

120 Box 47 - JGR/Recess Appointments (7) – Roberts, John G.:
Files SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

October 8, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Recess Appointment Materials

Attached are:

1. The Recess Appointments Clause, Article II, Section 2, Clause 3
2. Hauser reply to Byrd
3. List of recess appointments, Johnson through Reagan
4. List of all judges recess appointed
5. Passage from United States v. Woodley, 751 F.2d 1008, 1010-1011 (9 Cir. 1985), discussing judicial recess appointments (three by Washington during first recess, 300 altogether, 15 to the Supreme Court).
6. Talking points on recess appointments prepared by Peter Rusthoven, July 26, 1984

I have provided these items to Ben Elliott, who is preparing the statement for Speakes.

Attachments

PRESIDENT—RECESS APPOINTMENTS 2 § 2, cl. 3

power." U. S. v. Avery. C.C.Cal.1867, Deady, U.S., 204, 24 Fed.Cas.No.14,481.

The power of the President to dismiss an officer from the public service without the consent of the Senate was affirmed by Congress soon after the adoption of the Constitution, and has since received the sanction of every department

of the government. Claim of Surgeon Du Barry for Back Pay, 1847, 4 Op.Atty.Gen. 603.

"The power of removal from office is an executive power, and is vested by the Constitution in the President solely." Trial of Andrew Johnson, 177.

Notes 2

Section 2, Clause 3. Recess Appointments

^The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session. ^

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United States ⇨23.
C.J.S. Officers § 51.
C.J.S. United States §§ 29, 30.

1. Construction

This provision is construed to comprehend all vacancies that may happen to exist in a recess of the Senate, and the President has authority to fill, during the recess of the Senate, not only vacancies that have originated in the recess, but also such as originated while the Senate was in session. Appointments During Recess of Senate, 1880, 16 Op. Atty.Gen. 522.

The President has power to fill, during a recess of the Senate, by temporary commission, a vacancy that occurred by expiration of commission during a previous session of that body. "If we interpret the word 'happen' as being merely equivalent to 'happen to exist' (as I think we may legitimately do), then all

vacancies which, from any casualty, happen to exist at a time when the Senate cannot be consulted as to filling them, may be temporarily filled by the President: and the whole purpose of the Constitution is completely accomplished." Executive Authority to Fill Vacancies, 1823, 1 Op.Atty.Gen. 631. See, also, Matter of Farrow, C.C.Ga.1880, 3 F. 112.

2. Adjournment and recess distinguished
The President is authorized to make recess appointments during the temporary adjournment of the Senate from July 3 to August 8, 1960. 1960, 41 Op. Atty.Gen., July 14.

The reconvening of the Senate on August 8, 1960, is not to be regarded as the "next Session" of the Senate within the meaning of this clause, but as the continuation of the second session of the 86th Congress. Id.

While the duration of an adjournment which will constitute a recess of the Senate cannot be accurately defined, the President is vested with a large, although not unlimited, discretion to determine when there is a real and genuine recess making it impossible for him to receive the advice and consent of the Senate. 33 Op.Atty.Gen. 20.

The President was authorized during an adjournment of Congress extending from August 24 to September 21, 1921, to make recess appointments. Id.

The recess of the Senate during which the President shall have power to fill a vacancy that may happen, means the period after the final adjournment of Congress for the session and before the next session begins; while an adjournment during a session of Congress means a merely temporary suspension of business from day to day, or for such brief periods of time as are agreed upon by the

THE WHITE HOUSE

WASHINGTON

September 19, 1985

Dear Senator Byrd:

I have been asked to respond to your letter to the President dated July 30, 1985, concerning recess appointments.

In your letter, you expressed the view that the recent August recess "should not...be considered the kind of extended recess contemplated by Article III [sic], Section 2, Clause 3, of the Constitution," and that "recess appointments should be limited to circumstances when the Senate, by reason of a protracted recess, is incapable of confirming a vitally needed public officer." Such limitations on the President's power, however, do not appear in the Constitution. Article II, Section 2, Clause 3 of the Constitution simply provides: "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."

The courts have rejected the suggestion that the recess appointment power was intended to be used only in rare and exceptional cases. Perhaps the clearest statement may be found in an opinion rejecting a challenge to one of former President Carter's recess appointments:

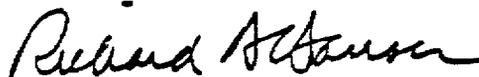
There is nothing to suggest that the Recess Appointments Clause was designed as some sort of extraordinary and lesser method of appointment, to be used only in cases of extreme necessity. ...There is no justification for implying additional restrictions not supported by the constitutional language. Recess appointments have traditionally not been made only in exceptional circumstances, but whenever Congress was not in session. Staebler v. Carter, 464 F. Supp. 585, 597 (D.D.C. 1979).

Your letter also suggests that use of the recess appointment power is somehow an improper circumvention of the advice and consent role of the Senate. We do not share this view. The power to make recess appointments is found in the Constitution, as is the Senate's advice and consent role. As the Supreme Court has stated, "The Constitution... must be regarded as

one instrument, all of whose provisions are to be deemed of equal validity." Prout v. Starr, 188 U.S. 537, 543 (1903). In no way is the provision for Senate confirmation constitutionally superior to the provision for recess appointments.

In conclusion, the decision to make a recess appointment is not made lightly. For example, there were over ninety-seven nominations pending when the Senate recessed in August, but only seven recess appointments were made. The power to make such appointments, however, is an important part of the system of checks and balances crafted by the Framers, and the President would do a disservice to that system and the institution of the Presidency were he to acquiesce in the reading of the Recess Appointments Clause set forth in your letter.

Sincerely,



Richard A. Hauser
Deputy Counsel to the
President

The Honorable Robert C. Byrd
United States Senate
Washington, D.C. 20510

FFF:JGR:aea 9/19/85

cc: FFFielding
RAHauser
✓ JGRoberts
Subject
Chron

During Johnson's administration
we did not compile a running
list of recent crypts. The
attached list was put together
from info we had in our records.

I believe there have been other
recent crypts by Johnson. When we have
time, all our records will be
checked. Ron

JOHNSON RECESS APPOINTMENTS

During the Recess of the Senate from 10/14/68 until 1/3/69

	<u>Date</u>
Patrick V. Murphy	10/17/68
Wesley A. Pomeroy	
Ralph G. H. Siu	10/17/68
Robert W. Komer	
Albert W. Sherer, Jr.	10/28/68
William Hill Brown, III	
Ted. J. Davis	10/29/68
Walter B. Lewis	
Hector P. Garcia	
Maurice B. Mitchell	11/4/68
William H. Darden	
Theodore R. McKeldin	11/14/68
John A. Logan	
Leonard H. Marks	11/18/68
J. McDonald Wray	
Joseph W. Barr	
Joseph W. Barr	12/21/68
Joseph W. Barr	
Joseph W. Barr	12/21/68
Joseph W. Barr	
Robert C. Wood	1/2/69

NIXON RECESS APPOINTMENTS

During the Recess of the Senate from 10/14/70 until 11/16/70 (intra)

		<u>Date</u>
Andrew E. Gibson	to be an Assistant Secretary of Commerce	10/21/70
C. Langhorne Washburn	to be Assistant Secretary of Commerce for Tourism	10/21/70
Hubert B. Pair Gerard D. Reilly J. Walter Yeagley	to be Associate Judges of the D.C. Court of Appeals	10/26/70
Robert C. Mardian	to be an Assistant Attorney General	11/11/70

