Attachment # 3 Signing Statement #1
President James Monroe

The American Presidency Project
John T. Woolley & Gerhard Peters • University of California at Santa Barbara
• James Monroe Special Message January 17th, 1822

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To the Senate of the United States:

I nominate the persons whose names are stated in the inclosed letter from the Secretary of War for the appointments therein respectively proposed for them.

The changes in the Army growing out of the act of the 2d of March, 1821 "to reduce and fix the military peace establishment of the United States," are exhibited in the Official Register for the year 1822, herewith submitted for the information of the Senate.

Under the late organization of the artillery arm, with the exception of the colonel of the regiment of light artillery, there were no grades higher than lieutenant-colonel recognized. Three of the four colonels of artillery provided for by the act of Congress of the 2d of March, 1821, were considered, therefore, as original vacancies, to be filled, as the good of the service might dictate, from the Army corps.

The Pay Department being considered as a part of the military establishment, and, within the meaning of the above-recited act, constituting one of the corps of the Army, the then Paymaster-General was appointed colonel of one of the regiments. A contrary construction, which would have limited the corps specified in the twelfth section of the act to the line of the Army, would equally have excluded all the other branches of the staff, as well that of the Pay Department, which was expressly comprehended among those to be reduced. Such a construction did not seem to be authorized by the act, since by its general terms it was inferred to have been intended to give a power of sufficient extent to make the reduction by which so many were to be disbanded operate with as little inconvenience as possible to the parties. Acting on these views and on the recommendation of the board of general officers, who were called in on account of their knowledge and experience to aid the Executive in so delicate a service, I thought it proper to appoint Colonel Towson to one of the new regiments of artillery, it being a corps in which he had eminently distinguished himself and acquired great knowledge and experience in the late war.

In reconciling conflicting claims provision for four officers of distinction could only be made in grades inferior to those which they formerly held. Their names are submitted, with the nomination for the brevet rank of the grades from which they were severally reduced.

It is proper also to observe that as it was found difficult in executing the act to retain each officer in the corps to which he belonged, the power of transferring officers from one corps to another was reserved in the general orders, published in the Register, till the 1st

day of January last, in order that upon vacancies occurring those who had been put out of their proper corps might as far as possible be restored to it. Under this reservation, and in conformity to the power vested in the Executive by the first section of the seventy-fifth article of the general regulations of the Army, approved by Congress at the last session, on the resignation of Lieutenant-Colonel Mitchell, of the corps of artillery, Lieutenant-Colonel Lindsay, who had belonged to this corps before the late reduction, was transferred back to it in the same grade. As an additional motive to the transfer, it had the effect of preventing Lieutenant-Colonel Taylor and Major Woolley being reduced to lower grades than those which they held before the reduction, and Captain Cobb from being disbanded under the act. These circumstances were considered as constituting an extraordinary case within the meaning of the section already referred to of the Regulations of the Army. It is, however, submitted to the Senate whether this is a case requiring their confirmation; and in case that such should be their opinion, it is submitted to them for their constitutional confirmation.

JAMES MONROE.

Attachment # 4
Signing Statement # 2

Statement on Signing the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006
December 30th, 2005

Today, I have signed into law H.R. 3010, the "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006." This Act appropriates funds for key domestic programs, including programs to protect America's workers, help educate America's youth, and guard Americans against potential bioterrorism or epidemics. The executive branch shall construe certain provisions of the Act that purport to require congressional committee approval for the execution of a law as calling solely for notification, as any other construction would be inconsistent with the constitutional principles enunciated by the Supreme Court of the United States in INS v. Chadha. These provisions include sections 103, 208, and language under the heading "Pension Benefit Guaranty Corporation Fund." The executive branch shall construe provisions in the Act that purport to mandate or regulate submission of information to the Congress in a manner consistent with the President's constitutional authority to withhold information that could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties. Such provisions include language under the heading "Department of Health and Human Services, Office of the Secretary, General Departmental Management." Certain provisions of the Act relate to race, ethnicity, or gender. The executive branch shall construe such provisions in a manner consistent with the requirement that the Federal Government afford equal protection of the laws under the Due Process Clause of the Fifth Amendment to the Constitution.

George W. Bush
The White House,
December 30, 2005

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Attachment # 5 President Ronald Reagan Signing Statement #3

Statement on Signing a Bill Amending the Bankruptcy Code
May 15th, 1987

I am today signing S. 903, a bill "To extend certain protections under title 11 of the United States Code, the Bankruptcy Code." This legislation amends substantially identical provisions of two different laws, Public Law 99-591 and Public Law 99-656, to extend their operation from May 15, 1987, until September 15, 1987. Both laws require the payment of certain benefits to retirees of business organizations in chapter XI bankruptcy proceedings (involving business reorganizations) and apply to cases pending under chapter XI in which benefits were being paid on October 2, 1986, and to all such cases in which an order for relief is entered after that date.

Those provisions are unobjectionable. I must note my serious concern, however, with the extension of subsection 2(b)(3) of Public Law 99-656. That provision requires a particular bankruptcy trustee, in a case identified by reference to the circumstances of its bankruptcy proceedings, to continue to pay certain benefits to retired former employees. Under the Constitution, the Congress is authorized to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Subsection 2(b)(3) singles out a specific firm. It amounts to a private bankruptcy law, which is beyond the Congress' constitutional authority to enact. I believe, therefore, the extension of this provision is unconstitutional.

In considering this legislation, I am of course aware that when the Congress enacted the temporary bankruptcy provisions of Public Laws 99-591 and 99-656 it did so for the express purpose of "freezing" the status quo, while it considered possible permanent amendments of the Bankruptcy Code in the area of pension benefits. I understand that these deliberations are still under way. For that reason, and because the extensions contained in S. 903 are both temporary and brief, I am persuaded in this unique circumstance to give the Congress additional time to ponder a more permanent and constitutionally sound response to the problems facing retired workers by approving S. 903.

In approving this legislation, however, I must once again underscore my belief that the purported extension of subsection 2(b)(3) of Public Law 99-656 constitutes an unconstitutional private bankruptcy law. Because of its unconstitutional nature, I have directed the Attorney General not to defend it.

Note: S. 903, approved May 15, was assigned Public Law No. 100-41.

Citation: John T. Woolley and Gerhard Peters,*The American Presidency Project* [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available from World Wide Web: http://www.presidency.ucsb.edu/ws/?pid=34288.

