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Career of Sen. Howard H. Baker, Jr.

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HOWARD H. BAKER, JR.: A LIFE IN PUBLIC SERVICE A Special Issue

PREFACE AND OVERVIEW

HOWARD H. BAKER, JR. AND THE PUBLIC VALUES OF COOPERATION AND CIVILITY:

*A Preface to the Special Issue
Theodore Brown, Jr.*

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*An Overview
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ARTICLES

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*Its Place in History and the Discovery of the White House Tapes
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IMAGES FROM A LIFE IN PUBLIC SERVICE

APPENDIX:

Selected Speeches, Remarks, and Articles



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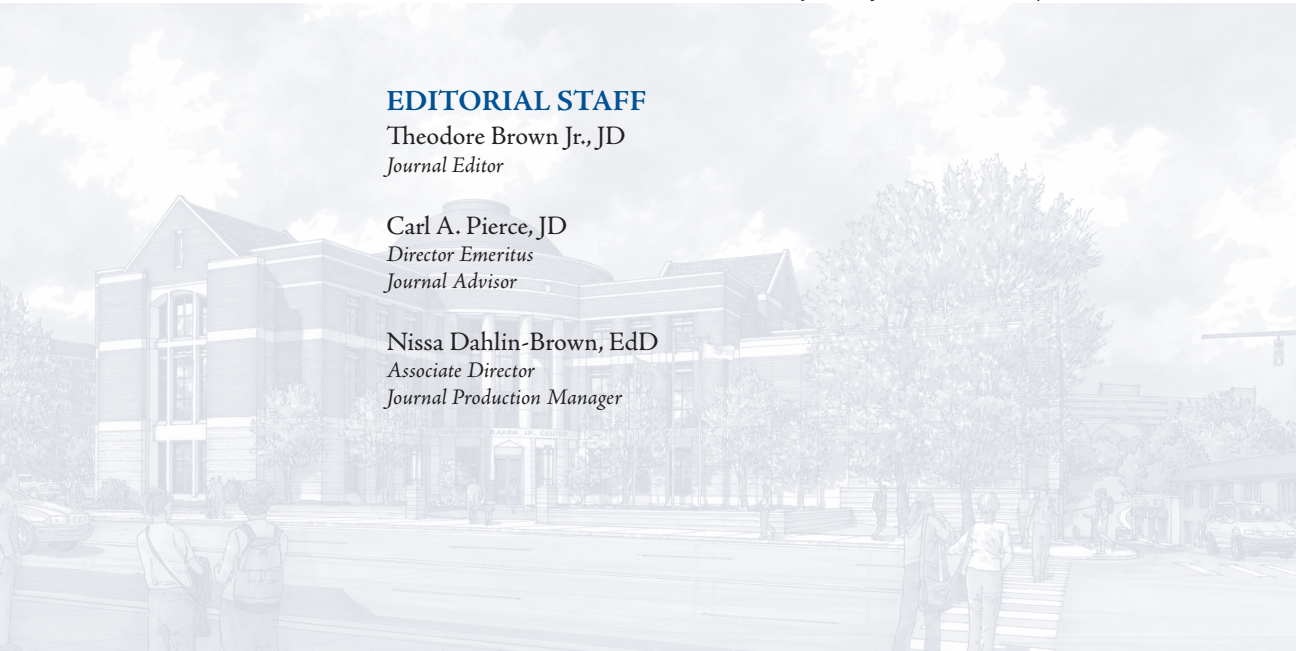
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HOWARD H. BAKER, JR. AND THE PUBLIC VALUES OF COOPERATION AND CIVILITY: *A Preface to the Special Issue*

*Theodore Brown, Jr.*¹

The principal articles published in this Special Issue of the *Journal* are expanded versions of papers presented by a distinguished group of scholars, journalists, and other commentators at a two-day conference, “Howard H. Baker, Jr.: A Life in Public Service,” sponsored by the Howard H. Baker Jr. Center for Public Policy in November, 2010, in connection with the observance of Senator Baker’s eighty-fifth birthday. That conference and this Special Issue represent, collectively, the products of the initial major initiative of the relatively new Baker Studies Program at the Baker Center.

To enhance the topics addressed by the principal articles, the editors have included in the Special Issue a selection of speeches, remarks, and articles by and about Senator Baker and a collection of photographic and cartoon images from various stages in his lengthy career in public service.

The author of one of the principal articles, Steve Roberts, who covered Capitol Hill for *The New York Times* during Senator Baker’s tenures in the United States Senate and as White House chief of staff, recently observed that “Senator Baker reflected certain values—bipartisanship, a respect for the institution, a sense of civility, a belief in the value of compromise—values that are far less visible today” in Washington than when he was there.² I think it is fair to say that this summation of the qualities that so distinguished Senator Baker’s career in public service set the tone and established one of the primary themes of the conference at the Baker Center that provided the impetus for this Special Issue of the *Journal*.

The desirability and use of cooperation and civility in our interactions with one another are, indeed, public values that are central to understanding both the effectiveness of Howard Baker as a public servant and the abiding esteem and affection with which he is regarded by those who worked with him during his career in public life. The sociologist Richard Sennett reminds us that the task of conflict management in the context of making a complex society work requires both cooperation and civility. The capacity for cooperation, or the ability to engage in an “exchange in which the participants benefit from the encounter,” in turn requires a number of skills, including those of “understanding and responding to one another in order to act together” for a common objective, of listening well, of behaving tactfully, of finding points of agreement and managing disagreement, of recognizing the interests of each of the participating parties and the value of compromise, and of avoiding the frustrations that often occur during difficult

1 Editor of the *Baker Center Journal* and Director of the Baker Studies Program, The Howard H. Baker Jr. Center for Public Policy.

2 E-mail message, Steven V. Roberts to the author, July 10, 2010.

discussions or negotiations.³ These were among the skills that comprised the hallmark of Senator Baker's career. It thus should not be surprising to find that Baker's rules for Senate leadership—the so-called “Baker's Dozen” found in his now famous speech, “On Herding Cats,” delivered in 1998 and the text of which is provided in the Appendix—include the following recommendations: listen more often than you speak, have a genuine and decent respect for differing points of view, be patient, tell the truth whether you have to or not, and be civil and encourage others to do likewise.

What of civility? How are we, and especially those who hold positions of political leadership, to “be civil”? One of the definitions of the term found in the *Oxford English Dictionary* is “[b]ehaviour or speech appropriate to civil interactions; politeness, courtesy, consideration.”⁴ *Webster's Third New International Dictionary* includes “decent behavior or treatment” as one of the meanings of the term (albeit designated, interestingly, as an obsolete one).⁵ Sennett refers to civility as “treating others as though they were strangers and forging a social bond upon that social distance” and concludes that he does “not think people now need await a massive transformation of social conditions or a magic return to the past in order to behave in a civilized way.”⁶

Whatever its definition, the concept of civility as a desirable ingredient in our political discourse contemplates the behavioral setting within which cooperation might occur. Civility thus addresses how we treat those fellow human beings with whom we are expected to live and work as we strive to manage—and perhaps resolve—the conflicts that inevitably arise within and as a result of that social relationship. The management of such conflicts is often a political task, a task that regrettably is becoming more and more difficult and challenging with the increasing ideological balkanization of the American political process.