During the Recess of the Senate from 1/2/71 until 1/21/71 (sine die)

Thomas J. Houser	to be a Member of the Federal Communications Commission for the unexpired term of seven years from 7/1/64	1/5/71
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	to be Governors of the U.S. Postal Service . . .	
Elmer T. Klassen	. . . for a term of one year	1/5/71
Frederick Russell Kappel	. . . for a term of two years	1/5/71
Theodore W. Braun	. . . for a term of three years	1/5/71
Andrew D. Holt	. . . for a term of four years	1/5/71
George E. Johnson	. . . for a term of five years	1/5/71
Crocker Nevin	. . . for a term of six years	1/5/71
Charles H. Coddling	. . . for a term of seven years	1/5/71
Patrick E. Haggerty	. . . for a term of eight years	1/5/71
M. A. Wright	. . . for a term of nine years	1/5/71

Robert Wells	to be a Member of the Federal Communications Commission for a term of seven years from 7/1/70	1/15/71
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Frank Charles Carlucci, III	to be Director of the Office of Economic Opportunity	1/18/71
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Thomas S. Kleppe	to be administrator of the Small Business Administration	1/18/71
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Ethel Bent Walsh	to be a Member of the Equal Employment Opportunity Commission for the term expiring 7/1/75	1/19/71
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Chester L. Mize	to be a Member of the U.S. Tariff Commission for the remainder of the term expiring 6/16/74	1/20/71
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Andrew J. Melton, Jr.	to be Directors of the Securities Investor Protection Corp. . .	
Glenn E. Anderson	. . . for a term expiring 12/31/71	1/21/71
George J. Stigler	. . . for a term expiring 12/31/72	1/21/71
Donald T. Regan	. . . for a term expiring 12/31/72	1/21/71
Byron D. Woodside	. . . for a term expiring 12/31/73	1/21/71
	. . . for a term expiring 12/31/73	1/21/71

During the Recess of the Senate from August 6, 1971 until September 8, 1971 (intra)

Philip A. Loomis, Jr.	to be a Member of the Securities and Exchange Commission for the remainder of the term expiring 6/5/72	8/13/71
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<u>During the Recess of the Senate from 12/17/71 until 1/18/72</u>		<u>sine die</u>	<u>Date</u>
John Eugene Sheehan	to be a Member of the Board of Governors of the Federal Reserve System for the unexpired term of fourteen years from 2/1/68		12/23/71
Charles W. Ervin Kevin O'Donnell	to be Associate Directors of Action		1/4/72
Robert Gottschalk	to be Commissioner of Patents		1/4/72
William Rinehart Pearce	to be Deputy Special Representative for Trade Negotiations, with the rank of Ambassador		1/4/72
Richard E. Wiley	to be a Member of the Federal Communications Commission for the unexpired term of seven years from 7/1/70		1/4/72
William D. Keller	to be U.S. Attorney for the Central District of California		1/5/72
Ralph E. Erickson Dale Kent Frizzell Henry E. Petersen	to be Assistant Attorneys General		1/11/72
Tedson J. Meyers	to be a Member of the District of Columbia Council for the remainder of the term expiring 2/1/74		1/13/72

<u>During the Recess of the Senate from 10/18/72 until 1/3/73</u>		<u>(sine die)</u>	
Cleo A. Noel, Jr.	Ambassador to the Democratic Republic of the Sudan		12/2/72
Melvin L. Manfull	Ambassador to Liberia		12/2/72
Irving Kristol	to be a Member of the Board of Directors of the Corporation for Public Broadcasting for the remainder of the term expiring 3/26/76		12/15/72
John Harold Fanning	to be a Member of the National Labor Relations Board for the term of 5 years expiring 12/16/77		12/5/72
Alfred Towson MacFarland	to be an Interstate Commerce Commissioner for the term of 7 years expiring December 31, 1978		11/1/72
Rodolfo Montejano	to be an Interstate Commerce Commissioner for the remainder of the term expiring 12/31/72		11/1/72

FORD RECESS APPOINTMENTS

<u>During the Recess of the Senate from 10/1/76 until 1/4/77 (sine die)</u>		<u>Date</u>
John A. Knebel	to be Secretary of Agriculture	11/3/76
Thaddeus A. Garrett, Jr.	to be a Commissioner of the Consumer Product Safety Commission for a term of seven years from October 27, 1975	11/17/76
William F. Gorog	to be Executive Director of the Council on International Economic Policy	11/17/76
Lowell Bruce Laingen	to be Ambassador to the Republic of Malta	11/17/76
Donald R. Norland	to be Ambassador to the Republic of Botswana	11/17/76
Donald R. Norland	to be Ambassador to the Kingdom of Lesotho	11/17/76
Donald R. Norland	to be Ambassador to the Kingdom of Swaziland	11/17/76
Jack B. Olson	to be Ambassador to the Commonwealth of the Bahamas	11/17/76
James M. Wilson, Jr.	to be Coordinator for Human Rights and Humanitarian Affairs	11/17/76
Malcolm Toon	to be Ambassador to the Union of Soviet Socialist Republics	11/24/76
William E. Simon	to be U.S. Governor of the African Development Fund	11/30/76
William D. Rogers	to be U.S. Alternate Governor of the African Development Fund	11/30/76
Ben Reifel	to be Commissioner of Indian Affairs	12/7/76
Don Paarlberg	to be an Assistant Secretary of Agriculture	12/10/76

CARTER RECESS APPOINTMENTS

During the Recess of the Senate from 12/15/77 until 1/19/78 (sine die)

	<u>Date</u>
John W. Snyder	1/19/78
to be a Member of the Board of Trustees of the Harry S Truman Scholarship Foundation for a term expiring December 10, 1983	
Steven L. Engelberg	1/19/78
Cecilia Denogean Esquer	
Hillary Diane Rodham	
Richard Allan Trudell	
Josephine Marie Worthy	
to be Members of the Board of Directors of the Legal Services Corporation	

During the Recess of the Senate from 10/15/78 until 1/15/79 (sine die)

John Warren McGarry	to be a Member of the Federal Election Commission for a term expiring April 30, 1983	10/25/78
John Patrick White	to be Deputy Director of the Office of Management and Budget	11/1/78
Kay Howe	to be a Member of the National Council on the Humanities for the remainder of the term expiring January 26, 1980	11/16/78
Charles V. Hamilton	to be Members of the National Council on the Humanities for terms expiring January 26, 1984	11/16/78
Louis J. Hector		
M. Carl Holman		
Jacob Neusner		
Sister Joel Read		
Leon Stein		
Harriet Morse Zimmerman		
Mary Beth Norton		
George M. Seignious II	to be Director of the United States Arms Control and Disarmament Agency	12/1/78
Richard W. Yarborough	to be a Member (and Chairman) of the Foreign Claims Settlement Commission of the United States for a term of three years from October 22, 1978	12/7/78
Alan Keith Campbell	to be Director of the Office of Personnel Management	1/1/79
Jule M. Sugarman	to be Deputy Director of the Office of Personnel Management	1/1/79
Ruth T. Prokop	to be a Member of the Merit Systems Protection Board for the remainder of the term expiring March 1, 1981	1/1/79
Ruth T. Prokop	to be Chairman of the Merit Systems Protection Board	1/1/79

During the Recess of the Senate from 10/15/78 until 1/15/79 (Continued)