Excerpts from Judiciary Committee Hearing on PRESIDENTIAL SIGNING STATEMENTS UNDER THE BUSH ADMINISTRATION: A THREAT TO CHECKS AND BALANCES AND THE RULE OF LAW?, WEDNESDAY, JANUARY 31, 2007 House of Representatives, Serial No. 110-6 http://judiciary.house.gov; or http://www.louisdb.org/documents/hearings/110/house/house-hearing-110-32844.html

Opening remarks by John Conyers, Jr. (Chairman of the Committee) presiding:

(#1).. . We are holding our first oversight hearing in the Judiciary Committee of the 110th Congress. Many have joined me in expressing concern about the growing abuse of power within the executive branch. This President has tried to take unto himself what has been termed absolute authority on issues such as surveillance, privacy, torture, enemy combatants, and rendition.

. . . Presidential signing statements . . . supposedly give him the power to ignore duly enacted laws he has negotiated with the Congress and signed into law. All too often, the Administration has engaged in these practices under a veil of secrecy. This is a constitutional issue . . . we announce that, out of this oversight hearing, we will begin an investigation of the specific use and abuse of Presidential signing statements.

In particular, I intend to ask the Administration to identify each statutory provision that they have not agreed with in signing statements and to specify precisely what they have done as a result.

Now, an example. If the President claims he is exempt from the McCain amendment ban on torture, we need to know whether and where he has permitted it. We want to know what he has done to carry out his claims to be exempt from many other laws such as oversight and reporting requirements under the PATRIOT Act, numerous affirmative action obligations and the requirement that the Government obtain a search warrant before opening the mail of American citizens.

So I am going to ask my staff, along with that of my friend the Ranking Member Lamar Smith's, staff. . . to meet with the Department of Justice and the White House . . . We are a coequal branch of Government, and if our system of checks and balances is going to operate, it is imperative that we understand how the executive branch is enforcing or ignoring the bills that are signed into law.

. . . the American Bar Association appointed a . . . task force which carefully studied the problem. They found out as of last year President Bush had challenged no fewer than 800 legal provisions, far more than all previous Presidents combined. This is in a total of 148 signing statements that we have here for our Members' examination.

Republicans and Democrats alike have reached a unanimous conclusion which was endorsed by the entire American Bar Association House of Delegates: this use of signing statements is ``contrary to the rule of law and our constitutional system of separation of powers."

Today, in an oversight hearing, we are here to explore that conclusion and then to take action. We are talking about a systematic extra-constitutional mode of conduct by the White House. The conduct threatens to deprive the American people of one of the basic rights of any democracy, the right to elect Representatives who determine what the law is, subject only to the President's veto. That does not mean having a President sign those laws but then say that he is free to carry them out or not as only he sees fit.

The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary

(#2) . . .Members of Congress have a right to say what they think of a particular piece of legislation, and the President, too, has the right to say what he thinks about a particular piece of legislation. Whenever the views of a Member of Congress or the President conflict with how a Federal court interprets a piece of legislation, the courts will have the final say on what the law means. The fact is that courts have rarely mentioned Presidential signing statements, and when they have mentioned them, they cite them only when such statements support the interpretive view of the statute the court has already embraced.

The Supreme Court explicitly agreed with the Presidential signing statement for the first time in *United States v. Lovett*. In that case, the courts held that a provision of the Urgent Deficiency Appropriation Act of 1943 was unconstitutional, and noted that President Roosevelt had earlier reached the same conclusion in a signing statement.

Recently, lower courts have occasionally cited signing statements, but only as affirmations of their own interpretations of the statutes. Presidential signing statements are a non-issue. Critics have launched a massive fishing expedition, but they have caught only the reddest of red herrings. To see why, one need look no further than the Supreme Court's decision just last year in *Hamdan v. Rumsfeld*. . . [the] Supreme Court decision completely ignored a Bush administration signing statement, asserting that the court lacked jurisdiction over the case.

So this hearing only consists of a critique of a sideshow that the courts themselves have barely glanced at. When a Presidential signing statement does not support what courts understand legislation to mean, the courts ignore the signing statement altogether as the Supreme Court did last year.

A Congressional Research Service report to Congress issued September 20th, 2006 concluded that, ``A bill that is signed by the President retains its legal effect and character irrespective of any pronouncements made in a signing statement, and remains available for interpretation and application by the courts." The same report concluded that, ``ultimately, it does not appear that the courts have relied on signing statements in any appreciably substantive fashion."

Opponents of the use of signing statements claim the President should veto bills if they contain any sections the President thinks are unconstitutional, and that if the President signs a bill, he has to implement the whole bill until a court decides he does not have to. But that would mean, for example, that the President would have to veto an entire bill that funds the military, and thereby deny the troops the support they deserve if the bill contained a single unconstitutional provision. In such instances, there is no reason the President should have to veto the whole bill rather than simply state the constitutional objections to one small portion of it.

If the President acts on his signing statement in an unconstitutional way, his position can be challenged in court. ...

Yet, this hearing focuses not on courts and judges, but rather on the President's simple opinion about the legislation he is deciding to sign. One has the distinct feeling that this is really a policy debate. ..

Chairman of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Mr. Jerry Nadler of New York

(#3) . . It is a core function established by the framers of our Constitution to ensure that no President can exercise unfettered power. The question of signing statements is an important one. Article I, Section 7 of the Constitution provides the President with the following options when presented with a bill passed by Congress. ``If he approves, he shall sign it, but if not, he shall return it with its objections to that house at which it shall have originated." . . .The more critical concern I have about this President's signing statements is their actual content. His broad and often unfounded assertions of Presidential power and his repeated attempts to reinterpret laws passed by Congress against the obvious intent are the real dangers. The President gets a yea or nay. He does not get to rewrite the bill or to try to establish his own legislative history. Only the legislative branch makes legislative history; hence, the name.

I would hope that the courts would not be tempted to look to these statements as anything more than oratory. They have no significance in terms of understanding and interpreting the legislation. At most, some of these signing statements could be considered due warning from the President that he intends to violate a law he has just signed. That is something we and the American people should take very seriously.

Of course, we have more than just signing statements to demonstrate this Administration's contempt for the rule of law. It is when the President acts on his declaration that the law means something other than what Congress intended that he goes from arrogance to lawlessness. In many cases, he has not even been forthright enough to let us know that he intends to violate the law. We have found out by reading the newspapers. The President is not shy about publicly declaring that he is not bound by the rule of law. His repeated assertions, for example, that he does not need to obtain a warrant for the Foreign Intelligence Surveillance Court, despite the fact that the law specifically requires one, is just one outrageous example. The fact that the President authorized warrantless surveillance in violation of the law threatens our democracy.

I would also remind people that FISA is a criminal act and says that it is a felony for anyone under the color of law, meaning Government officials, to wiretap Americans in the United States except under the provisions of that law. And I would again remind people that the statute of limitations of that law runs considerably beyond the lifetime of this Administration.

Ranking Minority Member of the Subcommittee, the Honorable Trent Franks, a Representative of Congress for the State of Arizona

(#4) . . .given today's hearing focuses on the proper function of the Executive under the U.S. Constitution, it is appropriate that we look to the Constitution itself to be our guide.