To perform such a difficult, challenging political task, Senator Baker reminds us that “there is a need for greater civility in our political discourse.”⁷ How does one go about creating a behavioral setting that cultivates and facilitates effective conflict management in the political context? To Senator Baker, certainly, civility in our political discourse seems to incorporate the simple concept found in the admonition of the Golden Rule, but, as the principal articles in this Special Issue and the documents in the Appendix suggest, his concept of civility contemplates

3 See RICHARD SENNETT, *TOGETHER: THE RITUALS, PLEASURES AND POLITICS OF COOPERATION* x, 5-6 (2012); RICHARD SENNETT, *THE FALL OF PUBLIC MAN* 264 (1976); Terry Eagleton, *On Meaning Well*, *THE TIMES LITERARY SUPPLEMENT*, Apr. 20, 2012, at 8. Sennett notes that cooperation can be both positive (e.g., conflict management that “sustains social groups across the misfortunes and upheavals of time”), which he calls “hard cooperation,” or negative (e.g., “destructive cooperation of the us-against-you sort” or cooperation “degraded into collusion”). SENNETT, *TOGETHER* at 6.

4 “Civility,” *OXFORD ENGLISH DICTIONARY*, available at <http://www.oed.com/view/Entry/33581?redirectedFrom=civility#eid>.

5 “Civility,” *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED*, available at http://collections.chadwyck.com/searchFulltext.do?id=Z200897621&divLevel=2&queryId=../session/1340381277_12395&trailId=1377A746390&area=mwd&forward=textsFT.

6 SENNETT, *FALL OF PUBLIC MAN*, *supra* note 3, at 264.

7 See, e.g., Howard H. Baker, Jr., “On Herding Cats,” July 14, 1998 (see Appendix).

something more than that. Perhaps reflecting his East Tennessee upbringing, Senator Baker's version of civility calls for rather regular infusions of healthy doses of what President Reagan once characterized as his Chief of Staff's "gentle Tennessee wit"⁸ as well.

Tennessee has a long-standing tradition of sending representatives to the United States Senate who subsequently, either there or elsewhere within the federal government, played significant roles in the political history of the United States. One thinks, for instance, of Andrew Jackson, Andrew Johnson, Cordell Hull, Estes Kefauver, and the two Albert Gores. No such list would be complete, however, without the name of Howard H. Baker, Jr. Senator Baker served as vice-chairman of the Senate Watergate Committee, as Senate Minority Leader, as Senate Majority Leader, as White House Chief of Staff to President Reagan, and, more than a decade and a half after his departure from the Senate and the White House, as U. S. Ambassador to Japan. It is our hope that the primary articles, the speeches and remarks and other documents, and the photographic and cartoon images published in this Special Issue of the *Journal* will help to provide a better understanding and appreciation of Senator Baker's rich legacy and of his significant and lasting contributions to the life and history of the Nation.

8 Ronald Reagan to Howard H. Baker, Jr., June 18, 1988, Howard H. Baker, Jr. Papers (unprocessed), Modern Political Archives, Howard H. Baker Jr. Center for Public Policy, the text of which is reproduced in the Appendix.

HOWARD H. BAKER, JR.:

A LIFE IN PUBLIC SERVICE

An Overview

*J. Lee Annis, Jr.*¹

A quarter of a century ago, Michael Barone and Grant Ujifusa, the chroniclers of the authoritative *Almanac of American Politics*, 1984, declared that there was but “one giant in the Senate” of the United States in the early 1980s and that he was the five-feet-six-and-one-half-inches tall Howard H. Baker, Jr., of Tennessee.² Here is no small tribute, in that the same body also included at that time several men now acclaimed by scholars as legislative lions, like Edward M. Kennedy (D. Mass.), Bob Dole (R. Kan.), Daniel Patrick Moynihan (D. N.Y.), Orrin Hatch (R. Utah), Robert Byrd (D. W. Va.), and Barry Goldwater (R. Ariz.), not to mention Nancy Landon Kassebaum (R. Kan.), the first woman ever elected to a full six-year term in the Senate without previously having been married to a member of Congress. Yet between 1980 and 1984, when senators, staffers, or congressional reporters were asked which member was the best, the most influential, the most effective or the most persuasive, Baker invariably finished first. In retrospect, one can find the conciliatory hands of Howard Baker permeating legislation covering such diverse realms as legislative reapportionment, fair housing, the monumental Clean Air and Water Acts of 1970,³ mass transit, the Panama Canal Treaties, revenue sharing, and the Reagan budget and tax cuts of 1981. Baker’s pragmatic, often eclectic, approach to the legislative process, shaped in studies in both law and engineering, allowed him to sift through the heart of highly complex issues before virtually any of his colleagues had done so. While long evident to congressional insiders, this knack was one that the broad general public first noticed in the summer of 1973 when he framed the nature of the involvement of a President of his own party in the Watergate scandal as the central question of the entire Watergate investigation.

It thus is confounding that no commemorations of an academic nature covering the highlights of Howard Baker’s career had ever been held prior to the occasion of his 85th birthday in November of 2010, some fourteen years after he had become the first United States Senator to marry another member of the Senate when he wed Nancy Kassebaum. In part, the lack of any such observance reflects the modesty of the man himself, for Baker deflected all such suggestions from Alan Lowe, the inaugural director of the Baker Center for Public Policy, about holding any conference of the sort, even one covering the monumental Watergate hearings, which launched the young Tennessee senator’s rapid emergence as a national figure.

1 J. Lee Annis, Jr., is Professor and Chairman of the History and Political Science Department at Montgomery College in Rockville, Maryland. He is the author of *Howard Baker: Conciliator in an Age of Crisis* (1995) and the co-author, with former U.S. Senator Bill Frist, of *Tennessee Senators, 1911-2001: Portraits of Leadership in a Century of Change* (1999).

2 MICHAEL BARONE & GRANT UJIFUSA, *THE ALMANAC OF AMERICAN POLITICS*, 1984, at xxxi (1983).

3 Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676; Water Quality Improvement Act of 1970, Pub. L. No. 91-224, Pt. 1, 84 Stat. 91.

Indeed, Carl Pierce, the Baker Center's current director, found that the only way he could host such an event was to schedule it without Baker's knowledge for the two days after his birthday.

The resulting conference, "Howard H. Baker, Jr.: A Life in Public Service," occurred at the Baker Center on November 16-17, 2010, and featured papers presented by seven distinguished scholars and journalists. Expanded versions of these papers are presented in this special issue of the *Baker Center Journal of Applied Public Policy*. Highlighting the conference proceedings were addresses by two men who actually had worked closely with Senator Baker: George Washington University professor Stephen V. Roberts, the longtime congressional correspondent for *The New York Times*, and noted Washington attorney James Hamilton, whose first venture into the national spotlight came during his service as deputy majority counsel to the Senate Watergate Committee.

In his paper, Hamilton notes in Baker a kindness that is uncommon among politicians, a quality that was best exemplified when Baker, a Republican, was the only member of the Ervin Committee to visit him, a top Democratic lawyer, while he was recuperating in the hospital after having had a kidney stone removed.

Roberts makes the civility of the Senate that Baker led the focal point of his paper, reminding us that civility—contrary to the current political atmosphere, largely driven by cable television hosts and producers who encourage loud, increasingly shrill confrontation at the expense of analysis—was the norm rather than the exception in the Senate of the early 1980s. Like his predecessors in Senate leadership positions such as Senators Mike Mansfield (D. Mont.) and Everett M. Dirksen (R. Ill.) or, for that matter, House leaders like Representatives Hale Boggs (D. La.), Gerald R. Ford (R. Mich.), and Tip O'Neill (D. Mass.), Howard Baker respected his colleagues and treated them as friends, regardless of party. In those bygone days, Roberts notes, members of Congress worshipped together, golfed together, dined together, and got to know each other, something increasingly unlikely in the early part of the 21st century when many members opt not to move their families to Washington. These days, members often come to the Senate from a House of Representatives increasingly polarized by the gerrymandering of congressional districts for the purpose of electing the most intransigent partisans beholden to the most demanding special interests in their area. In recent years, legislators first elected from such districts have often led the chorus of complaint when even respected members of their caucuses like Edward Kennedy or John McCain have sought to find common ground with those on the other side of the partisan divide. Is there a better way? Professor Roberts argues emphatically in the affirmative and cites the Baker example as a model for the future.