Haywood Patrick Swygert	to be Special Counsel of the Merit Systems Protection Board	1/1/79
James J. Dillman Milton S. Gwartzman D. S. MacNaughton David H. Rodgers	to be Members of the National Commission on Social Security for terms of two years. (New Position)	1/11/79
Henry Bowen Frazier III	to be a Member of the Federal Labor Relations Authority for a term of one year	1/11/79
Ronald W. Haughton	to be a Member of the Federal Labor Relations Authority for a term of five years	1/11/79
William J. Sullivan	to be a Governor of the United States Postal Service for the term expiring December 8, 1984	1/12/79
Bernhardt K. Wruble	to be Director of the Office of Government Ethics	1/14/79

During the Recess of the Senate from 8/3/79 until 9/5/79 (intra)

Neil Goldschmidt	to be Secretary of Transportation	8/10/79
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During the Recess of the Senate from 12/21/79 until 1/3/80 (sine die)

William A. Lubbers	to be General Counsel of the National Labor Relations Board for a term of four years	12/24/79
William J. Beckham, Jr.	to be Deputy Secretary of Transportation	1/3/80
Thomas K. Berg	to be United States Attorney for the District of Minnesota	1/3/80
William J. Driver	to be Commissioner of Social Security	1/3/80
Ralph Earl II	to be Director of the United States Arms Control and Disarmament Agency	1/3/80
George M. Seignious II	to be a Member of the General Advisory Committee of the United States Arms Control and Disarmament Agency	1/3/80
William Lee Smith	to be Commissioner of Education	1/3/80

During the Recess of the Senate from 10/2/80 until 11/11/80 (intra)

Hannah D. Atkins Donald F. McHenry William J. vanden Heuvel	to be Representatives of the United States of America to the Thirty-fifth Session of the General Assembly of the United Nations	10/3/80
Nathan Landow H. Carl McCall Barbara Newsom Richard W. Petree	to be Alternate Representatives of the United States of America to the Thirty-fifth Session of the General Assembly of the United Nations	10/3/80

During the Recess of the Senate from 10/2/80 until 11/11/80 (Continued)

		<u>Date</u>
John C. Sawhill	to be Chairman of the Board of Directors of the United States Synthetic Fuels Corporation for a term of seven years. (New Position)	10/4/80
Catherine Blanchard Cleary	to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation for a term of two years. (New Position)	10/4/80
John D. DeButts	to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation for a term of one year. (New Position)	10/4/80
Joseph Lane Kirkland	to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation for a term of five years. (New Position)	10/4/80
Frank Savage	to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation for a term of three years. (New Position)	10/4/80
Laird F. Harris Harold Lafayette Thomas	to be Assistant Directors of the Community Services Administration	10/17/80
Alex P. Mercure	to be Under Secretary of Agriculture for Small Community and Rural Development. (NO ORIGINAL NOMINATION)	10/23/80
John C. Truesdale	to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 1985. (Reappointment)	10/23/80

During the Recess of the Senate from 12/16/80 until 1/5/81 (sine die)

Lynn R. Coleman	to be Deputy Secretary of Energy. (NO ORIGINAL NOMINATION)	12/23/80
Joseph S. Bracewell	to be President of the Solar Energy and Energy Conservation Bank. (New Position)	12/31/80
Ralph W. Emerson	to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 1981. (New Position)	12/31/80
Walter Meheula Heen	to be United States District Judge for the District of Hawaii	12/31/80
Wallace Nathaniel Hyde	to be a Governor of the United States Postal Service for the term expiring December 8, 1989	12/31/80
Reuben W. Askanase Melba Pattillo Beals	to be Members of the Board of Directors of the Corporation for Public Broadcasting for terms expiring March 26, 1986	1/2/81
John Connell Dorothy Graham-Wheeler Albert T. Klyberg	to be Members of the National Museum Services Board for terms expiring December 6, 1985. (NO ORIGINAL NOMINATIONS)	1/2/81

During the Recess of the Senate from 12/16/80 until 1/5/81 (Continued)

		<u>Date</u>
Thomas W. Fredericks	to be an Assistant Secretary of the Interior	1/2/81
Vernon W. Thomson	to be a Member of the Federal Election Commission for the remainder of the term expiring April 30, 1983	1/2/81
Alice Coig McDonald	to be a Member of the National Council on Educational Research for a term expiring September 30, 1982	1/3/81

REAGAN RECESS APPOINTMENTS

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u> (<u>DATE</u> <u>APPROXIMATE</u>)	<u>DATE OF APPOINTMENT</u>
<u>During Senate recess of 8/3 '81 (3:10pm) to 9/9/81 (noon)</u>		
<u>WRIGHT, Joseph Robert, Jr.</u> , of New York,	. . . to be Federal Cochairman of the following: Coastal Plains Regional Commission, Four Corners Regional Commission, New England Regional Commission, Old West Regional Commission, Ozarks Regional Commis- sion, Pacific Northwest Regional Commission, Southwest Border Regional Commission, Upper Great Lakes Regional Commission.	<u>BY ORDER AN</u> <u>COMMISSIONER</u> 8/27/81
<u>CHAMBERS, Terry</u> , of California,	. . . to be Alternate Federal Cochairman of the: Coastal Plains Regional Commission, Four Corners Regional Commission, New England Regional Commission, Old West Regional Commission, Ozarks Regional Commission, Pacific Northwest Regional Commission, Southwest Border Regional Commission, Upper Great Lakes Regional Commission. (<u>NO ORIGINAL NOMINATION</u>)	<u>BY ORDER AN</u> <u>COMMISSIONER</u> 8/7/81
<u>HUNTER, Robert F.</u> , of Virginia,	. . . to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 1985, vice John C. Truesdale.	<u>COMMISSIONER</u> 8/13/81
<u>VAN de WATER, John R.</u> , of California,	. . . to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 1981, vice John A. Penello, resigned.	<u>COMMISSIONER</u> 8/13/81
<u>VAN de WATER, John R.</u> , of California,	. . . to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 1986. (<u>Reappointment</u>)	<u>COMMISSIONER</u> 8/13/81
<u>MURPHY, Richard W.</u> , of Maryland,	. . . (FSO-CM) to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia. (<u>NO ORIGINAL NOMINATION</u>)	<u>COMMISSIONER</u> 8/19/81
<u>ADELMAN, Kenneth L.</u> , of Virginia,	. . . to be Representatives of the United States of America to the Thirty-sixth Session of the General Assembly of the United Nations. (<u>NO ORIGINAL NOMINATIONS</u>)	<u>COMMISSIONER</u> 9/8/81
<u>COOPER, John Sherman</u> , of Kentucky,	"	"
<u>GILMAN, Benjamin A.</u> , United States Representative from the State of New York,	"	"
<u>IRELAND, Andy</u> , United States Representative from the State of Florida,	"	"
<u>KIRKPATRICK, Jeane J.</u> , of Maryland,	"	"
<u>CAPUTO, Bruce F.</u> , of New York,	. . . to be Alternate Representatives of the United States of America to the Thirty-sixth Session of the General Assembly of the United Nations (<u>NO ORIGINAL NOMINATIONS</u>)	<u>COMMISSIONER</u> 9/8/81
<u>CHRISTOPHER, George</u> , of California,	"	"
<u>LICHENSTEIN, Charles M.</u> , of the District of Columbia,	"	"
<u>SHERMAN, William Courtney</u> , of Virginia,	"	"
<u>SORZANO, Jose S.</u> , of Virginia,	"	"
<u>FOWLER, John M.</u> , of Pennsylvania,	. . . to be a Member of the Board of Directors of the National Railroad Passenger Corporation, until the end of the next session of the Senate of the United States and no longer, subject to the conditions prescribed by law. (<u>NO ORIGINAL NOMINATIONS</u>)	<u>BY ORDER</u> 9/8/81
<u>KNOUSE, Mark S.</u> , of Pennsylvania,	"	"
<u>SWINBURN, Charles</u> , of Virginia,	"	"
<u>TEELE, Arthur E., Jr.</u> , of Florida,	"	"
<u>TRENT, Darrell M.</u> , of California,	"	"
<u>VERSTANDIG, Lee L.</u> , of the District of Columbia,	"	"