Article II, Section 1 mandates that the President take a very specific oath of office, just as do Members of Congress and Federal judges, and the oath is as follows: ``I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

The constitutional system of checks and balances among the three branches of Government is fundamental to the American system of Government. . . . if the Congress passes an unconstitutional law, as it has sometimes done in the past, according to even the Supreme Court jurisprudence, then what is the President to do? Can anyone seriously contend that the President has no choice but to enforce the unconstitutional law upon the people? Could that possibly be what the framers intended? And what of checks and balances? Are the people to be oppressed by an unconstitutional law unless it can be processed through the court system, or does the President have the ability to exercise his judgment as to the constitutionality of an act of Congress?

An honest reading of the Presidential oath allows us only one conclusion: that the President has a duty to the people to execute only that law which is constitutional. Conversely, he has a duty to protect the people from the enforcement of an unconstitutional law. Indeed, in the Marbury decision, Chief Justice Marshall proclaimed, ``A legislative act contrary to the Constitution is not law."

Presidential signing statements are valuable tools used since the early days of the Republic to explain the Executive's understanding of a statute and, at times, to enable the President to renounce his refusal to enforce a clearly unconstitutional statute. According to the Office of Legal Counsel under the Clinton administration, this practice is consistent with the views of the framers, and Presidential signing statements have been common in both the Bush and Clinton administrations, with Mr. Clinton issuing approximately 391 signing statements. And for obvious reasons, Presidential signing statements tend to be more common in times of war when the President must exercise his role as Commander in Chief in addition to his other roles.

Now, the Majority has stated in their preparatory memorandum the signing statements may be used to invite judicial review and to attempt to influence what a court sees when examining the legislative history. However, this statement is not proven out by our history. And I echo the thoughts of Ranking Member Lamar Smith when he makes clear that the courts have not substantively relied on Presidential signing statements to inform their decisions. Even Laurence Tribe has dismissed this supposed, ``threat" of signing statements as nothing more than a flourish on the part of the Chief Executive.

Therefore, there seems to be no merit in the opposition's arguments, and one must beg the question of why we are devoting a hearing to this issue. . .

TESTIMONY OF JOHN P. ELWOOD, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, UNITED STATES DEPARTMENT OF JUSTICE

(#5). . . I appreciate the opportunity to appear today to discuss the use and legality of Presidential signing statements. The subtitle of today's hearing asks whether the President's use of such statements poses a threat to checks and balances and the rule of law. The answer to that question, I think, is clearly ``no'' for three reasons.

First, such signing statements are traditional, dating back at least to 1821. Second, they are both lawful and appropriate. And third, far from being a threat to checks and balances, they are an essential part of a respectful constitutional dialogue . . .among coequal branches of Government.

Let me be clear from the outset. Article I of the Constitution gives Congress exclusive legislative power, a clear and unequivocal mandate. These statements do not subvert the authority of Congress . . .

Beginning in the early days of the Republic under Presidents Monroe and Jackson and continuing under Presidents Lincoln and Wilson, Presidents have long used signing statements to note constitutional issues raised by the law. The use of such constitutional signing statements has greatly increased in recent decades, and such statements have been issued by every President since Franklin Roosevelt. Traditionally, Presidents have used them to provide guidance to executive branch employees about new laws they must implement and to communicate the President's constitutional views to Members of Congress and to the public.

As this long tradition reflects, signing statements are not acts of Executive defiance of Congress, nor are they an indication that the President will adhere to the laws selectively as he wishes. While signing statements often seek to preserve the Executive's role in our system of checks and balances, the mere description of constitutional concerns about a provision does not imply that the law will not be enforced as written.

President Bush's signing statements are consistent with those of his predecessors and give voice to views expressed by Presidents of both parties, including Presidents Truman, Eisenhower, Carter, and Clinton. . . the Congressional Research Service concluded that, ``It is important to note that the substance of President Bush's signing statements do not appear to differ substantively from those issued by either Presidents Reagan or Clinton.'' Professors Curtis Bradley of Duke Law School and Eric Posner of the University of Chicago noted that they were, ``almost identical in wording,'' to President Clinton's statements.

Contrary to recent claims, the number of constitutional signing statements the President has issued is comparable to every President in a generation.

Second, this longstanding practice is clearly lawful, an exercise of the President's obligation under Article II to take care that the laws be faithfully executed and to preserve, protect and defend the Constitution. In executing new laws, the President must interpret their meaning both standing alone and in light of supreme law, the Constitution. As the Supreme Court held in *Boucher v. Synar*, ``Interpreting a law enacted by

Congress to implement the legislative mandate is the very essence of execution of the law." Moreover, the Congressional Research Service recently concluded that, ``No constitutional or legal deficiencies adhere to the issuance of such statements."

During the Clinton administration, Assistant Attorney General Walter Dellinger noted that such statements were, ``legitimate and defensible." And Harvard Law School Professor Laurence Tribe recently said that such statements are, ``constitutionally unobjectionable," . . .

Third. . . these statements promote comity by publicly informing coequal branches of Government of the President's constitutional views on the execution of new laws. Such statements do not seek to alter the constitutional balance among the branches nor could they under the Constitution. The legislative process and indeed Government as a whole would suffer if the President withheld his views about constitutional concerns until the moment of enforcement or if his only option to express those views were to veto needed legislation reflecting months or years of work because of what are sometimes minor and redressable issues.

Signing statements seek to promote a dialogue between the branches of Government to ensure that the President faithfully executes the law while respecting Congress' exclusive authority to make it.

TESTIMONY OF THE HONORABLE MICKEY EDWARDS, FORMER MEMBER OF CONGRESS FROM THE STATE OF OKLAHOMA, ASPEN INSTITUTE

(#6) . . The question is whether or not the President of the United States is above the law, because the moment he signs the legislation that you have presented to him, it is not merely a proposal, not a bill, not a statute; it is the law, and it is binding upon every citizen of the United States, whether a street sweeper or the President.

The powers of the President are clearly delineated in the Constitution. No President is required to approve of an act of Congress. No President is required to sign an act of Congress into law. He may sign it, making it law, but he may refuse to sign it. He may veto it. He may refuse, to have nothing to do with that at all. But those are his only choices.

Under Article I, Section 7, a President who finds a piece of a law unconstitutional has the authority, the right, the obligation under the Constitution to veto it, and then the Congress can reconsider what it wants to do about it. . . Presidents . . . are free to say whatever they want . . . but he may not choose whether or not to be bound by the law.

Further, there is a view of the Presidency articulated by the current President which considers the executive branch to be a single unit under the sole direction of the President, and according to this theory of the unitary Executive, the legislative branch of Government may not instruct executive branch agencies in the performance of their duties. So that when a President declares that he is not bound by the bills he signs into law, he is saying in effect that none of the Executive agencies are bound either.