Brown University political scientist Wendy Schiller, a onetime aide to Senator Daniel Patrick Moynihan and Governor Mario Cuomo, both New York Democrats, echoes Roberts's findings in a lively paper examining Baker's service as Senate minority leader and majority leader. Contrary to general opinion, she asserts, Senate rules are situational rather than set in stone. In turn, congressional leaders succeed by molding them to fit given circumstances, thus dispelling any reasonable implication that they are using the rules for the purpose of stifling

debate. No better example does Schiller find to document her point than Howard Baker's model, crafted while formulating legislative strategy for the Reagan budget and tax bills of 1981. Faced with a growing conservative bloc within his caucus, Baker adapted to circumstances and built a consensus around the notion that the best way to guarantee that the Reagan Administration would be a success was to secure the approval of its economic program before proceeding to consider the more controversial social issues on the Reagan legislative agenda. In as personal and inclusive a brand of leadership as has ever been seen in the Senate, Schiller demonstrates, Baker did what he could to resolve struggles over legislative turf before they erupted, consulted dozens of senators prior to key decisions on both procedure and substance, and limited parliamentary challenges to those maneuvers by other senators that might delay progress on Ronald Reagan's economic recovery program. How well Baker fared, she points out, can be seen from the fact that the presidential campaign of Bill Clinton copied the Baker mantra of the early 1980s in identifying the Democratic presidential ticket's core theme ("It's the Economy, Stupid") during the presidential election of 1992.

Two other thoughtful political scientists, Charles E. Walcott of Virginia Tech and David B. Cohen of the University of Akron, assess Baker's role as chief of staff in restoring faith in the Reagan White House in the aftermath of the Iran-Contra scandal. Professor Walcott paints a portrait of an executive branch in disarray on Thursday, February 26, 1987, the day former Senator John Tower (R. Tex.), the chairman of a commission examining the debacle, declared that President Reagan had been "poorly advised and poorly served" and "not aware of a lot of things that were going on."⁴ Tower and his colleagues distributed blame for the operation in many directions but especially targeted the "personal control" of Donald Regan, Baker's predecessor as the President's chief of staff, over his subordinates and his failure to insist upon an orderly process of review. First Lady Nancy Reagan particularly feared that Regan's brusque manner had alienated potential allies in the news media and in Congress. Her eyes and her husband's lit up when they heard former Senator Paul Laxalt (R. Nev.), their close friend, suggest a considerably humbler Baker, who would soon be joking that his wife Joy was perpetually reminding him that "Ronald Reagan is the President and you are not." In the narrative that Professor Cohen continues, the fortunes of the Reagan Administration revived once Baker joined the President's White House team. Deeming himself the leader of the staff of the man who had been elected President as opposed to serving as a "prime minister" as Regan had done, Baker saw his principal duties as restoring credibility to a White House that had been devastated by the Iran-Contra debacle and then, as Baker's deputy Kenneth Duberstein put it, giving "Reagan reality." Immediately, Baker prompted Reagan to come clean about his own role in the Iran-Contra matter and to furnish all relevant documents to congressional committees and to the special counsel who had been appointed to investigate the matter. In liquidating this distraction, Baker allowed Reagan what the influential GOP operative Tom Korologos called the

4 *The White House Crisis: The Three Panel Members Give Their Views; Excerpts from the Tower Commission's News Conference*, N.Y. TIMES, Feb. 27, 1987, at A8.

luxury of a “third term.”⁵

Even so, Howard Baker would be the first to concede that not all went as planned on his watch as chief of staff, with the prime example being the Senate’s rejection of Reagan nominee Robert Bork for the seat on the Supreme Court of the United States that had been vacated by Justice Lewis Powell. After a second nominee, Douglas Ginsburg, was forced to ask that his nomination be withdrawn, the Senate eventually confirmed a more moderate conservative jurist, Anthony Kennedy, to succeed Powell. In a well-argued presentation, Princeton University political scientist Keith Whittington points out that the rejection of Bork continues to have ramifications even today. The Senate’s rejection of Bork not only resulted in interest groups’ handling of future Supreme Court confirmation battles as the functional equivalent of political campaigns for elective office, but also effectively resulted in the elevation to the Court of a moderate justice who today holds the crucial “swing vote” that at times he casts with the Court’s four more liberal justices and that at other times he casts with the four more conservative justices led by Chief Justice John Roberts.

Howard Baker has a more obscure connection with the Supreme Court as well. In the fall of 1971, President Richard Nixon had Attorney General John Mitchell offer Senator Baker the seat on the Court that eventually went to William Rehnquist. Baker contemplated the offer and determined, after having met with Justice Potter Stewart, that he would prefer to remain in the Senate but that he would be willing to accept the nomination out of loyalty to Nixon if that was what the President wanted. Aware that Nixon had changed his mind, Mitchell suggested to Baker that it was best for all parties if Rehnquist were chosen. In a fascinating counterfactual essay, George Washington University law professor Jeffrey Rosen, the astute Supreme Court correspondent for *The New Republic*, speculates as to how history might have changed had Baker assumed the seat on the Court rather than Rehnquist. What has to be pointed out, however, is that Baker subsequently has often said that had he taken the seat, he would have resigned after a few years as a result of sheer boredom. Funeral homes, he later told Orrin Hatch, “are livelier than the Court.”⁶

Still, what is most likely to define Baker’s place in the histories penned in future decades, even centuries, is his performance as vice chairman of the Senate Select Committee on Presidential Campaign Activities, popularly known as the Watergate Committee. From this perch, he focused all inquiries at the time (and many that were raised in the future) with his oft-repeated question: “What did the

5 THE NEW YORK TIMES, THE TOWER COMMISSION REPORT xiii, xviii (1987); Interview by J. Lee Annis, Jr., with Kenneth Duberstein (Oct. 26, 1992); Douglas Harbrecht & Richard Fly, *With Baker Leaving the White House, It’s Over Before It’s Over*, BUS. WK., June 27, 1988, at 41.

6 J. LEE ANNIS, JR., HOWARD BAKER: CONCILIATOR IN AN AGE OF CRISIS 52 (1995); see HOWARD H. BAKER, JR., NO MARGIN FOR ERROR: AMERICA IN THE EIGHTIES 21 (1980); ETHAN BRONNER, BATTLE FOR JUSTICE: HOW THE BORK NOMINATION SHOOK AMERICA 200 (1989).

President know and when did he know it?”⁷ In the seminal address of the Baker Center conference, James Hamilton, the Committee’s deputy majority counsel, was quick to note that the preliminary work of the Committee began in a highly charged partisan atmosphere that resulted in at least one fistfight between majority and minority Committee staffers. Yet, while there were some underlying tensions, Hamilton found that the panel conducted an exemplary congressional probe in that it spawned a bevy of reforms and provided a model of how to seek truth in a responsible, nonpartisan manner. For this, he credited the partnership of the Committee’s chairman, Sam J. Ervin, and vice chairman, Howard Baker, their obvious mutual respect for one another, and their determination to run the Committee in a nonpartisan manner. Echoing the view that Senator Ervin expounded in the first interview with him that this writer conducted for his biography of Senator Baker a generation ago, Hamilton noted that only one vote of the Committee was divided along party lines. Moreover, the motion to subpoena nine White House tapes was made not by a Democratic member of the Committee but, rather, by Baker; it had not been a Democratic staffer but, rather, a Republican staffer, Donald Sanders, who posed the question behind the scenes that revealed the existence of those tapes; and it had been chief minority counsel Fred Thompson, not counsel for the majority, who posed that question in public. Perhaps not going so far as Ervin, who once told Baker that he would “support him for President if he’d only run on the Democratic ticket,” Hamilton expressed his hope that Baker’s example in the Watergate Committee probe would influence even the most “shortsighted and reckless partisans on both sides of the aisle” to understand that the public interest was more important than any short-term political gain.⁸