REAGAN RECESS APPOINTMENTS (Cont'd)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
<u>(intra) (AUTHORITY)</u>		
<u>During Senate recess of 10/2/82 (2:12am) to 11/29/82 (noon)</u>		
<u>NELSON, L. Clair,</u> of Virginia,	. . . to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 1986, vice Marian Pearlman Nease, resigned.	<u>COMMISSIONER</u> 10/5/82
<u>BENTLEY, Orville G.,</u> of Illinois,	. . . to be an Assistant Secretary of Agriculture.	<u>COMMISSIONER</u> 10/14/82
<u>FELDSTEIN, Martin S.,</u> of Massachusetts,	. . . to be a Member of the Council of Economic Advisers.	<u>COMMISSIONER</u> 10/14/82
<u>LESHER, William Gene,</u> and Assistant Secretary of Agriculture,	. . . to be a Member of the Board of Directors of the National Consumer Cooperative Bank for a term of three years. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 10/21/82
<u>HUME, Caroline H.,</u> of Carolina,	. . . to be a Member of the National Museum Services Board for a term expiring December 6, 1985, vice Dorothy Graham-Wheeler.	<u>COMMISSIONER</u> 10/22/82
<u>DONATELLI, Frank J.,</u> of Virginia,	. . . to be a Member of the Board of Directors of the Legal Services Corporation, until the end of the next session of	<u>BY ORDER</u> 10/22/82
<u>RATHBUN, Daniel M.,</u> of Virginia,	of the Senate of the United States and no longer, subject to the conditions prescribed by law. <u>(NO ORIGINAL NOMINATIONS)</u>	
<u>JOHNSON, Manuel H., Jr.,</u> of Virginia,	. . . to be an Assistant Secretary of the Treasury.	<u>COMMISSIONER</u> 11/2/82
<u>KNAPP, Edward A.,</u> of New Mexico,	. . . to be Director of the National Science Foundation for a term of six years. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 11/2/82
<u>HODEL, Donald F.,</u> of Oregon,	. . . to be Secretary of Energy. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 11/5/82
<u>HESSE, Martha C.,</u> of Illinois,	. . . to be an Assistant Secretary of Energy (Management and Administration). <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 11/10/82
<u>WHITE, Mastin Gentry,</u> of the District of Columbia,	. . . to be a Judge of the United States Claims Court. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 11/10/82
<u>GERARD, Jean Broward Shevlin,</u> of New York,	. . . to be the Representative of the United States of America to the Fourth Extraordinary Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 11/19/82
<u>PHILLIPS, James Daniel,</u> of the District of Columbia,	. . . to be the Alternate Representative of the United States of America to the Fourth Extraordinary Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 11/19/82
<u>(sine die) (NO AUTHORITY)</u>		
<u>During the Senate recess of 12/23/82 (1:13pm) to 1/3/83 (noon)</u>		
<u>MILLER, John Carl,</u> of Ohio,	. . . to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 1987. <u>(NO ORIGINAL NOMINATION)</u>	<u>COMMISSIONER</u> 12/23/82
<u>(intra)</u>		
<u>During the Senate recess of 1/3/83 (1:19pm) to 1/25/83 (noon) (NO AUTHORITY)</u>		
<u>MASSON, Milton M., Jr.,</u> of Arizona,	. . . to be a Member of the Board of Directors of the Legal Services Corporation, until the end of the next session of the	<u>BY ORDER</u> 1/21/83
<u>McCARTHY, Robert E.,</u> of California,	Senate of the United States and no longer, subject to the conditions prescribed by law. <u>(NO ORIGINAL NOMINATIONS)</u>	"
<u>SANTARELLI, Donald Eugene,</u> of Virginia,	"	"
<u>SHAPIRO, E. Donald,</u> of New Jersey,	"	"

NOTE: E. Donald Shapiro notified President by letter dated 2/1/83 of his decision not to

FEAGAN RECESS APPOINTMENTS (Cont'd)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
(intro) <u>During the Senate recess of 8/4/83 (7:03pm) to 9/12/83 (noon) (AUTHORITY)</u>		
<u>GERSTEIN, Linda Chavez, of the District of Columbia</u>	. . . to be Staff Director for the Commission on Civil Rights, vice Louis Nunez, resigned.	8/16/83
<u>MIDDENDORF II, J. William, of Virginia</u>	. . . to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 1988, vice Marc E. Leland, term expired. (NO ORIGINAL NOMINATION)	9/6/83
<u>MOTLEY, Langhorne A., of Alaska</u>	. . . to be a Member of the Board of Directors of the Inter-American Foundation for the remainder of the term expiring September 20, 1984, vice Thomas O. Enders, resigned. (NO ORIGINAL NOMINATION)	9/6/83
<u>HANLEY, William Lee, Jr., of Connecticut</u>	. . . to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 1, 1984, vice Gillian Martin Sorensen, term expired. (NO ORIGINAL NOMINATION)	9/12/83 (11:30 am)
<u>During the Senate recess (sine die) of 11/18/83 (10:04pm) to 1/23/84 (noon) (AUTHORITY)</u>		
<u>FRANKUM, Ronald E., of California</u>	. . . to be a Member of the Board of Directors of the Legal Services Corporation, until the end of the next session of the Senate of the United States and no longer, subject to the conditions prescribed by law. (NO ORIGINAL NOMINATION)	11/19/83 (By ORDER)
<u>HENNELLY, Edmund F., of New York</u>	. . . to be a Representative of the United States of America to the Twenty-second session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization. (NO ORIGINAL NOMINATION)	11/29/83 (& by ORDER)
<u>DEL JUNCO, Tirso, of California</u>	. . . to be a Representative of the United States of America to the Twenty-second session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization.	11/29/83 (& by ORDER)
<u>GERARD, Jean Broward Shevlin, of New York</u>	" " " "	
<u>TAYLOR, Helen Marie, of Virginia</u>	" " " "	
<u>WICK, Charles Z., of California</u>	" " " "	
<u>AERAMS, Elliott, of the District of Columbia</u>	. . . to be an Alternate Representative of the United States of America to the Twenty-second session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization.	11/29/83 (& by ORDER)
<u>GUARDABASSI, Frederick W. M., of Florida</u>	" " " "	
<u>PETRONI, Joseph Carlton, of Iowa</u>	" " " "	
<u>ROMERO, David, of California</u>	. . . to be an Alternate Representative of the United States of America to the Twenty-second session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization. (NO ORIGINAL NOMINATION)	11/29/83 (& by ORDER)
<u>STUART, Patricia E., of New Jersey</u>	" " " "	
<u>PATRICK, Dennis R., of the District of Columbia</u>	. . . to be a Member of the Federal Communications Commission for the unexpired term of seven years from July 1, 1978, vice Anne P. Jones, resigned.	11/30/83 (& by ORDER)
<u>PETERS, Ruth O., of Virginia</u>	. . . to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 1987, vice Paula D. Hughes, resigned.	12/2/83
<u>PHILLIPS, Harold K., of California</u>	. . . to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 1988, vice Alberto Ibarguen, term	12/5/83