The Congress. . . may require a Federal agency to report on some matter, but at best that requirement simply becomes a suggestion and probably one that will not be taken too seriously.. . . Defenders of these Presidential assertions claim they know of no instance in which the President, having declared himself not bound by a law, has nonetheless refused to comply with it. There are two answers to that.

First, if agencies refuse to inform the Congress, as the Attorney General just did in regard to the Administration's agreements with the FISA Court on Electronic Surveillance, how can the Congress or the public know whether or not the law is being complied with?

Second, and more important, any Presidential assertion of the right to ignore the law must be challenged or it will become precedent. . . . future Presidents can rely on that unchallenged assertion to disobey future laws; and if that happens, the Congress of the United States will become irrelevant and the basic structure of American Government will have been fundamentally changed. The voice of the people . . . will have been considerably diminished. . . .

. . .this is not a question of authority or powers or rights. It is a question of duty and responsibility. . . Every Member of Congress takes an oath to fulfill very specific constitutional obligations. Under that Constitution, it is the obligation of the Congress to determine what shall be law and what shall not be law. It is the obligation of Congress to act as a completely separate, a completely independent, and a completely equal branch of Government . . . This Congress must block any attempt by any President of any party to treat the people's Representatives with contempt. .Congress must use its . . . powers to . . . ensure that the United States does not devolve into a system the founders feared and worked so hard and so long to avoid.

TESTIMONY OF KAREN J. MATHIS, PRESIDENT, AMERICAN BAR ASSOCIATION

(#7) . . . The ABA Task Force on Presidential Signing Statements and the Separation of Powers Doctrine was appointed . . .to examine the changing role of Presidential signing statements in which . . . Presidents articulate their views of provisions in newly enacted laws and to consider such statements in light of the Constitution and the law of the land.. .

Specifically, the policy, ``opposes as contrary to the rule of law and our constitutional system of separation of powers the misuse of Presidential signing statements," that claim in those signing statements the authority or, I should say, an intention to disregard or decline to enforce all or part of a law the President has signed or to interpret such law in a manner inconsistent with the clear intent of the Congress. . . . the task force expressed concern that the practice of issuing Presidential signing statements that raise challenges to provisions of law has grown more and more common over the course of the last 25 years. The potential for misuse in the issuance of Presidential signing statements has reached a point where it poses a real threat to our systems of checks and balances and the rule of law. The Founding Fathers set forth in the constitution a thoughtful process for the enactment of laws as part of the delicate system of checks and balances. The framers required that the President either sign or veto a bill enacted by Congress in its entirety. Presidential signing statements that express intent to disregard or that effectively rewrite laws are inconsistent with this single, finely wrought, and exhaustively considered process.

Any attempt to refuse to enforce provisions of duly enacted laws or to reinterpret them contrary to their clear meaning can be viewed as an attempt to achieve a line item veto by other means. If Presidential signing statements nullify a provision of the law without following constitutionally prescribed procedures, that President is usurping the power of the legislative branch by denying Congress the right to override a veto of that law. In some instances, a signing statement that declines enforcement of a provision on constitutional grounds would also abrogate the power of the judicial branch to make its own determination of constitutionality.

ABA policy goes beyond raising concerns about Presidential signing statements, and it presents practical recommendations designed to improve transparency in the process and to resolve any separation of powers issues that may accompany the use of Presidential signing statements in the manner I have discussed.

These recommendations are directed to the practices of various Presidents, and they represent a call to all Presidents to fully respect our constitutional system of separation of powers. These recommendations urge the President to, number one, communicate concerns about the constitutionality of any pending bills in Congress before their passage and, number two, to confine the content of signing statements to views regarding the meaning, the purpose, and the significance of bills and to veto a bill that he believes is unconstitutional.

. . . recommendations also urge Congress to enact legislation that. . . requires the President to submit a report to Congress upon the issuance of signing statements that express the intent to disregard or decline to enforce a law that the President has signed, including an explanation of those reasons for taking such a position, which report will be made available in a database available to the public.

TESTIMONY OF NICHOLAS QUINN ROSENKRANZ, ASSOCIATE PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

(#8). . . I largely agree with the position put forth by Principal Deputy Assistant Attorney General John Elwood earlier this morning. Rather than reiterate his testimony, I will just
briefly make two points.. . .

The most common, the most important, the most uncontroversial function of Presidential signing statements is to announce the President's interpretation of the law. As the Supreme Court has explained, ``[i]nterpreting a law enacted by Congress to implement the legislative mandate is the very essence of `execution' of the law," and the President interprets statutes in much the same way that courts do, with the same panoply of interpretive tools. One such tool is of particular interest today: the canon of constitutional avoidance. This is the canon the President is applying when he says in signing statements that he will construe a particular provision to be consistent with a particular constitutional command.

It is crucial to understand what these statements do and do not say. These statements emphatically do not, ``reserve the right to disobey the law." They do not declare that the statutes enacted by Congress are unconstitutional. In fact, they declare exactly the opposite.

As President Clinton's Office of Legal Counsel has explained, these sorts of statements are, ``analogous to the Supreme Court's practice of construing statutes, if possible, to avoid holding them unconstitutional." in effect, these statements say simply that if one possible meaning of a statute would render it unconstitutional, then the President, out of respect for Congress, will presume a different, constitutional meaning. The clear and crucial implication of these statements is that he will faithfully execute the laws as so interpreted. . . .I have written that Congress should exercise this [statutory interpretation] power, but a crucial aspect of my thesis is that it should be approached comprehensively. For this reason, I think that any rule on the matter should ideally be adopted as part of a coherent and cohesive code of statutory interpretation.

In conclusion, the recent brouhaha over Presidential signing statements is largely unwarranted. Signing statements are an appropriate means by which the President fulfills his constitutional duty to take care that the laws be faithfully executed. However, I do applaud Congress' interest in the proper judicial use of Presidential signing statements, and I hope that this interest will blossom into a more comprehensive and general initiative of Federal rules of statutory interpretation.

TESTIMONY OF CHARLES J. OGLETREE, JR., JESSE CLIMENKO PROFESSOR OF LAW, HARVARD LAW SCHOOL

(#9). . . I wanted to first say . . . it is very important and useful for this Committee to look very carefully at the bill proposed by Congresswoman Sheila Jackson Lee and a comparable bill in the Senate by Senator Arlen Specter. I think it shows . . .for the first time that Congress is taking very seriously the exercise of executive power in using signing statements. . .

Presidential signing statements reflect an important and necessary line of authority given to the executive branch to clarify and address matters of constitutional magnitude. They can promote transparency by signaling how the President plans to enforce or to interpret the law. They can also allow the President to more clearly define his perspective or understanding of the law's parameters.