7 *Presidential Campaign Activities of 1972, Watergate and Related Activities, Phase I: Watergate Investigation, Bk. 4: Hearings Before the S. Select Comm. on Presidential Campaign Activities, 93rd Cong. 1467 (1973)* (examination of John Dean by Senator Baker). During his presentation at the Baker Center conference, James Hamilton declared that he understood that Baker’s immortal line had been fed to him by chief minority counsel, Fred D. Thompson. Yet Thompson in *At That Point in Time*, his memoir of the work of the Senate panel, maintains that Baker needed little help from staff in framing his questions. Baker himself in a 1993 interview asserted that he had arrived at his line of inquiry after telling his press secretary at the time, Ron McMahan, that the panel had been “chasing rabbits” and that it needed to find the “central animal.” ANNIS, *supra* note 6, at 68 (citing Interview of Howard H. Baker, Jr., on *Capitol Notebook*, May 30, 1993); FRED D. THOMPSON, *AT THAT POINT IN TIME: THE INSIDE STORY OF THE SENATE WATERGATE COMMITTEE* 51 (1975).

8 Interview by J. Lee Annis, Jr., with Sam J. Ervin, Jr. (May 27, 1981).

WE MUST NOT BE ENEMIES:

Howard H. Baker, Jr., and the Role of Civility in Politics

Steven V. Roberts¹

During his eighteen years in the United States Senate, Howard H. Baker, Jr., was known as the “Great Conciliator.” In a capital poisoned by over-wrought and under-thought partisanship, it is hard to remember a time when “conciliator” was actually used as a compliment. If he were running for re-election to the Senate today, Baker might be challenged in the Republican primary by a hard-right rival branding him a heretic for working with Democrats. That is precisely why an examination of Baker’s career, and the premium importance he placed on civility, is so useful. He knew that compromise is not an act of betrayal, or a selling out of principles. Rather it is an essential part of public life. The United States is a vast country, reflecting a wide range of ethnic, religious, racial, geographical, and economic interests. Without civility, without a degree of tolerance for our differences, and without a decent respect for the institutions they serve and the values they share, Americans cannot govern themselves. Without civility, Washington starts to resemble Baghdad or Bosnia. The “city on a hill” becomes just another village in a valley, divided by sectarian strife and tribal rivalries. To alter slightly the lyrics of an old Paul Simon song, “Where have you gone, Howard Baker? A capital turns its lonely eyes to you . . .”²

I have spent close to fifty years as a political reporter and college professor, and there are few figures in public life I admire more than Howard Baker. He was already a two-term senator when I first started covering Congress for the *New York Times* in 1978, and three years later, when I was assigned to Capitol Hill full-time, Baker was just taking over as majority leader. He retired from the Senate after the election of 1984, but I hung around the Hill for two more years, before being transferred to the White House in early 1987. Just a few months later, Baker became President Ronald Reagan’s chief of staff, and since he brought key members of his Congressional staff with him, I went from being the worst-connected to the best-connected reporter in the place, virtually over-night. In many conversations with the senator over the years, one quality I remember most is his sense of humor (often directed at himself), and I want to share two of my favorite Baker stories that I have re-told many times.

The first occurred early in his career. One of his local supporters called in on election night and said, “Good news. You carried my county by,” say, “2,000 votes” (I don’t recall the exact figure or the county). Baker replied, “That’s great, but I was hoping for 4,000 out of your county.” The supporter paused and finally said, “Howard, I’ll call you back . . .” The second story I heard in Baker’s White House

1 Steven V. Roberts is the Shapiro Professor of Media and Public Affairs at George Washington University in Washington, D.C. His 25-year career at the *New York Times* included assignments as Congressional and White House correspondent. He is the author of five books and appears regularly as a political analyst on the ABC Radio network and National Public Radio (NPR). Hadas Gold helped do the research for this paper.

2 See PAUL SIMON, *Mrs. Robinson* on BOOKENDS (Columbia Records 1968), for the original lyrics.

office, right after Al Gore had announced his candidacy for president in 1987. "I was thinking," Baker told me, "that I should mark this day somehow. I served in the Senate with Al's father and have known this young man since he was a boy. I thought about calling Al directly but then realized, I couldn't do that on a White House phone. I thought about calling his father, but Al Sr. talked too much. So I called his mother, Pauline" (who was always known for her quick wit). "Howard," she said immediately, "I know why you're calling me. I'm the only Gore in town you can count on to keep her mouth shut."

Humor was an essential ingredient in Baker's leadership style, a point made by Trent Lott who served as Senate Republican leader in the late '90s. Introducing Baker in 1998, at a convocation honoring his career, Lott put it this way:³

There is nothing in any political science textbook that explains the unique way that he led the Senate, but those who were part of it at the time remember. They remember his cool and his patience, even under personal attack. They remember how, seemingly nonchalant, he would let a policy battle rage for days on the Senate floor, with each Senator exercising fully their right to debate. And then, when the voices calmed and the tempers died down, there would be an informal gathering in his office. After a while, I am told, the anxious staffers outside would hear laughter, probably the result of an anecdote aptly timed to break the ice and bring about a civil consensus.

When Baker took the podium that evening and described his style in his own words, humanity was as important as humor:⁴

Very often in the course of my 18 years in the Senate, and especially in the last eight years as Republican Leader and then Majority Leader, I found myself engaged in fire-breathing, passionate debate with my fellow Senators over the great issues of the times: civil rights, Vietnam, environmental protection, Watergate, the Panama Canal, tax cuts, defense spending, the Middle East, relations with the Soviet Union, and dozens more. But no sooner had the final word been spoken and the last vote taken than I would usually walk to the desk of my most recent antagonist, extend a hand of friendship, and solicit his support on the next issue for the following day. People may think we're crazy when we do that. Or perhaps they think our debates are fraudulent to begin with, if we can put our passion aside so quickly and embrace our adversaries so readily. But we aren't crazy and we aren't frauds. This ritual is as natural as breathing here in the Senate, and it is as important as anything that happens in Washington or in the country we serve, for that matter. It signifies that, as Lincoln said, "We are not enemies but friends. We must not be enemies."

3 Address by Howard H. Baker, Jr., July 14, 1998, available at http://www.senate.gov/artandhistory/history/common/generic/Leaders_Lecture_Series_Baker.htm.

4 *Id.*

Baker never treated his rivals as enemies, and he never denigrated Congress as a way of pandering to voters. Today people run for Congress by tearing down the very institution they want to join, and then they wonder why its reputation is so dismal. (In September 2011, only 13 per cent of Americans approved of the job Congress was doing, according to a survey of polling data by Real Clear Politics.⁵) Baker's deep respect for Congress flowed in part from his family heritage. His father, Howard H. Baker, Sr., served in Congress for thirteen years until his death in 1964 and in a great act of courage—and civility—refused to sign the Southern Manifesto of 1956 rejecting the Supreme Court decision in *Brown v. Board of Education*.⁶ The younger Baker's stepmother, Irene Bailey Baker, ran for the seat, finished out her late husband's term, and then retired from Congress to become director of public welfare in Knoxville, Tennessee. Baker's first wife, Joy Dirksen, was the daughter of Sen. Everett Dirksen of Illinois, and their children might well be the only Americans in our entire history to have three grandparents who served in Congress. After Joy's death in 1993, Baker married Sen. Nancy Landon Kassebaum (R. Kan.), the first woman elected to the Senate who did not succeed her husband into politics. Kassebaum, too, was a model of civility during her eighteen years in the Senate, working often with Democrats like Sen. Edward M. Kennedy of Massachusetts on health insurance legislation and foreign policy issues.