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REAGAN RECESS APPOINTMENTS (Cont'd)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
<u>GROSE, Vernon L.,</u> of California	. . . to be a Member of the National Transportation Safety Board for the term expiring December 31, 1987, vice Francis H. McAdams, term expired.	12/5/8
<u>LEE-MILLER, Stephanie.</u> of the District of Columbia	. . . to be an Assistant Secretary of Health and Human Services, vice Pamela Needham Bailey.	12/6/8
<u>BARKSDALE, Maurice Lee,</u> of Texas	. . . to be an Assistant Secretary of Housing and Urban Development, vice Philip Abrams.	12/6/8
<u>LENKOWSKY, Leslie (Mr.),</u> of New York	. . . to be Deputy Director of the United States Information Agency, vice Gilbert A. Robinson, resigned.	12/6/8
<u>DISABATO, Louis Roman,</u> of Texas	. . . to be a Member of the National Museum Services Board for a term expiring December 6, 1987, vice Lloyd Hezekiah, term expired.	12/6/8
<u>BRIGHT, Simeon Miller,</u> of West Virginia	. . . to be a Commissioner of the Postal Rate Commission for the term expiring November 22, 1988. (Reappointment)	12/7/8
<u>TUTTLE, Donna F.,</u> of California	. . . to be Under Secretary of Commerce for Travel and Tourism, vice Peter McCoy, resigned.	12/8/8
<u>BUSH, Mary Kate,</u> of New York	. . . to be United States Alternate Executive Director of the International Monetary Fund for a term of two years, vice Charles H. Dallara, resigned.	12/13/8
<u>BUCKLEY, Elliot Ross,</u> of Virginia	. . . to be a Member of the Occupational Safety and Health Review Commission for the term expiring April 27, 1989, vice Bertram R. Cottine, term expired.	1/4/8
<u>WALDMAN, Frieda,</u> of California	. . . to be a Governor of the United States Postal Service for the term expiring December 8, 1992, vice Robert L. Hardesty, term expired. (NO ORIGINAL NOMINATION)	1/6/8
<u>NITZE, Paul H.,</u> of Maryland	. . . to be Special Representative for Arms Control and Disarmament Negotiations. (NO ORIGINAL NOMINATION)	1/13/8
<u>CORCORAN, Maureen E.,</u> of California	. . . to be General Counsel, Department of Education, vice Daniel Oliver, resigned. (NO ORIGINAL NOMINATION)	1/20/8
<u>ANGRISANI, Albert, of</u> New Jersey	. . . to be a Member of the Board of Directors of the Legal Services Corporation, until the end of the next session of the Senate of the United States and no longer, subject to the conditions prescribed by law. (NO ORIGINAL NOMINATION)	1/21/84 (ORDER)
<u>FERRARA, Peter Joseph, of</u> the District of Columbia	. . . to be a Member of the Board of Directors of the Legal Services Corporation, until the end of the next session of the Senate of the United States and no longer, subject to the conditions prescribed by law. (NO ORIGINAL NOMINATION)	1/21/84 (ORDER)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
	(intra) <u>During Senate recess of 6/29/84 (7:09pm) to 7/23/84 (noon)</u> (AUTHORITY)	
<u>LIVINGSTON, Dodie Truman,</u> of California	. . . to be Chief of the Children's Bureau, Department of Health and Human Services, vice Clarence Eugene Hodges.	7/2/84
<u>SEGER, Martha R., of</u> Michigan	. . . to be a Member of the Board of Governors of the Federal Reserve System for a term of fourteen years from February 1, 1984, vice Nancy Hays Teeters, term expired.	7/2/84
<u>BROADBENT, Robert N.,</u> of Nevada	. . . to be an Assistant Secretary of the Interior, vice Daniel N. Miller, Jr. resigned.	7/2/84 (P. BY ORDER)

FEASIBLE RECESS APPOINTMENTS (Cont'd)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
<u>ENSLEY, Melvin A., of Washington.</u>	. . . to be a Member of the Federal Farm Credit Board, Farm Credit Administrator, for a term expiring March 1, 1990, vice George Warren Lacey, term expired.	7/2/84 (& by ORDER)
* <u>HALL, Marianne Mele, of New Jersey</u>	. . . to be a Commissioner of the Copyright Royalty Tribunal for the unexpired term of seven years from September 27, 1982, vice Katherine D. Ortega, resigned.	7/2/84 (& by ORDER)
<u>ALLEN, William Barclay, of California</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice Charles V. Hamilton, term expired.	7/2/84 (& by ORDER)
<u>CRESIMORE, Mary Joseph Conrac, of North Carolina</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice Louis J. Hector, term expired.	7/2/84 (& by ORDER)
<u>KASS, Leon Richard, of Illinois</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice M. Carl Holman, term expired.	7/2/84 (& by ORDER)
<u>KILPATRICK, Kathleen S., of Connecticut</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice Harriett Morse Zimmerman, term expired.	7/2/84 (& by ORDER)
<u>LAXALT, Robert, of Nevada</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice Sister Joel Read, term expired.	7/2/84 (& by ORDER)
<u>SCHALL, James V., of California</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice Leon Stein, term expired.	7/2/84 (& by ORDER)
<u>TAYLOR, Helen Marie, of Virginia</u>	. . . to be a Member of the National Council on the Humanities for a term expiring January 26, 1990, vice Mary Beth Norton, term expired.	7/2/84 (& by ORDER)
<u>MACDONALD, Donald Ian, of Florida</u>	. . . to be Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, vice William E. Mayer.	7/3/84
<u>ZECH, Lando W., Jr., of Virginia</u>	. . . to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 1989, vice Victor Gilinsky, term expiring.	7/3/84
<u>DAWSON, Carol Gene, of Virginia</u>	. . . to be a Commissioner of the Consumer Product Safety Commission for the remainder of the term expiring October 26, 1985, vice Samuel D. Zagoria, resigned.	7/5/84
<u>ROWLAND, Robert A., of Texas</u>	. . . to be an Assistant Secretary of Labor, vice Thorne G. Aughter, resigned.	7/20/84

During the Senate recess (sine die) of 10/12/84 (3:17pm) to 1/3/85 (noon) (AUTHORITY)

<u>COLLYER, Rosemary M., of Colorado</u>	. . . to be General Counsel of the National Labor Relations Board for a term of four years, vice William A. Lubbers, term expiring	10/16/84 (& by ORDER)
<u>LASTOWKA, James A., of Virginia</u>	. . . to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 1990, vice A. E. Lawson, term expired.	10/26/84 (& by ORDER)
<u>BRIDGES, Peter Scott, of Louisiana</u>	. . . to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Somali Democratic Republic (NO ORIGINAL NOMINATION)	11/14/84
<u>BENAVIDES, Hortencia, of Texas</u>	. . . to be a Member of the Board of Directors of the Legal Services Corporation for the remainder of the term expiring July 13, 1986, vice Ronald B. Frankum.	11/23/84 (ORDER)
<u>BERNSTEIN, Leanne, of Maryland</u>	. . . to be a Member of the Board of Directors of the Legal Services Corporation for the remainder of the term expiring July 13, 1986, vice Albert Angrisani.	11/23/84 (ORDER)

