adjournment of Congress. It is at least doubtful if the Supreme Court would countenance such a possibility under the Constitution.

On the other hand, the Constitution contemplates that the President shall have ten full days for consideration of legislation before having to communicate his disapproval. As stated in The Pocket Veto Case, 279 U.S., 655 at 677, 678, "The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly." Following this line of thought, a persuasive argument may be made that the President can not have that ten-day period for consideration if, before actual delivery to the President, a bill may be considered to

have been "presented to the President", as required by the Constitution. However, even if this latter view is the proper one (and I certainly do not wish to be considered to be disagreeing with the conclusion reached by the Attorney General), the problems indicated appear to me to be sufficiently grave that it is preferable to avoid giving opponents of the pending legislation the opportunity of raising them in court.

The only known precedent which might support the opinion of the Attorney General is the action of President Wilson when he was in Paris after the last war. He signed a number of bills within 10 days after they were actually presented to him by a courier who took them to Curope. See Rogers American Government and Politics, 1920, 14 Am. Pol. Sc. Rev., 74, 87, note 7. However, no legal problem was involved in that case since Congress remained in session and all of these bills would have become law without the President's signature if they had not been sent to Paris. Moreover, from the sources available to me, I have not been able to ascertain whether the courier who took these bills to President Wilson was a courier sent by Congress or whether Congress delivered the bills to the White House and the President's staff then forwarded them to him in Paris.

If it were clear that Congress has not adjourned so as to prevent the return of the bills to Congress, the problem of the time within which the President must sign the bills would not be signficant as the bills would become law without his signature. The Constitution provides:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.* * * *If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

It seems clear, however, that under the most optimistic view, Congress will not be in session long enough for the bills to become law without the President's signature. The House of Representatives in which all of these bills originated adjourned on July 21 until October 8. There is every indication that the Senate, on August 1, will adjourn until October 8. As the 10th day after delivery of these three bills to the White House will fall on August 2 in the case of the Export-Import Bank bill, and on August 3 in the case of the other two, the question would be squarely presented as to whether such an adjournment is one which prevents the return of the bills by the President. It is likely that an adjournment of the Senate on August 1 would be considered an adjournment of Congress making the bills in question subject to a pocket veto. If, on the other hand, the Senate remains in session until August 4, the bills would probably become law without the President's signature. Neither case is clearly decided, however, and I do not believe it would be wise to rely upon anything except the President's signature of the three bills by August 2 and August 3.

In the Pocket Veto Case, the Supreme Court held that the adjournment of Congress at the end of its first session prevented the return of a bill presented less than ten days before that adjournment and that the bill did not become law. The Court stressed the view that the return required under the Constitution was to a House in session.

In Wright v. United States (1939) 302 U.S. 583 a bill was returned by the President with his objections to the Senate while the Senate was taking a three day recess. The majority held that the bill had not become law because the Congress had not passed it over the President's objection, holding that it was properly returned to the Senate because the Congress had not adjourned since one House was in session (even though it was not the one in which the bill originated) and because such a three day adjournment or recess did not constitute such an adjournment as to prevent the return of the bill. Chief Justice Hughes pointed out that return of the bill could be made to an appropriate agent of the Senate during its recess.

Justices Stone and Brandeis concurred in the holding that the bill did not become law but based their conclusion on the finding that the recess of the Senate had prevented the return of the bill to the originating house and thereby caused a pocket veto.

The majority opinion is expressly limited to the facts of the case, that is, to whether a three day recess taken by the originating House while the other House is in session, would prevent the return of a bill. Under the reasoning of both decisions it would appear that an adjournment of both Houses until October 8 will constitute such an adjournment as will prevent the return of bills to Congress after August 1.

The Attorney General's opinion of July 16, 1943 (vol. 40, op. No. 70) considered the problem that will exist if the Senate adjourns, as planned, on August 1. The facts in that opinion were that Congress had adjourned on July 8, 1943, until September 14, 1943, or until three days after notice to reassemble. A number of bills were presented to the President before and after that adjournment. The Attorney General, relying on the Wright case, concluded that "failure to return the bills within the time specified by the Constitution would result in their being pocket vetoed and their not becoming law".

Since the Senate plans to adjourn on August 1, which is less than 10 days since the bills were delivered to the White House, they can not become law without the President's signature. In view of the fact that there has been no clear decision on the question of when presentation to the President takes place, the safest course for the President to follow would be to sign the bills before the time is reached when any question can be raised as to the validity of the legislation. This means that the bills should be signed within 10 days of delivery to the White House.

Once the President has signed the bills they will become laws as of the time of signature. Prevost v. Morgenthau (C.C.A. 1939), 106 F. (2d) 330; Gardner v. Collector (1867), 6. Wall. 499, 506.

CRMcNeil:RB:bn 7-30-45

MEMORANDUM FOR THE PRESIDENT

I am troubled over the possible difficulties that might develop over your not signing the bills which have passed the Congress since your departure (including the Bretton Woods bill, the Interim Tax bill and the Export-Import Bank bill). Accordingly, I recommend that these bills should be acted upon by you at once.

I have not had the opportunity to examine the Attorney General's opinion which I understood was prepared on this general subject some months ago, although I understand that it was his view that the ten-day period provided in the Constitution for Presidential approval or veto does not begin to run until the bills have actually reached the President. However, the brief examination I have made of the point provokes certain problems which suggest the desirability of prompt action.

In the first place, the brief check I have made has failed to disclose a Supreme Court decision holding that the ten-day period for Presidential approval or veto does not begin to run until the bills have actually reached the President. As a matter of fact, I have not discovered any court decisions covering this point.

The legal consequences of a tardy signature would not be particularly significant if both Houses of Congress were in session since, in that case the Constitution provides that

> "If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in a like Manner as if he had

> signed it, unless the Congress by their Adjournment prevent its Return, in which case it shall not be a Law. (underscoring added)

It is the underscored part of this provision, however, that worries me now.

Specifically it is not clear whether the adjournment of the House pursuant to the attached concurrent Resolution constitutes an adjournment of Congress within the meaning of the underscored part of the above quotation (since the Senate is still in session). If it were so held, then a tardy signature might be possibly construed as a pocket veto.

All of the bills involved here originated in the House and the House has adjourned. The Supreme Court has recently held (Wright v United States (1938) 302 US 583) that such an adjournment for not more than three days leaves the way open for the normal type of veto and signature of bills. However, it specifically reserved the right to hold differently in the event of a longer adjournment. The Court stated:

> "We are not impressed by the argument that while a recess of one House is limited to three days without the consent of the other House, cases may arise in which the other House consents to an adjournment and a long period of adjournment may result. We have no such case before us and we are not called upon to conjecture as to the nature of the action which might be taken by the Congress in such a case or what would be its effect."

If the Court should reach a contrary conclusion because of the length of the House recess and should also conclude that delivery of the bills to the White House is a presentation to the President, then these bills would not become law if not signed within ten days.

Finally, I am troubled about public reaction to a procedure that might be interpreted as novel and which might, in any case, provoke litigation throwing doubt on the validity of the legislation until resolved by the courts.

I understand that the Export-Import Bank legislation reached the White House on July 21 and the Bretton Woods and Interim Tax bills were delivered on July 23. Thus, the Export-Import Bank bill should be signed by August 2 and the others by August 4.

AFL:ehb 28/7/45