I know something about political families. My father-in-law, Hale Boggs, served in the U. S. House of Representatives with the elder Baker, and, after his death in 1972, Hale was succeeded by my mother-in-law, Lindy Boggs. Lindy's maiden name was Claiborne and her ancestor, W. C. C. Claiborne, traveled from his home in Virginia as a teenager to serve as an enrolling clerk when the early Congresses met in New York and Philadelphia. He aspired to a career in politics and planned to return to Virginia, but the clerk of the House, John J. Beckley, gave him some good advice: Go to Tennessee; it's the frontier. Claiborne followed that advice and moved to Sullivan County in Tennessee in 1794 to start a law practice. He was appointed to the state's supreme court in 1796, the year Tennessee became a state, and a year later was elected to Congress after the first House member elected from Tennessee, Andrew Jackson, resigned. When the presidential election of 1800 was thrown into the House, Claiborne helped elect Thomas Jefferson and as a reward was made governor of the Mississippi Territory in 1801. In 1812, Claiborne was elected governor of the new state of Louisiana. Claiborne County, Tennessee, is named for him.⁷ (So is my grandson, Claiborne Hill Hartman.)

This history gives me an unusual background for a political reporter. I've lived inside a political family since 1966 and, as a result, I have a special appreciation for a life dedicated to public service. John McCain used the phrase "Country First" as a campaign slogan, but Howard Baker lived by that motto, always putting the national interest above personal or partisan advantage. Two examples make this

5 See http://www.realclearpolitics.com/epolls/other/congressional_job_approval-903.html.

6 JOHN EGERTON, *SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH* 622 (1995); see 102 CONG. REC. 4459-60 (1956) (statement of Sen. George).

7 For a biographical profile of William Charles Cole Claiborne, see JAMES W. ELY, JR., & THEODORE BROWN, JR., EDS., *LEGAL PAPERS OF ANDREW JACKSON* 363 (1987).

point clearly: he helped bring a president of his own party to justice for the crimes of Watergate, and he guided the Panama Canal treaties through Congress over the steadfast opposition of Republican conservatives. And he acted with such good humor and warm humanity that he was beloved on both sides of the aisle. Here, for instance, is what Wikipedia⁸ has to say about his career:

Known in Washington, D.C. as the “Great Conciliator,” Baker is often regarded as one of the most successful senators in terms of brokering compromises, enacting legislation, and maintaining civility. A story is sometimes told of a reporter telling a senior Democratic senator that privately, a plurality of his Democratic colleagues would vote for Baker for President of the United States. The senator is reported to have replied, “You’re wrong. He’d win a majority.”

Baker employed those talents as a “conciliator” after taking the job as President Reagan’s chief of staff. I wrote a story for the *New York Times* in which Sen. Robert Byrd of West Virginia, the Democratic leader, called him an “excellent choice” who had a “good working relationship with those of us in the Senate.”⁹ A few weeks later, I wrote about Baker’s lobbying efforts to shore up the President’s veto of a highway spending bill. After he convinced Sen. Bob Packwood (R. Ore.) to reverse his vote and to sustain the veto, Packwood explained how he had done it: “Howard is not a pressure person. . . . He just said, ‘I hope you can help me,’ and that’s typical. . . . He’s a decent man trying to do a tough job under difficult circumstances. . . . And you like to help a friend if you can.”¹⁰ McCain added: “People take Baker’s word, they believe him.”¹¹ But it is also instructive to note that Baker did not last long in the job, a little over a year. He and his staff quickly realized that Reagan was a very different political animal, far more eager for confrontation with Congress than they were, and they found themselves acting against all their instincts and experience. I wrote about Baker that “he has acquired some painful bruises and disappointed some old friends in his first six months in office.”¹² Republican Sen. Bill Cohen of Massachusetts told me, “Baker was brought in to calm the waters. . . . But underneath the surface, all the currents and conflicts are still there.” A Republican strategist added, “Howard was a charmed figure on Capitol Hill. . . . But now he’s in a situation where confrontation is inevitable, so of course it’s a little uncomfortable. The first punch in the nose always hurts the worst.”¹³

I was a witness to one of those punches. Reagan nominated Robert Bork to the U. S. Supreme Court in July of 1987, and as opposition mounted on Capitol Hill, Baker tried to ease tensions with his former colleagues. But the White House

8 *Howard Baker*, WIKIPEDIA, http://en.wikipedia.org/wiki/Howard_Baker.

9 Steven V. Roberts, *President Termed Unready to Yield on Iran Arms Deal*, N.Y. TIMES, Mar. 2, 1987, at A10.

10 Steven V. Roberts, *How Baker Gets Help From His Friends in Congress*, N.Y. TIMES, Apr. 2, 1987, at A28.

11 *Id.*

12 Steven V. Roberts, *Grumbles and Moans About Baker*, N.Y. TIMES, Aug. 13, 1987, at A22.

13 *Id.*

speechwriting shop was stocked with true blue conservatives who loved Bork (and mistrusted Baker), and one day, when the president was traveling to New Jersey, the speechwriters did an end run around the chief of staff and released to the traveling press corps a red meat speech defending Bork. Team Baker was so appalled that they pulled the speech back after it was distributed and substituted a hastily-written alternative that took a much milder line. Reagan, who was an actor after all, read the conciliatory lines that were put in front of him. I wrote about what happened next:¹⁴

President Reagan acknowledged today that Judge Robert H. Bork would almost certainly not win confirmation to the Supreme Court, but he vowed to appoint a new nominee who upsets Democrats “just as much” as Judge Bork did.

The President’s off-the-cuff comment, at the end of a political speech to Republican contributors, upset a calculated strategy of conciliation toward Congress promoted by some of his aides.

These aides rewrote another Presidential speech, given here earlier in the day to the New Jersey Chamber of Commerce, to tone down Mr. Reagan’s attacks on Judge Bork’s critics. The change reflected a concern among some that if the President inflamed emotions in the Senate now, he could “poison the atmosphere” in the Capitol, as one put it, and hurt the chances of Mr. Reagan’s replacement for Judge Bork.

But Mr. Reagan allowed his feelings to show in the nearby town of Whippany this afternoon when, at the conclusion of his speech to the Republicans, a woman in the audience called out, “We want Bork, too.”

The President snapped back: “You want Bork. So do I.”

He went on to describe the confirmation process conducted by Democrats in the Senate as “a political joke.” Urged on by a cheering audience, the President added, “If I have to appoint another one, I’ll try to find one that they’ll object to just as much as they did to this one.”

Poof! In one combative comment, Reagan torpedoed all of Baker’s peacemaking efforts. The erosion of civility in Washington has many causes, and both parties must share the blame. But the bitter fight over the Bork nomination—despite Baker’s best efforts to tone it down—stands as one of the key moments in the capital’s long, steady slide into its current state of partisan acrimony and ideological rigidity. So, today, a sitting vice president feels free, on the floor of the Senate, to tell a senator from the other political party to perform a physical act that for

14 Steven V. Roberts, *Reagan Vows New Appointment As Upsetting to His Foes as Bork’s*, N.Y. TIMES, Oct.14, 1987, at A1.

most of us is impossible. A member of Congress interrupts a State of the Union address to shout at the President, “You lie!” Almost one of five Americans chooses to believe—in the face of all evidence—that President Barack Obama is a Muslim, and they do not mean that as a compliment. Republican candidates for president insist on questioning Obama’s eligibility for office and allege that he is shaped more by Kenyan values than by American values. The Speaker of the House calls proponents of the president’s health care plan “un-American.” One Democratic lawmaker accuses Republicans of wanting Americans to “die quickly,” and a party official authorizes a fund-raising letter that refers to Republican activists as “fire breathing Tea Party nut jobs.” Robert Bixby, director of the Concord Coalition, which encourages a bipartisan approach to budget issues, described the current climate this way: “Compromise is in very short supply—it just doesn’t exist. It’s 24-7 campaign mode, and the point of campaigns is not to come together. It’s to beat the other side.”¹⁵

President Obama has talked often about the “erosion of civility,” perhaps because he has been the object of so much vitriolic derision. At the National Prayer Breakfast in February, 2010, he went on at length:¹⁶

[W]e shouldn’t over-romanticize the past. But there is a sense that something is different now; that something is broken; that those of us in Washington are not serving the people as well as we should. At times, it seems like we’re unable to listen to one another; to have at once a serious and civil debate. And this erosion of civility in the public square sows division and distrust among our citizens. It poisons the well of public opinion. It leaves each side little room to negotiate with the other. It makes politics an all-or-nothing sport, where one side is either always right or always wrong when, in reality, neither side has a monopoly on truth.