REAGAN RECESS APPOINTMENTS (Cont'd)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
<u>MILLER, Lorain,</u> of Michigan	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1986, vice Milton M. Massor, Jr., resigned.	11/23/84 (ORDER)
<u>SWAFFORD, Claude Galbreath,</u> of Tennessee	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1986, vice Robert E. McCarthy.	11/23/84 (ORDER)
<u>VALOIS, Robert A.,</u> of North Carolina	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1986, vice Donald Eugene Santarelli.	11/23/84 (ORDER)
<u>DURANT III, William Clark,</u> of Michigan	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1987 (vice William J. Olson).	11/23/84 (ORDER)
<u>EAGLIN, Paul E.,</u> of North Carolina	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1987 (vice Robert Sherwood Stubbs, II).	11/23/84 (ORDER)
<u>MENDEZ, Pepe J.,</u> of Colorado	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1987 (vice Peter Joseph Ferrara).	11/23/84 (ORDER)
<u>SMEGAL, Thomas F., Jr.,</u> of California	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1987 (vice David E. Satterfield, III).	11/23/84 (ORDER)
<u>UDDO, Basile Joseph,</u> of Louisiana	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1987 (vice Howard H. Dana, Jr.).	11/23/84 (ORDER)
<u>WALLACE, Michael E.,</u> of Mississippi	. . . to be a Member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1987 (vice George E. Paras).	11/23/84 (ORDER)
<u>ADAMS, Elizabeth Helms,</u> of California	. . . to be a Member of the National Advisory Council on Women's Educational Programs for a term expiring May 8, 1987, vice Diana Powers Evans, term expired.	11/27/84
<u>KEISLER, Peter Douglas,</u> of Connecticut	. . . to be a Member of the National Advisory Council on Women's Educational Programs for a term expiring May 8, 1986, vice Virginia Gillham Tinsley, term expired. (NOTE: Although original nomination read as the preceding, Mr. Keisler was recessed for a term expiring May 8, 1987, vice Maria Pornaby Shuhi, term expired.)	11/27/84
<u>AZCUENAGA, Mary L.,</u> of the District of Columbia	. . . to be a Federal Trade Commissioner for the term of seven years from September 26, 1984, vice Michael Pertschuk, (resigned.) term expiring.	11/27/84
<u>NAFTZGER, Pauline Crowe,</u> of California	. . . to be a Member of the National Museum Services Board for a term expiring December 6, 1988, vice Neil Harris, term expired.	11/27/84
<u>SILBERMAN, Rosalie Gaull,</u> of California	. . . to be a Member of the Equal Employment Opportunity Commission for the remainder of the term expiring July 1, 1985, vice Cathie A. Shattuck, resigned.	11/27/84
<u>PHILBIN, Edward J.,</u> of California	. . . to be a Federal Maritime Commissioner for the term expiring June 30, 1989, vice James V. Day, resigned.	11/28/84 (& by ORDER)
<u>SCHLICHER, Barbara W.,</u> of New Jersey	. . . to be a Member of the Board of Directors of the National Corporation for Housing Partnerships for the term expiring October 27, 1987, vice Frank J. Donatelli, resigned. (NOTE: Original nomination for this term read "(Reappointment)" however the remainder of the term for which she was also nominated had expired at the time of this recess appointment.)	11/28/84 (ORDER)

REAGAN RECESS APPOINTMENTS (Cont'd)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
<u>CORCORAN, Tom,</u> of Illinois	. . . to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation, to serve in a part-time capacity, for the term expiring August 16, 1990, vice Milton M. Masson, Jr.	11/28/84 (ORDER)
<u>MacAVOY, Paul Webster,</u> of New York	. . . to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation, to serve in a part-time capacity, for the term expiring September 14, 1991, vice Robert A. G. Monks, resigned.	11/28/84 (ORDER)
<u>REICHL, Eric, of</u> Connecticut	. . . to be a Member of the Board of Directors of the United States Synthetic Fuels Corporation, to serve in a part-time capacity, for the remainder of the term expiring September 14, 1986, vice C. Howard Wilkins, resigned.	11/28/84 (ORDER)
<u>PEDEK, Mae Neal,</u> of Virginia	. . . to be an Assistant Administrator of the Agency for International Development, vice Elise R. W. du Pont, resigned.	11/29/84
<u>WARD, John D.,</u> of Colorado	. . . to be Director of the Office of Surface Mining Reclamation and Enforcement, vice James R. Harris.	11/30/84 (& by ORDER)
<u>SHANNON, John W.,</u> of Maryland	. . . to be an Assistant Secretary of the Army. (New Position - P.L. 98-94 of September 24, 1983)	12/7/84 (& by ORDER)
<u>KENNICKELL, Ralph E., Jr.,</u> of Virginia	. . . to be Public Printer, vice Danford L. Sawyer, Jr., resigned.	12/11/84
<u>GRIESEMER, John N.,</u> of Missouri	. . . to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 1986, vice John R. McKean.	12/12/84
<u>ELSNER, Robert,</u> of Alaska	. . . to be a Member of the Marine Mammal Commission for the term expiring May 13, 1987, vice Robert E. Weeden, term expired.	12/12/84
<u>PRYOR, Karen,</u> of Washington	. . . to be a Member of the Marine Mammal Commission for the term expiring May 13, 1986, vice Donald Kenneth MacCallum, term expired.	12/12/84
<u>JONES, Richard H.,</u> of Virginia	. . . to be Deputy Administrator of the Federal Aviation Administration, vice Michael J. Fenello, resigned.	12/13/84
<u>GUISTON, Henrietta Faye,</u> of California	. . . to be a Commissioner of the Postal Rate Commission for the remainder of the term expiring November 22, 1988, vice Simeon Miller Bright. (NOTE: No original nomination was pending for GUISTON; however, one was pending for BRIGHT.)	12/14/84
<u>McGINNIS, William J., Jr.,</u> of New Jersey	. . . to be a Member of the Federal Labor Relations Authority for a term of five years expiring July 1, 1989, vice Ronald W. Houghton, term expired.	12/14/84
<u>HUGHES, Richard H.,</u> of Oklahoma	. . . to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 1985, vice James Ernest Yonge, resigned.	12/21/84
<u>SCANLON, Terrence M., of</u> the District of Columbia	. . . to be Chairman of the Consumer Product Safety Commission, vice Nancy Harvey Steorts, resigned. (NO ORIGINAL NOMINATION)	12/28/84 (& by ORDER)
<u>MERKLEIN, Helmut A., of the</u> District of Columbia	. . . to be Administrator of the Energy Information Administration, vice J. Erich Evered, resigned. (NO ORIGINAL NOMINATION)	12/31/84

During the Senate recess (intra) of 1/7/85 (1:22pm) to 1/21/85 (4:00pm) (AUTHORITY)

<u>BOHN, John A., Jr., of</u> Virginia	. . . to be First Vice President of the Export-Import Bank of the United States for a term expiring January 20, 1989. (Reappointment)	1/21/85 (& by ORDER)
<u>HUGHES, Richard H.,</u> of Oklahoma	. . . to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 1987. (Reappointment)	1/21/85 (& by ORDER)

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REAGAN RECESS APPOINTMENTS (Cont'd.)