One of the reasons it is important to pursue this topic . . . is the unusual high number of both challenges of laws that have been passed by Congress and the exercise of signing statements. . . . It is clear that President Bush has signed over 1,100 provisions challenging laws. At the same time, it is clear that he has issued a total of 150 signing statements, even though the number has often suggested that it is higher. . .

Why is this important, and why should this Congress be concerned about it? One of the important things is that there is no question that every modern President. . . have used signing statements for the last 25 years, but what is remarkable is when you put that in context of those signing statements. According to several reports, President Reagan used, in order to challenge Congress' authority, the veto 78 times, 39 times the actual veto laws, and 39 times they were pocket vetoes. President George H.W. Bush vetoed 44 bills, with 15 of them being pocket vetoes. President Clinton in his two terms vetoed 37 bills, including one pocket veto. President Bush in the 6 years that he has been in the White House only vetoed a single bill.

So one of the fundamental questions posed by these actions is whether the President is using the signing statement in order to expand the authority of the executive branch at the expense of the legislative process. In other words, is he using the signing statement as a way to declare a law nonbonding without having to face the public scrutiny that comes with the veto or the possibility of a legislative override?

. . . quick examples . . . one law passed in 2006, the Defense appropriations bill, where the signing statement by one scholar, ``reads like a unilateral alteration of a legislative bargain." you may recall that Senator John McCain made it clear that torture should not be part of this, and yet, President Bush's signing statement made it clear that he was not going to be bound by what the law said in that provision.

. . . passed just this past year the Henry Hyde United States-India Peaceful Atomic Energy Cooperation Act. . . the Indian Government considered the signing statement. . . announcing that the Administration would treat certain sections as merely advisory, as an indication of how the United States plans to interpret these sections.

You have passed a law; it is the law. . . .President Bush made it clear . . . that they are merely advisory, what you had passed and submitted to him for signature. What does that mean? It means not only that will the Indian Government and other countries be confused by what we mean by the law, but they will have to fear…[what subsequent president thinks it means]

Testimony of Charles J. Ogletree, Jr.,Jesse Climenko Professor of Law, and Executive Director of the Charles Hamilton Houston Institute of Race and Justice,at Harvard Law School.

(#10). . . Presidential signing statements reflect an important and necessary line of authority given to the executive branch to clarify and address matters of constitutional significance. They can promote transparency by signaling how the president plans to enforce or interpret the law. They can also allow the president to more clearly define his perspective or understanding of the law's parameters.\2\ Official reports indicate that many former presidents have used signing statements in a wide range of legislative areas, and have generally done so without much objection or controversy.

\2\ For a thorough discussion of the history of presidential signing statements, see *Phillip J. Cooper's By Order of The President: The Use and Abuse of Executive Direct Action (2002).*

One of the reasons that it is important to examine this topic, however, is the unusually high number of signing statements that have been issued by President George W. Bush during his tenure in office. To be sure, the use of signing statements has been a staple of many presidents and reflects the Executive exercise of authority across ideological lines. At the same time there is a discernable pattern being employed by the current Administration and this pattern has resulted in unusual and bipartisan concern. While it is true that former Presidents Reagan, Bush and Clinton relied upon presidential signing statements during the course of the past 25 years, the nature and extent of their use has been demonstrably greater under President Bush.

At the same time, President Bush has declined to use the traditional method employed when the president believes legislation is unconstitutional, the veto. According to several estimates, President Ronald Reagan vetoed 78 bills, including 39 actual vetoes and another 39 pocket vetoes. President George H. W. Bush vetoed 44 bills, with 15 of them being pocket vetoes. During his two terms, President Bill Clinton vetoed 37 bills, including one pocket veto. In contrast, during his six years in office, President George W. Bush, to date, has only vetoed a single bill. The unprecedented juxtaposition of President Bush's failure to exercise a single veto, yet issuing a substantial number of signing statements, has created considerable concern, and explains the broad and bipartisan response to his actions.

One of the fundamental questions posed by these actions is whether the president is using the signing statement in order to expand the authority of the executive branch at the expense of the legislative branch. In other words, is he using the signing statement as a way to declare a law non-binding, without having to face the public scrutiny that comes with a veto, or the possibility of a legislative override?

In order to get a clearer sense of whether this is the case, it is necessary to examine very carefully how the signing statements have been used. On the other hand, there are numerous signing statements, particularly in the past few years, which raise serious questions about the exercise of executive authority, and serious issues of constitutional magnitude.

The essential issue is whether a president, who objects to a law being enacted by Congress through its constitutionally prescribed procedures, should either veto that law, or find other ways to challenge it. Using signing statements, rather than vetoes, calls into question the President's willingness to enforce duly enacted legislation, and it also denies the legislative branch any clear notice of the executive branch's intent to not enforce the law, or to override laws that could have been the subjects of vetoes.

It is hoped that the House Judiciary Committee will closely examine these matters and examine these issues carefully. Among the matters to be considered are the following:

A signing statement that suggests that all or part of a law is unconstitutional raises serious legal considerations. It has been exercised more recently in lieu of an actual veto. While the President has considerable powers of constitutional interpretation, those powers must be balanced with the authority granted to other branches of government, including the legislative and judicial branches. When the President refuses to enforce a law on constitutional grounds without interacting with the other branches of government, it is not only bad public policy, but also creates a unilateral and unchecked exercise of authority in one branch of government without the interaction and consideration of the others.

. . . The signing statement [to 2006 Defense Appropriations Bill] announced that the executive branch would construe provisions relating to detainees ``in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power," and thus read an ``implicit exception" in the McCain Amendment's prohibition on ``cruel, inhuman or degrading treatment or punishment." Trevor Morrison, an assistant professor of law at Cornell, observed that the Administration had understood the aim of the Amendment and had threatened to veto it, but had changed course and decided to support the Amendment, ``partly because there were clearly enough votes for Congress to overcome a veto, and partly because the Administration had obtained a number of concessions on related matters, including a set of provisions severely restricting the federal courts' jurisdiction to review the detention of enemy combatants at Guantanamo Bay."

Of course, the deeper objection to the use of presidential signing statements is to what extent any administration is taking a hostile attitude with respect to how statutes should be interpreted. This excessive exercise of executive power, coupled with the failure to use the authorized veto power, creates serious issues of constitutional magnitude, and requires a legislative response.

. . .One of the critical issues that this committee must consider is whether and to what extent the President's exercise of signing statements is influenced by the war on terrorism or other matters of national security. That certainly seems to be the case when one examines the application of signing statements on issues like the USA Patriot Act, or other provisions having to do with the detention of suspected terrorists for long periods of time without any form of judicial review. In fact, according to one analysis, the President has used signing statements to challenge the constitutionality of more than 1,000 provisions of bills adopted by Congress. On hundreds of occasions he has object on the grounds that provisions have interfered with his ``power to supervise the unitary executive," or with his ``exclusive power over foreign affairs," or with his ``authority to determine and impose national security classifications and withhold information." \3\

Such examples require further probing by the Senate Committee on the Judiciary, and more detailed and persuasive explanations from the executive branch.