I agree with the President that politics has become “an all-or-nothing sport” where only one gladiator can leave the arena alive. Washington is not heeding the Lincolnian adage that Howard Baker loved to quote: “We must not be enemies.” New members come to Congress and say, “I cannot compromise, I have my principles.” Well, there are 534 other elected representatives who also have principles, who also have voters to please and promises to keep and districts to reflect. How can this vast and diverse nation govern itself effectively if everyone stands on principle and refuses to compromise? If political rivals are viewed as infidels? The answer is a simple one. It cannot. And the “Great Conciliator” knew that truth in his bones. Today most members of Congress get up and go to work and ask one question: How can I score political points today? How can I screw the other guy and the other party? Who is asking, as Howard Baker did when he

15 William Douglas, *Is Compromise Dead in DC? Gang of Six’s Unraveling Suggests So* MIAMI HERALD, May 18, 2011, available at <http://www.miamiherald.com/2011/05/18/v-fullstory/2223280/is-compromise-dead-in-dc-gang.html>.

16 *Obama at National Prayer Breakfast: The Transcript*, WASH. POST, Feb. 4, 2010, available at <http://voices.washingtonpost.com/44/2010/02/obama-at-national-prayer-break.html>.

backed the Panama Canal Treaty, what is right for the country? Who is asking, as Nancy Kassebaum did when she worked with Ted Kennedy on health insurance reform, how can I find a partner on the other side of the aisle to work with? How can I get something done and share the credit?

Obama is certainly correct in saying we should not “over-romanticize the past.” I do not want to imply that once upon a time, there was a peaceable kingdom in Washington where Republican lions and Democratic lambs held hands on the Mall and sang “Kumbaya.” Fierce partisanship has always been part of our politics and should be. Voters want and deserve choices, and the two political parties represent different priorities and value systems. When Rep. Joe Wilson (R. S.C.) yelled, “You lie!” to President Obama during his health-care speech before a joint session of Congress in 2009, at least he didn’t hit anybody with his cane. That did happen on the floor of the Senate in 1856, when Rep. Preston Brooks of South Carolina beat Sen. Charles Sumner of Massachusetts so badly he almost killed him. But the president is also right when he says things used to be different, and they were different not so long ago.

Former Sen. Evan Bayh (D. Ind.) decided to retire after two terms and wrote an article for the *New York Times* explaining his decision. Here’s one passage that reinforces the president’s point:¹⁷

While romanticizing the Senate of yore would be a mistake, it was certainly better in my father’s time. My father, Birch Bayh, represented Indiana in the Senate from 1963 to 1981. A progressive, he nonetheless enjoyed many friendships with moderate Republicans and Southern Democrats.

One incident from his career vividly demonstrates how times have changed. In 1968, when my father was running for re-election, Everett Dirksen, the Republican leader, approached him on the Senate floor, put his arm around my dad’s shoulder, and asked what he could do to help. This is unimaginable today.

Bayh is a Democrat, but remarkably similar feelings were expressed a few months later by a Republican, Sen. Susan M. Collins of Maine, who wrote her own essay on the same theme in the *Washington Post*:¹⁸

I don’t know who first described politics as the “art of compromise,” but that maxim, to which I have always subscribed, seems woefully unfashionable today. It’s a tough time to be a moderate in the U. S. Senate. Sitting down with those on the opposite side of a debate, negotiating in good faith, attempting to reach a solution—such actions are now vilified by the hard-liners on both sides of the aisle. Too few want to achieve real solutions; too

17 Evan Bayh, *Why I’m Leaving the Senate*, N.Y. TIMES, Feb. 20, 2010, available at <http://www.nytimes.com/2010/02/21/opinion/21bayh.html>.

18 Susan M. Collins, *Why divided government would be less divisive*, WASH. POST, Oct. 10, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/08/AR2010100802663.html>.

many would rather draw sharp distinctions and score political points, even if that means neglecting the problems our country faces.

Gerald Ford also believed that “something is different now.” When my father-in-law, Hale Boggs, was the Democratic whip of the House in the 1960s, Ford, the House Republican leader, was one of his best friends. Just before he died, Ford told my wife, Cokie Roberts, that he and Hale would often get in a cab together, go downtown to the National Press Club or some other forum, and debate the issues of the day. The words were sharp, Ford said, the disagreements between them were real, but when the session was over, they’d go back to the Hill together and resume their relationship. As Baker said, Boggs and Ford were not “crazy” and were not “frauds.” Their mutual respect and affection was “as natural as breathing,” but that seldom happens today.

This is not just a question of comity or politeness (although both of those qualities are desperately needed and sorely missed.) The relationships between Boggs and Ford, Kassebaum and Kennedy, Baker and dozens of Democrats, had very real and beneficial effects on the legislative process. My favorite example is the Nunn-Lugar measure passed by Congress in 1992. Senators Sam Nunn, a Georgia Democrat, and Richard Lugar, an Indiana Republican, co-sponsored a bill providing funds for the dismantling of nuclear weapons in the former Soviet Union. There is no bigger threat to American security interests than the possibility of those devices falling into the hands of terrorists. As a result of their joint effort, to cite just a few figures, more than 7,500 nuclear warheads have been destroyed and sixty sites secured.¹⁹ Civility and cooperation are not impossible. It has happened before and it can happen again. Nunn and Lugar prove that. But, as Collins says, that sort of bipartisan cooperation today is “vilified by the hard-liners on both sides of the aisle.” In fact, Lugar faces a primary challenge from a conservative opponent in 2012, in part because he helped Obama pass the START treaty with Moscow aimed at further reducing nuclear stockpiles.

I cherish a photo taken in 2001, after Congress enacted President George W. Bush’s landmark “No Child Left Behind” legislation. The president was taking a victory lap, visiting different cities and thanking lawmakers who had helped him. Sitting next to Bush, smiling broadly and basking in his praise, was Sen. Edward M. Kennedy of Massachusetts. Like Nunn-Lugar, this was an example of Democrats and Republicans working together on a common project of national significance. A similar effort occurred in 2005, when the “Gang of 14,” seven senators from each party, stepped in and defused a showdown over judicial nominations that threatened to car bomb the Senate. “Our deal,” wrote Collins, a prime architect of the compromise, “restored trust and helped preserve the unique culture of the Senate. It showed that the two parties could come together and reach an agreement in an atmosphere of mutual respect and good faith. Oh, how times have changed.”²⁰

Yes, they have. Consider, for instance, what happened to two incumbent

19 See http://en.wikipedia.org/wiki/Nunn%E2%80%93Lugar_Cooperative_Threat_Reduction.

20 Collins, *supra* note 18.

senators, Republican Bob Bennett of Utah and Democrat Blanche Lincoln of Arkansas, in 2010. Bennett was a reliable conservative with impeccable credentials, his father had been a senator, and his grandfather and father-in-law both had served as president of the Mormon Church. But he committed an unpardonable sin in the eyes of Tea Party activists in Utah: he actually thought Democrats had heads and hearts and teamed with Sen. Ron Wyden, Democrat of Oregon, in co-authoring a health care reform bill. He also voted (along with thirty-three other Senate Republicans) for the bank bailout bill that was signed into law in 2008 by that well-known liberal, George W. Bush. In 2010, both acts of heresy were thrown in Bennett's face during the Republican state convention in Utah, which denied him re-nomination to the Senate. As a teary-eyed Bennett told the Associated Press after the vote, "The political atmosphere obviously has been toxic and it's very clear that some of the votes that I have cast have added to the toxic environment."²¹