<u>NAME</u>	<u>ORIGINAL NOMINATION LANGUAGE</u>	<u>DATE OF APPOINTMENT</u>
<u>During the Senate recess (intra) of 8/1/85 (11:13pm) until 9/9/85 (noon) (AUTHORITY)</u>		
<u>CLARK, Vance L.,</u> of California	. . . to be Administrator of the Farmers Home Administrator, vice Charles Wilson Shuman, resigned.	8/9/85
<u>JOSEPHAK, Thomas John,</u> of Virginia	. . . to be a Member of the Federal Election Commission for a term expiring April 30, 1991, vice Frank F. Reiche, term expired.	8/9/85
<u>LETT, Raymond D.,</u> of Virginia	. . . to be an Assistant Secretary of Agriculture, vice C. W. McMillan, resigned.	8/9/85
<u>MONTGOMERY, Hugh,</u> of Virginia	. . . to be the Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.	8/9/85
<u>OKUN, Herbert Stuart,</u> of the District of Columbia	. . . a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be the Deputy Representative of the United States of America to the United Nations, with the rank and status of Ambassador Extraordinary and Plenipotentiary.	8/9/85
<u>RADEF, Robert E., Jr.,</u> of Texas	. . . to be a Member of the Occupational Safety and Health Review Commission for the term expiring April 27, 1991, vice Timothy F. Cleary, term expiring.	8/9/85
<u>WALL, John R.,</u> of Ohio	. . . to be a Member of the Occupational Safety and Health Review Commission for the remainder of the term expiring April 27, 1987, vice Robert A. Rowland.	8/9/85

tion ... must be regarded as one instrument, all of whose provisions are to be deemed of equal validity." *Prout v. Starr*, 188 U.S. 537, 543, 23 S.Ct. 398, 400, 47 L.Ed. 584 (1903). Moreover, while article III speaks specifically about the tenure of federal judges, article II is equally specific in addressing the manner of their appointment. There is therefore no reason to favor one Article over the other.

The language of the recess appointment clause explicitly provides that the President has the power to fill all vacancies during the recess of the Senate. The *Federalist* papers clarify the meaning of the recess clause, stating that it "is to be considered as supplementary to the [clause] which precedes" and that the vacancies referred to "must be construed to relate to the 'officers' described in the preceding [clause]." *The Federalist No. 67*, at 455 (A. Hamilton) (J. Cooke ed. 1961). The preceding clause in question provides in relevant part that the President "shall nominate, and by and with the Advice and Consent of the Senate shall appoint ... Judges of the supreme Court, and all other Officers of the United States...." U.S. Const. art. II, § 2, cl. 2 (emphasis added). This language further underscores that there is no basis upon which to carve out an exception from the recess power for federal judges. Particularly relevant in this context is Alexander Hamilton's statement that "[a]s to the mode of appointing the judges: This is the same with that of appointing the officers of the union in general...." *The Federalist No. 78*, *supra*, at 522.³

III

Woodley also argues that there is no historical evidence that the Framers intended the recess provision to apply to the

3. The United States Supreme Court has noted that "[t]he opinion of [*The Federalist*] has always being considered as of great authority ... and the part two of its authors performed in framing the constitution, put it very much in their power to explain the views with which it was framed." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 120, 187, 5 L.Ed. 257 (1821).

judiciary. This argument is not only refuted by the express language of the recess clause, which, as previously noted, refers to all vacancies, but it is also refuted by legislative history, as well as historical practice, consensus, and acquiescence.

Although the recess appointment clause was adopted without debate, 2 Farrand, *Records of the Federal Convention* 533, 540 (1911), there is evidence that it was not entirely uncontroversial. Edmund Randolph, the governor of Virginia, initially declined to sign the Constitution, in part because the recess provision gave the Executive the power to confer judicial commissions during the recess of the Senate. 3 Farrand, *supra*, at 123, 127.

In 1789, shortly after ratification of the Constitution, George Washington, who had served as President of the Constitutional Convention, exercised his power under the recess provision. During the recess between the sessions of the First Congress, he conferred three recess district judge commissions. 30 *The Writings of George Washington*, 457-58, 473, 485 n. 75 (J. Fitzpatrick ed. 1939). At the time of these appointments, Edmund Randolph and two contributors to *The Federalist*, Alexander Hamilton and John Jay, served as members of President Washington's Cabinet. There is no evidence that they doubted the constitutionality of the recess appointments.⁴ Moreover, the district court judges were confirmed upon the return of the Senate without objection to their recess appointments. 1 *Executive Journal of the Senate* 38, 40 (1790). It is further noteworthy that President Washington's recess appointments of Justice Johnson in 1791 and of Chief Justice Rutledge in 1795 went unchallenged.⁵ One commentator has aptly

4. Randolph, who was Attorney General, was advised by President Washington of Judge Griffin's recess appointment. See 30 *Writings of George Washington*, *supra*, at 472-73. Secretary of State Jay, in turn, had the duty to seal all civil commissions. See *Marbury v. Madison*, 5 U.S. (1 Cranch.) 87, 98, 2 L.Ed. 60 (1803).

5. Although Rutledge was not ultimately confirmed, it was not because he was a recess

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noted that "the most significant historical fact is that by the end of 1823, there had been five recess appointments to the Supreme Court. During this period, when those who wrote the Constitution were alive and active, not one dissenting voice was raised against the practice." Note, *Recess Appointments to the Supreme Court—Constitutional But Unwise?*, 10 Stan.L.Rev. 124, 132 (1957).

The actions of the three branches of our government have consistently confirmed the President's power to make recess appointments. The Executive Branch has made extensive use of the recess power. Approximately 300 judicial recess appointments have been made in our nation's history.⁶ Presidents Eisenhower and Kennedy alone made fifty-three such appointments during their Administrations. See H. Chase, *Federal Judges The Appointing Process* 86-88, 114-15 (1972).

The Legislative Branch has consistently confirmed judicial recess appointees without dissent. Moreover, Congress has passed legislation providing for the salaries of recess appointees, without excluding judges. 5 U.S.C. § 5503; see also S.Res. 334, 86th Cong., 2d Sess., 106 Cong.Rec. 18,130-45 (1960) (statement of Senator Hart) (confirming President's power to make judicial recess appointments).

Finally, we turn to the Judicial Branch. The only direct challenge, prior to the present action, to the President's power to make judicial recess appointments was rejected by the Second Circuit in *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962), cert. denied, 371 U.S. 964, 83 S.Ct. 545, 9 L.Ed.2d 511 (1963). Although the United States Supreme Court has never passed on the issue, numerous Justices have been recess appointees. Chief Justice Rutledge sat as a recess appointee for six months and participated in two decisions. He delivered the opinion of the Court in *United States v. Peters*, 3 U.S. (3 Dall.) 96,

appointee, but because of his opposition to the Jay Treaty. See *Ex parte Ward*, 173 U.S. 452, 454 n. 1, 19 S.Ct. 459, 43 L.Ed. 765 (1899).

1 L.Ed. 535 (1795) and wrote with the majority in *Talbot v. Jansen*, 3 U.S. (3 Dall.) 105, 1 L.Ed. 540 (1795). Justice Curtis, who received a recess appointment in 1851, sat as a judge of the Circuit Court of the United States for the First Circuit and the Rhode Island District Court, while he was a recess appointee. See Note, *supra*, at 131 n. 24. Altogether, fifteen recess appointments have been made to the Supreme Court. Staff of House Comm. on the Judiciary, 86th Cong., 1st Sess., *Recess Appointments of Federal Judges* 40 (Comm. Print 1959). Of these, at least four appointees sat on the Court prior to their confirmation. Note, *supra*, at 125. There is no evidence that any member of the Supreme Court ever objected to this practice on constitutional grounds.