\3\ *Christopher Kelley, The Unitary Executive and the Presidential Signing Statement 8 (June 1, 2006), available at* http://www.users.muohio.edu/kelleycs/conproject.pdf.
See also Kelley, Do You Wish to Keep Tabs on the Bush Administration's Use of the Bill Signing Statement? (January 12, 2007), available at http://www.users.muohio.edu/kelleycs/

What is clear, in going forward, is the reaction of large segments of the media, across the country, to the suggestion that the Bush administration has sought authority to examine the mail of America's citizens. While the White House has declared their efforts as simply to ``clarify existing law'', the media have found this argument unpersuasive. Among a sampling of the responses are the following:

Several major newspapers have published editorials opposing the signing statement and any new it might grant the administration to review mail without a warrant. Many of these editorials argue that if, as the Bush administration contends, the signing statement only restates current law, the administration need not have issued it. These editorials reflect a growing public wariness of any signing statement issued by the administration as an attempt to expand executive power.
*See, e.g., ``Mail Privacy; Bush Signing Statement Raises Questions,'' SUN SENTINEL, (Ft. Lauderdale, Fl), January 24, 2007* (``The Constitution and the law are very clear: except in an emergency, a warrant is required before any government agent can open first-class mail. Such clarity requires nothing further from the president, and the president shouldn't have to be told to respect the law."); ``*Don't Open Personal Mail,'' HARTFORD COURANT, January 19, 2007* (``Congress should move quickly to remove any potential for overreaching on the part of the White House. If the administration's intentions were pure, there would have been no need to issue a signing statement."); ``*Privacy and National Security,'' DENVER POST, January 16, 2007* (``Remember, this is the same reasoning that saw no problem with warrantless wiretapping of domestic phone lines. And President Bush just last month issued one of his notorious signing statements, attempting to nullify the intent of legislation by saying federal officials could open U.S. mail without a warrant. Once you've issued a signing statement to undermine anti-torture legislation, as the president did last summer, the next ones come too easy); ``*Signing Statements: Pushing the Envelope,'' MILWALKIE JOURNAL SENTINAL, January 16, 2007* (The Constitution requires a warrant for a reason: to provide a judicial check against despotism, in which the authorities can search your belongings willy-nilly. Congress must stop Bush's apparent attempt to erode this check); ``*Postal Inspector Bush?,'' CLEVELAND PLAIN DEALER, January 16, 2007* (If President Bush really means nothing new by his signing statement, he should withdraw it--and provide Congress credible assurances that he was merely asserting a right to open mail, not already exercising it").. . .

Ultimately, it is an important moment in history for Congress to not only review the use and application of presidential signing authority, but to as well determine its own role and responsibility in carrying out the legislation mandate as authorized by the Constitution.

Attachment # 6 President William J. Clinton Signing Statement #5

Statement on Signing the Legislative Branch Appropriations Act of 1995
July 22nd, 1994

Today I have signed into law H.R. 4454, the Legislative Branch Appropriations Act, 1995. H.R. 4454 provides fiscal year 1995 appropriations to fund the Congress, the Congressional Budget Office, the Office of Technology Assessment, the Architect of the Capitol, the General Accounting Office, the Government Printing Office, and the Library of Congress

In signing the bill into law, I note that this Act, the purpose of which is to provide appropriations for the legislative branch, also contains provisions affecting the operations of the executive branch. As a matter of comity, legislative branch appropriations acts historically have not contained provisions affecting the executive branch, and the executive branch has not commented on provisions of these acts. Since this Act contains provisions that depart from that standard, it is appropriate to express my views on these provisions. These provisions concern the involvement of the Public Printer and the Government Printing Office in executive branch printing related to the production of Government publications. Specifically, the Act includes amendments to existing law that expand the involvement of the Public Printer and the Government Printing Office in executive branch functions.

The Act raises serious constitutional concerns by requiring that executive branch agencies receive a certification from the Public Printer before procuring the production of certain Government documents outside of the Government Printing Office. In addition, the Act expands the types of material that are to be produced by the Government Printing Office beyond that commonly recognized as "printing." In light of these concerns, I will interpret the amendments to the public printing provisions in a manner that minimizes the potential constitutional deficiencies in the Act.

In this regard, the exclusive authority of the Government Printing Office over "the procurement of any printing related to the production of Government publications" will be restricted to procurement of documents intended primarily for distribution to and use by the general public. Additionally, in light of the substantial expansion of the role of the Government Printing Office that would be occasioned by a broad reading of the term, "duplicating," that term will be read to encompass only the reproduction inherent in traditional printing processes, such as composition and presswork, and not reproduced by other means, such as laser printers or photocopying machines.

The concerns raised by this Act reinforce my eagerness and resolve to accomplish a comprehensive reform of Federal printing in accordance with constitutional principles, an effort that began last year with the Vice President's National Performance Review. Reform legislation can improve the efficiency and cost-effectiveness of Government printing by maximizing the use of private sector printing capability through open competitive procedures and by limiting Government-owned printing resources to only those necessary to maintain a minimum core capacity. Reform of Federal printing practices can also serve to enhance public access to public information, through a

diversity of sources and in a variety of forms and formats, by improving the printing and information dissemination practices of the Federal Government. I look forward to pursuing this effort in the next Congress.

William J. Clinton

The White House,
July 22, 1994.

U.S. Department of Justice
Office of Legal Counsel

ASF

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

February 5, 1986

TO: The Litigation Strategy Working Group

FROM: Samuel A. Alito, Jr.
Deputy Assistant Attorney General
Office of Legal Counsel

SUBJ: Using Presidential Signing Statement to Make Fuller Use of the President's Constitutionally Assigned Role in the Process of Enacting Law.

At our last meeting, I was asked to draft a preliminary proposal for implementing the idea of making fuller use of Presidential signing statements. This memorandum is a rough first effort in that direction.

A. Objectives

Our primary objective is to ensure that Presidential signing statements assume their rightful place in the interpretation of legislation. In the past, Presidents have issued signing statements when presented with bills raising constitutional problems. OLC has played a role in this process, and the present proposal would not substantively alter that process.

The novelty of the proposal previously discussed by this Group is the suggestion that Presidential signing statements be used to address questions of interpretation. Under the Constitution, a bill becomes law only when passed by both houses of Congress and signed by the President (or enacted over his veto). Since the President's approval is just as important as that of the House or Senate, it seems to follow that the President's understanding of the bill should be just as important as that of Congress. Yet in interpreting statutes, both courts and litigants (including lawyers in the Executive branch) invariably speak of "legislative" or "congressional" intent. Rarely if ever do courts or litigants inquire into the President's intent. Why is this so?