Senator Lincoln committed a similar sin, angering orthodox liberals by opposing the idea of a public option in the health care debate by supporting President Bush's tax cuts, and by voting like a senator from Arkansas, not New York or California. Out-of-state activists and union bosses supported a primary challenge against Lincoln from Arkansas' Lt. Gov. Bill Halter. She barely survived the primary but suffered fatal wounds and lost badly in the general election. In describing her defeat, the Associated Press summed up the dilemma facing many centrists in either party today: "Conservatives said Lincoln, who won her first two Senate elections comfortably, was too close to Obama, while liberals said she wasn't loyal enough."²²

Why is Washington "broken," in the president's word? What has caused this "erosion of civility"? There are many interlocking reasons, but start with the one highlighted by the demise of Bennett and Lincoln. The parties are becoming dangerously polarized, we are approaching in America a European model, with a liberal party called the Democrats and a conservative party called the Republicans. On Capitol Hill, the center is disappearing. "Over the years," former Senate Republican leader Trent Lott recently told the *National Journal*, "there is no question that the middle in the Senate has shrunk considerably." Statistics support Lott's assertion. A massive study of voting records by Ronald Brownstein in the *Journal*²³ turned up this stunning fact: For only the second time in thirty years, since the *Journal* started keeping records, every Senate Democrat compiled a voting record that was more liberal than every Republican. Nebraska's Ben Nelson, the Senate's most conservative Democrat, finished slightly to the left of the three most progressive Republicans, George Voinovich of Ohio (who had the luxury of retiring) and the two Maine women, Susan Collins and Olympia Snowe. In other words, not a single senator posted a voting record that overlapped with the other party. Not one. Compare that record to 1982, when Howard Baker was majority

21 *Sen. Bob Bennett ousted at Utah GOP convention*, USA TODAY, May 9, 2010, available at http://www.usatoday.com/news/politics/2010-05-08-bennett-loses-utah_N.htm.

22 *John Boozman Defeats Blanche Lincoln in Arkansas Senate Race*, HUFFINGTON POST, Nov. 3, 2010, available at http://www.huffingtonpost.com/2010/11/02/john-boozman-defeats-blan_n_765862.html.

23 Ronald Brownstein, *Pulling Apart*, NAT'L J., Feb. 24, 2011.

leader: fully sixty Senators, three out of five, were in that middle ground. That year, thirty-six Democrats were more conservative than the Senate's most liberal Republican, Lowell Weicker of Connecticut, and twenty-four Republican senators voted more liberally than the most conservative Democrat in the Senate at the time, Edward Zorinsky of Nebraska. The reason is clear: the sharp decline of two distinguished traditions in American politics, conservative Southern Democrats and liberal Northern Republicans.

The Senate Democrats who voted to the right of Weicker included "New South" moderates like Sam Nunn of Georgia and David Boren of Oklahoma, old guard mossbacks like John Stennis of Mississippi and Harry Byrd of Virginia, even suburban centrists like Bill Bradley of New Jersey. The Republicans in the Senate who voted to the left of Zorinsky included such distinguished New Englanders as Bill Cohen of Maine, Warren Rudman of New Hampshire, Robert Stafford of Vermont, and John Chafee of Rhode Island. Those Southern and border state Democrats, like Blanche Lincoln, have been largely replaced by Republicans; even Richard Shelby of Alabama who was first elected as a Democrat in 1986 switched to the Republicans after 1994. The disintegration of the Republican Party in the Northeast has been even more pronounced. Senator Arlen Specter of Pennsylvania felt so uncomfortable in an increasingly conservative Republican Party that he quit, became a Democrat, and then lost the primary in 2010. Senator John Chafee's son Lincoln, who succeeded his father in the Senate in 1999, also quit the Republican Party and was elected governor of Rhode Island as an independent. Representative Mike Castle, a highly-regarded moderate during the eighteen years he represented Delaware in the House, was defeated in the Republican Senate primary in 2010 by a Tea Party favorite, Christine O'Donnell, who then lost badly in the general election.

The same pattern has changed the complexion of the House. In 1982, the *National Journal* reports, 344 congressmen occupied the middle ground between the most liberal Republican, Representative Claudine Schneider of Rhode Island, and the most conservative Democrat, Representative Larry McDonald of Georgia. By 2010, that number had shriveled to only nine, and only one of them, Republican Representative Walter Jones of North Carolina (whose father had been a Democratic congressman) remained in office at the beginning of 2011. Many Blue-Dog Democrats, moderates who counterbalanced the liberal leadership of former Speaker Nancy Pelosi, either retired or were defeated. As the *New York Times* reported after the 2010 election, "Southern white Democrats in Congress have become as rare as a Dixie blizzard."²⁴ Vic Fazio, a former member of the Democratic House leadership, described the trend this way: "The two parties increasingly are at polar opposites."²⁵

As a result, few lawmakers are left in either chamber to do the deals, to do the hard but essential legislative work that Susan Collins described as "[s]itting

24 Campbell Robertson, *White Democrats Lose More Ground in South*, N.Y. TIMES, Nov. 6, 2010, available at <http://www.nytimes.com/2010/11/07/us/07south.html>.

25 Brownstein, *supra* note 23.

down with those on the opposite side of an issue, . . . negotiating in good faith, and attempting to reach a solution.”²⁶ What is maddening to many is that this extreme polarization in Congress does not represent the American people, who are far more centrist than their representatives. In the 2008 election, only twenty-two per cent of voters called themselves liberals and thirty-four per cent identified as conservatives. By far the largest group, forty-four per cent, was self-described moderates.²⁷ Matthew Bennett, the head of Third Way, a centrist Democratic group, looks at those numbers and says that moderates “are the most underrepresented category of voters at the moment.”²⁸ Jim Leach, a former Republican congressman from Iowa, made a similar point in a speech at St. Ambrose University in September 2010.²⁹ “Today, the great under-represented group is the American center,” he said. “What is happening in Washington today is that people have no reason to compromise. It is bizarre, the harshness of feeling out there.”³⁰

The second reason for the decline of civility is linked to the first: congressional redistricting. Yes, we saw a lot of seats change hands in 2010, and that’s healthy, but that was a huge wave election. In normal years, incumbents are almost entirely insulated from any serious challenge. Using high-powered computers, politicians draw district lines with such precision that most seats are entirely safe for one party or the other. This perverts the essential nature of the House of Representatives. By mandating the members to run every two years, the Founders wanted one chamber of Congress to be directly accountable to the voting public. But if you don’t have to listen to the voters who disagree with you, if you are at no risk of losing, that accountability is lost. In fact, for many lawmakers—House members and senators alike—their biggest threat often comes in the primary, from a rival who thinks the incumbent is not doctrinaire enough. “There is more of a demand in each party for a degree of purity or inflexibility that was not there before,” says John Danforth, a former Republican senator from Missouri. “You really need to toe the line. . . . That affects people’s thinking—both Democrats and Republicans.”³¹

It surely does affect their thinking. Lawmakers look at what happened to Bennett and Lincoln and become more fearful of straying from the party line and reaching across the aisle. One case study in intimidation is illustrative. John McCain once posted the thirty-ninth most conservative voting record in the Senate. He joined with Democrat Russ Feingold of Wisconsin in reforming the federal

26 Susan M. Collins, “Governing Across the Divide,” Remarks delivered by Sen. Susan M. Collins at the 2010 Ignatius Program, Washington, D.C., Oct. 11, 2010, available at http://collins.senate.gov/public/continue.cfm?FuseAction=PressRoom.Articles&ContentRecord_id=9d6a1cce-802a-23ad-4f0d-f409fcb5ec1&Region_id=&Issue_id=.