IV

Our historical review demonstrates that there is an unbroken acceptance of the President's use of the recess power to appoint federal judges by the three branches of government. Woodley argues, however, that the Supreme Court's recent decision in *INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983), teaches that historical patterns cannot save an unconstitutional practice.

We agree that historical acceptance alone cannot conclusively establish a practice's constitutionality. Yet while we rely only in part on historical consensus in upholding the President's authority to make judicial recess appointments, we cannot ignore historical observance. The teachings of *Chadha* are not to the contrary. That case held that historical acceptance of the legislative veto could not prevent it from running afoul of the Constitution. 103 S.Ct. at 2279 n. 13. The legislative veto is, however, a recent practice, barely 50 years old. Its use does not reach back to the days of the Framers, such as the practice at issue. Moreover, it is an impermissible statutory

6. These statistics were compiled from the files of the Office of the Deputy Attorney General at our request.

Recess Appointments During Temporary Senate Recesses

- ° On this issue, to paraphrase Justice Holmes, a page of history is worth a volume of political rhetoric.
 - ° The Constitution gives the President the power to make appointments when the Senate takes a recess -- and this is not limited only to final adjournments after a session.
 - ° Presidents have often made such appointments when the Senate breaks for a few weeks during the middle of a session.
 - President Carter made 17 direct appointments during temporary Senate breaks -- including a Cabinet member [Secretary of Transportation Neil Goldschmidt] and AFL-CIO head Lane Kirkland to the Board of the Synfuels Corporation
 - President Truman made a dozen direct appointments during one temporary recess in 1950. */
 - ° This issue was decided long ago. In the 1940's, the Comptroller General -- an officer of the Congress -- ruled that the President had power to make direct appointments during temporary as well as final recesses. [28 Comp. Gen. 30 (1948)]. Attorneys General have agreed. [41 Op. Att'y Gen. 463 (1960); 33 Op. Att'y Gen. 20 (1921)]. The courts have noted that "Recess appointments have traditionally not been made only in exceptional circumstances, but whenever Congress was not in session." [Staebler v. Carter, 464 F. Supp. 585, 597 (D.D.C. 1979) (unsuccessful challenge to Carter recess appointment [after final adjournment] to FEC)]
 - ° President Reagan didn't try to evade the Senate's power to confirm. Every person he appointed had already been nominated before the recent Senate recess -- the Senate just hadn't acted on the nominations. And every appointee was renominated when the Senate came back.
 - ° President Reagan wasn't dodging the rules -- he was playing by them. If the Senate doesn't confirm these appointees, the Constitution says they can only serve until the end of the next session of the Senate. But the Constitution also makes it clear that President Reagan -- just like Presidents Carter, Truman and many others -- had every right to make these appointments.
- */ President Kennedy had no chance to make any intra-session recess appointments, as the Senate took no mid-session recesses of more than 3 days during his entire time in office.

nomination to come to a vote. "This is the only lever I have to prompt the administration to be specific on its position," Helms said in an interview. "I get lots of doubt-talk from AID."

Congressional recess. However, the Democrats agreed last Thursday to allow Lord's nomination to proceed. Helms delayed Lord's nomination in the Foreign Relations Committee until last week, when it was ap-

by Mr. McPherson," the letter said. In a letter to Dole last week, conservative senators asked that Lord's nomination not be brought to the floor, saying "it would be an occasion for extended debate on China's population policies."

White House Asks End to Appointee 'Backlog'

By Ira R. Allen
United Press International

The White House called on Senate Minority Leader Robert C. Byrd (D-W. Va.) yesterday to break "the largest backlog of presidential appointments in modern history" and allow votes on more than 5,000 presidential nominees.

Byrd has blocked action on thousands of regular appointments in anger over seven "recess appointments" that President Reagan made when Congress was out of session in August. Such appointments do not require Senate confirmation.

White House spokesman Larry Speakes issued a statement saying: "The president is deeply displeased that 70 key appointments touching virtually every area of the executive branch are being deliberately held up by Senate Democratic leader Robert Byrd."

Speakes said that those awaiting Senate confirmation include per-

sons nominated to be federal judges, ambassadors and assistant secretaries of Cabinet departments, as well as 5,000 mid-level career military officers whose promotions must be approved by the Senate. "It is the largest backlog of presidential appointments in modern history," Speakes said.

Citing the history of recess appointments dating to George Washington, and a recent federal court ruling that supported President Carter's use of the power 17 times, Speakes said, "The president's power to make recess appointments is grounded in the Constitution, and this issue was decided long ago."

Reagan has made 146 recess appointments in almost five years in office, believed to be a record.

Recess appointments may serve without confirmation until the end of the congressional session, in which they were nominated, in this case through the end of next year. Most such appointees eventually are confirmed.

In a July 30 letter to Reagan, Byrd said that the five-week August recess should not be considered "the kind of extended recess" contemplated by the Constitution for the purpose of making nominations.

President Reagan did not evade the Senate's power to confirm," Speakes said. "The individuals he appointed had already been nominated before the recent Senate recess—the Senate just hadn't acted on the nominations. And those appointees were reappointed when the Senate returned."

In response, a Byrd aide cited a recent statement in which the senator said that his action was "the only leverage we have to make sure that the executive branch does not continue to use the recess appointment process as a means of circumventing the constitutional role of the Senate."

The aide added that the senator and the Democratic Caucus were "happy to get the White House's attention on this."

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DRAFT REPLY TO NEW YORK TIMES EDITORIAL

ON RECESS APPOINTMENTS

In an editorial that betrayed ignorance of constitutional law and history, the Times accused President Reagan of "misuse of the recess-appointment power," argued that the power "plainly" does not apply during the "vacation breaks" of today's Congress, and asserted that the power was being used "to circumvent the Senate's constitutional duty to advise on and consent to appointments."

The Times apparently believes it can pick and choose some provisions of the Constitution, and ignore others. The same Constitution that gives the advice and consent role to the Senate also explicitly gives the President the power to make appointments that are valid, for a limited period, when the Senate is in recess. The two powers co-exist and have co-existed for nearly 200 years. One is not superior to the other.

Contrary to the unsupported assertion of the Times, courts have long held that the recess appointment power applies during the "vacation breaks" of today's Congress. Even the Comptroller General -- an officer of Congress -- has ruled that the power applies during temporary as well as final recesses. As one court wrote in rejecting a challenge to one of President Carter's recess appointments: "There is nothing to suggest that the Recess Appointments Clause was designed as some sort of extraordinary and lesser method of appointment, to be used only in cases of extreme necessity... Recess appointments have traditionally not been made only in exceptional circumstances, but whenever Congress was not in session."

This tradition goes back to George Washington, who made the first recess appointments between sessions of the First Congress. Recent Presidents -- Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter -- have all made numerous recess appointments. President Kennedy recess appointed 16 Federal judges in one day. (President Reagan has never recess appointed a Federal judge.) President Carter made many recess appointments during the "vacation breaks" of Congress, including that of a Cabinet member.

President Reagan has not used the power to circumvent the Senate's advice and consent role. In the August recess referred to by the Times, there were 97 non-military nominations pending. The President granted only seven recess appointments. All seven had been nominated before the recess, and all seven were renominated when the Senate returned.