Part of the reason undoubtedly is that Presidents, unlike Congress, do not customarily comment on their understanding of bills. Congress churns out great masses of legislative history bearing on its intent--committee reports, floor debates, hearings. Presidents have traditionally created nothing comparable. Presidents have seldom explained in any depth or detail how they

interpreted the bills they have signed. Presidential approval is usually accompanied by a statement that is often little more than a press release.

From the perspective of the Executive Branch, the issuance of interpretive signing statements would have two chief advantages. First, it would increase the power of the Executive to shape the law. Second, by forcing some rethinking by courts, scholars, and litigants, it may help to curb some of the prevalent abuses of legislative history.

B. Problems

I see five primary obstacles to the enhanced use of Presidential signing statements.

1. Resources. The most important problem is the manpower that will be required. One need only consider the size of the congressional staffs responsible for creating legislative history to appreciate the dimensions of the potential commitment that may be required if the Executive Branch were to undertake to issue interpretive statements regarding all important legislation touching on matters of federal concern. In all likelihood, it would be necessary to create a new office with a substantial staff to serve as a clearinghouse for statements furnished by the various departments and agencies. Each department and agency would also have to devote significant resources to the project.

2. Timing. Under the Constitution (Art. I, sec. 7), if Congress is in session, a bill must be signed or vetoed within 10 days after its presentation to the President. Since presidential signing statements have traditionally been issued at the time of the signing of legislation, very little time has been available for the preparation and review of such statements. These time constraints will become much more troublesome if presidential signing statements become longer, more substantive, and more detailed.

3. Congressional Relations. It seems likely that our new type of signing statement will not be warmly welcomed by Congress. The novelty of the procedure and the potential increase of presidential power are two factors that may account for this anticipated reaction. In addition, and perhaps most important, Congress is likely to resent the fact that the President will get in the last word on questions of interpretation.

Because of the anticipated reaction of Congress, it seems likely that some Executive Branch officers concerned about congressional relations may likewise oppose this effort. In the past, signing statements prepared by OLC have sometimes been substantially changed by the White House or OMB due to such concerns. As signing statements become more and more controversial, this problem is likely to get worse.

4. Acceptance by Executive Departments and Agencies. Once a clearinghouse unit is established or designated, it seems likely that there will be friction between that unit and the various departments and agencies wishing to insert interpretive statements into presidential signing statements. If the lines of authority are not clear, this inevitable friction may be magnified.

5. Theoretical problems. Because presidential intent has been all but ignored in interpreting the meaning of statutes, the theoretical problems have not been explored. For example:

- In general, is presidential intent entitled to the same weight as legislative intent or is it of much less significance? As previously noted, presidential approval of legislation is generally just as important as congressional approval. Moreover, the President frequently proposes legislation. On the other hand, Congress has the opportunity to shape the bills that are presented to the President, and the President's role at that point is limited to approving or disapproving. For this reason, some may argue that only Congressional intent matters for purposes of interpretation. If our project is to succeed, we must be fully prepared to answer this argument.

- What happens when there is a clear conflict between the congressional and presidential understanding? Whose intent controls? Is the law totally void? Is it inoperative only to the extent that there is disagreement?

- If presidential intent is of little or no significance when inconsistent with congressional intent, what role is there for presidential intent? Is it entitled to the deference comparable to that customarily given to administrative interpretations?

C. A Proposal.

In view of the concerns noted above, I would make the following recommendation.

- As an introductory step, the Department should seek to have interpretive signing statements issued for a reasonable number of bills that fall within its own field of responsibility. By concentrating at first on a small number of bills, we can begin without a commitment of resources that would necessitate major changes in staffing. And by concentrating on bills within our own field of responsibility and concern, we can begin without depending upon the cooperation of other departments and agencies, which may be skeptical at first. If our project is successful, cooperation may be more readily available.

- For use in this pilot project, we should try to identify bills that (a) are reasonably likely to pass, (b) are of some importance, and (c) are likely to present suitable problems of interpretation.

- Again, as an introductory step, our interpretive statements should be of moderate size and scope. Only relatively important questions should be addressed. We should concentrate on points of true ambiguity, rather than issuing interpretations that may seem to conflict with those of Congress. The first step will be to convince the courts that Presidential signing statements are valuable interpretive tools.

- It would also be very helpful, as pointed out in Steve Calabresi's memorandum of January 27, 1986, to include in each signing statement a section spelling out the grant of authority to the federal government on which the statute rests.

- The most important step will be approval of this project by the President. Obviously there can be no project unless the President wishes to sign interpretive statements of the type we envision. For the purpose of presenting this issue to the President, it may be helpful if we draft a sample of a new-style signing statement either for a bill that is now pending before Congress or one that was recently enacted. Also, as a first step, the proposal should be discussed with White House counsel.

- The Office of Legislative and Intergovernmental Affairs seems the logical unit within the Department to coordinate our efforts. In particular, OLIA should be able to identify appropriate bills as they proceed through Congress. The actual selection of the bills may then be done, in cooperation with OLIA, by this Group as a whole, a subgroup, or some other body. Once appropriate bills have been chosen, components of the Department with expertise regarding the particular bills selected should be asked for their views. For example, OLC should be consulted, as it now is, when constitutional questions are raised. OLIA should assemble and coordinate the responses of the various units.

- Because of the time problems previously noted, the drafting of our pilot signing statements should begin well before final passage of the bills. Moreover, if Presidential signing statements are ever to achieve much importance, I think it will be necessary to escape from the requirement of having to complete our work prior to the signing of the bill. Accordingly, after the first few efforts, the President could merely state when signing the bill that his signing is based on an interpretation to be set out in detail in a statement to be issued later. If this procedure is followed, it presumably would still be necessary to provide the President with an internal interpretive memorandum prior to signing, but the pressure to complete a formal statement

for public release would be relieved. This procedure would mirror the procedure followed by congressional committees, which vote out proposed legislation long before the committee report is issued.

- The Department should continue and should intensify its internal consideration of the theoretical problems posed by the proposed expanded role for Presidential signing statements. Once a few of signing statements of this new type have been issued, discussion in legal journals may be stimulated and should be encouraged.

James K. Polk, Special Message August 14th, 1848
To the House of Representatives of the United States

When the President has given his official sanction to a bill which has passed Congress, usage requires that he shall notify the House in which it originated of that fact. The mode of giving this notification has been by an oral message delivered by his private secretary having this day approved and signed an act entitled "An act to establish the Territorial government of Oregon," I deem it proper, under the existing circumstances, to communicate the fact in a more solemn form. The deeply interesting and protracted discussions which have taken place in both Houses of Congress and the absorbing interest which the subject has excited throughout the country justify, in my judgment, this departure from the form of notice observed in other cases. In this communication with a coordinate branch of the Government, made proper by the considerations referred to, I shall frankly and without reserve express the reasons which have constrained me not to withhold my signature from the bill to establish a government over Oregon, even though the two territories of New Mexico and California are to be left for the present without governments. None doubt that it is proper to establish a government in Oregon. Indeed, it has been too long delayed. I have made repeated recommendations to Congress to this effect. The petitions of the people of that distant region have been presented to the Government, and ought not to be disregarded. To give to them a regularly organized government and the protection of our laws, which, as citizens of the United States, they claim, is a high duty on our part, and one which we are bound to perform, unless there be controlling reasons to prevent it.

In the progress of all governments questions of such transcendent importance occasionally arise as to cast in the shade all those of a mere party character. But one such question can now be agitated in this country, and this may endanger our glorious Union, the source of our greatness and all our political blessings. This question is slavery. With the slaveholding States this does not embrace merely the rights of property, however valuable, but it ascends far higher, and involves the domestic peace and security of every family.

The fathers of the Constitution, the wise and patriotic men who laid the foundation of our institutions, foreseeing the danger from this quarter, acted in a spirit of compromise and mutual concession on this dangerous and delicate subject, and their wisdom ought to be the guide of their successors. Whilst they left to the States exclusively the question of domestic slavery within their respective limits, they provided that slaves who might escape into other States not recognizing the institution of slavery shall be "delivered up on the claim of the party to whom such service or labor may be due."

Upon this foundation the matter rested until the Missouri question arose.

In December, 1819, application was made to Congress by the people of the Missouri Territory for admission into the Union as a State. The discussion upon the subject in Congress involved the question of slavery, and was prosecuted with such violence as to produce excitements alarming to every patriot in the Union. But the good genius of conciliation, which presided at the birth of our institutions, finally prevailed, and the Missouri compromise was adopted. The eighth section of the act of Congress of the 6th of March. 1820. "to authorize the people of the Missouri Territory to form a constitution and State government " etc., provides:

That in all that territory ceded by France to the United States under the name of Louisiana which lies north of 36 degree 30' north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of

crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always* , That any person escaping into the same from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

This compromise had the effect of calming the troubled waves and restoring peace and good will throughout the States of the Union.

The Missouri question had excited intense agitation of the public mind, and threatened to divide the country into geographical parties, alienating the feelings of attachment which each portion of our Union should bear to every other. The compromise allayed the excitement, tranquilized the popular mind, and restored confidence and fraternal feelings. Its authors were hailed as public benefactors.

I do not doubt that a similar adjustment of the questions which now agitate the public mind would produce the same happy results. If the legislation of Congress on the subject of the other Territories shall not be adopted in a spirit of conciliation and compromise, it is impossible that the country can be satisfied or that the most disastrous consequences shall fail to ensue.

When Texas was admitted into the Union, the same spirit of compromise which guided our predecessors in the admission of Missouri a quarter of a century before prevailed without any serious opposition. The joint resolution for annexing Texas to the United States, approved March 1, 1845, provides that--

Such States as may be formed out of that portion of said territory lying south of 36° 30' north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire; and in such State or States as shall be formed out of said territory north of the Missouri compromise line slavery or involuntary servitude (except for crime) shall be prohibited.

The Territory of Oregon lies far north of 36° 30', the Missouri and Texas compromise line. Its southern boundary is the parallel of 42°, leaving the intermediate distance to be 330 geographical miles. And it is because the provisions of this bill are not inconsistent with the laws of the Missouri compromise, if extended from the Rio Grande to the Pacific Ocean, that I have not felt at liberty to withhold my sanction. Had it embraced territories south of that compromise, the question presented for my consideration would have been of a far different character, and my action upon it must have corresponded with my convictions.

Ought we now to disturb the Missouri and Texas compromises? Ought we at this late day, in attempting to annul what has been so long established and acquiesced in, to excite sectional divisions and jealousies, to alienate the people of different portions of the Union from each other, and to endanger the existence of the Union itself?

From the adoption of the Federal Constitution, during a period of sixty years, our progress as a nation has been without example in the annals of history. Under the protection of a bountiful Providence, we have advanced with giant strides in the career of wealth and prosperity. We have enjoyed the blessings of freedom to a greater extent than any other people, ancient or modern, under a Government which has preserved order and secured to every citizen life, liberty, and property. We have now become an example for imitation to the whole world. The friends of freedom in every clime point with admiration to our institutions. Shall we, then, at

the moment when the people of Europe are devoting all their energies in the attempt to assimilate their institutions to our own, peril all our blessings by despising the lessons of experience and refusing to tread in the footsteps which our fathers have trodden? And for what cause would we endanger our glorious Union? The Missouri compromise contains a prohibition of slavery throughout all that vast region extending twelve and a half degrees along the Pacific, from the parallel of 36° 30' to that of 49°, and east from that ocean to and beyond the summit of the Rocky Mountains. Why, then, should our institutions be endangered because it is proposed to submit to the people of the remainder of our newly acquired territory lying south of 36° 30', embracing less than four degrees of latitude, the question whether, in the language of the Texas compromise, they "shall be admitted (as a State) into the Union with or without slavery." Is this a question to be pushed to such extremities by excited partisans on the one side or the other, in regard to our newly acquired distant possessions on the Pacific, as to endanger the Union of thirty glorious States, which constitute our Confederacy? I have an abiding confidence that the sober reflection and sound patriotism of the people of all the States will bring them to the conclusion that the dictate of wisdom is to follow the example of those who have gone before us, and settle this dangerous question on the Missouri compromise, or some other equitable compromise which would respect the rights of all and prove satisfactory to the different portions of the Union.

Holding as a sacred trust the Executive authority for the whole Union, and bound to guard the rights of all, I should be constrained by a sense of duty to withhold my official sanction from any measure which would conflict with these important objects.

I can not more appropriately close this message than by quoting from the Farewell Address of the Father of his Country. His warning voice can never be heard in vain by the American people. If the spirit of prophecy had distinctly presented to his view more than a half century ago the present distracted condition of his country, the language which he then employed could not have been more appropriate than it is to the present occasion. He declared:

The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that from different causes and from different quarters much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth, as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a

common cause fought and triumphed together. The independence and liberty you possess are the work of joint councils and joint efforts, of common dangers, sufferings, and successes.

With such powerful and obvious motives to union affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who in any quarter may endeavor to weaken its hands.

In contemplating the causes which may disturb our union it occurs as matter of serious concern that any ground should have been furnished for characterizing parties by *geographical* discriminations-- *Northern* and *Southern* , *Atlantic* and *Western* --whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You can not shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection.

JAMES K. POLK.

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