27 CNN National Exit Poll / President/ Vote by Ideology, Nov. 4, 2008, available at <http://www.cnn.com/ELECTION/2008/results/polls/#val=USP00p1>.

28 Brownstein, *supra* note 23.

29 Kurt Allemeier, *Leach Bemoans Loss of Civility in Politics*, QUAD CITY TIMES, Sept. 25, 2010, available at http://qctimes.com/news/local/government-and-politics/article_01585c8a-c85c-11df-8dad-001cc4c03286.html.

30 *Id.*

31 Brownstein, *supra* note 23.

campaign finance laws and formed a strong working relationship with Senator Hillary Clinton of New York on foreign policy matters. But as he ran for re-election in 2010, McCain faced a strong challenge from a conservative opponent, former Congressman J. D. Hayworth, and his voting habits veered sharply to the right. As a result, in the last Congress, McCain tied for the most conservative voting record among all Republican senators.³² And while McCain survived the Hayworth challenge, it is hard to imagine that he will return to the role of bipartisan dealmaker that he played for so long.

The third factor in the decline of civility in the Senate is the breakdown of an old custom, the refusal of lawmakers to campaign against their colleagues. Ev Dirksen throwing his arm around Birch Bayh reflected a much deeper point about the nature of the Senate. Personal relationships, of the kind that Baker cultivated so assiduously and successfully, are the threads that tie the institution together. When lawmakers campaign directly against each other, those relationships fray and fragment. Susan Collins made that precise point in her *Washington Post* essay:³³

When I was a freshman senator in 1997, Sen. John Chafee of Rhode Island, as fine a gentleman as has ever graced the Senate chamber, advised me never to campaign against those with whom I served. The Senate is too small a place for that, he counseled. Campaign for your fellow Republicans and go to states with open seats but do not campaign against your Democratic colleagues. It will poison your relationship with them.

Back then, most senators followed the “Chafee rule,” but that soon changed. Now many enthusiastically campaign against their colleagues across the aisle. . . .

This year’s elections have shown just how far the destruction of collegiality has progressed, with some lawmakers campaigning against senators in their own caucus by endorsing their primary opponents. Such personal campaign attacks have detrimental effects that last long after Election Day.

A fourth factor is both a cause and symptom of diminishing civility. Leaders in both parties, and both chambers, increasingly use autocratic tactics to suffocate the voice of the minority. As a result, resentment increases, trust decreases, and the gulf between the parties grows wider. In the House, most bills are brought to the floor under “closed rules” that preclude amendments. In the Senate, a particularly pernicious practice called “filling up the amendment tree” has the same effect.³⁴

32 *Id.*

33 Collins, *supra* note 18.

34 The amendment trees have developed over decades of practice in the Senate as a way of visualizing certain principles of precedence that govern the offering of, and voting on, amendments in that chamber. These principles of precedence are reflected in four charts published in *Riddick’s Senate Procedure*, the official compilation of Senate precedents. The four *Riddick* charts depict the maximum number and type of amendments that may be offered to a bill and simultaneously pending under various circumstances during its consideration. Which of the four charts will be applicable at a given point during consideration of a measure is dictated by the form of the first amendment that is offered. . . .

Aggrieved minorities then resort to other tactics in retaliation. In the Senate, the practice of secret “holds” allows a single member to bury bills and nominations without any public accountability.³⁵ And the filibuster has become a routine part of Senate life, requiring the majority to get sixty votes for any measure of consequence.³⁶ According to one study, the number of filibusters mounted during the last Congress exceeded the number employed during the fifty years between World War I and the moon landing.³⁷ Collins describes the dynamic at work today:³⁸

During the past two years the minority party has been increasingly shut out of the discussion, even in the Senate which used to pride itself on being a bastion of free and open debate. Procedural tactics are routinely used to prevent Republican amendments. That causes Republicans to overuse the filibuster, because our only option is to stop a bill to which we cannot offer amendments.

[T]he same principles of precedence are often depicted in four line diagrams whose component parts resemble the trunk of a tree (representing the legislative measure being considered) with limbs (representing the various possible amendments to the measure) growing out from the trunk. These diagrams are widely and colloquially referred to as “amendment trees.”

An amendment tree may be said to be “filled” when all of the possible amendments permitted by these principles of precedence have been offered and are pending. . . .

When an amendment tree is filled, the amendment process is, in effect, frozen—no additional floor amendments may be offered to the measure until action is taken to dispose of one or more of the amendments that are already pending.

Congressional Research Service (CRS) Memorandum on Measures on Which Opportunities for Floor Amendment Were Limited by the Senate Majority Leader or His Designee Filling or Partially Filling the Amendment Tree: 1985-2010, Mar. 18, 2010, reprinted in *Hearings on the Filibuster Before the Committee on Rules and Administration of the United States Senate*, 111th Cong., 2d Sess. 223-224 (2010); see also Elizabeth Rybicki, *Filling the Amendment Tree in the Senate*, available at www.apsanet.org/~lss/Newsletter/jan2010/Rybick.pdf.

35 A “hold” is simply “a request by a Senator to his or her party leader to delay floor action on a measure or matter. It is up to the majority leader to decide whether, or for how long, he will honor a colleague’s hold.” Walter J. Oleszek, “‘Holds’ in the Senate,” CRS Report No. 98-712 at ii (2008). Holds are “a potent blocking device because they are linked to the Senate’s tradition of extended debate and unanimous consent agreements,” and because a hold requires no public utterance by any member of the Senate, they are sometimes referred to as a “silent filibuster” *Id.* at 1.

36 The filibuster has been described as “one of the Senate’s most characteristic procedural features.” Richard S. Beth et al., “Filibusters and Cloture in the Senate,” CRS Report No. RL30360 at i (Feb. 22, 2011). Filibustering includes

any use of dilatory or obstructive tactics to block a measure by preventing it from coming to a vote. The possibility of filibusters exists because Senate rules place few limits on Senators’ rights and opportunities in the legislative process. In particular, a Senator who seeks recognition usually has a right to the floor if no other Senator is speaking, and then may speak for as long as he or she wishes. Also, there is no motion by which a simple majority of the Senate can stop a debate and allow the Senate to vote in favor of an amendment, a bill or resolution, or any other debatable question. . . . Senate Rule XXII, however, known as the ‘cloture rule,’ enables Senators to end a filibuster on any debatable matter the Senate is considering. Sixteen Senators initiate this process by presenting a motion to end the debate. . . . [F]or most matters, it requires the votes of at least three-fifths of all Senators (normally 60 votes) to invoke cloture.”

Id.

37 *Record Use of the Filibuster*, POL. WIRE, Mar. 1, 2010, http://politicalwire.com/archives/2010/03/01/record_use_of_the_filibuster.html.

38 Collins, *supra* note 18.

Collins is right but only up to a point. Heavy-handed tactics by the Democratic leadership are not the only reason that use of the filibuster has exploded. As I say, procedural warfare is both a symptom and a cause of incivility. The underlying problem is the one identified by former Sen. Danforth when he decried the “degree of purity or inflexibility” demanded by both parties and their leaders. In this climate, each battle becomes a jihad, a Holy War, and it is that sense of self-righteousness which justifies the use of procedural tactics that throttle the opposition. Most days on Capitol Hill, few if any members are listening to President Obama’s warning that “neither side has a monopoly on truth.” As a result Congress, at its worst, can resemble the Middle East, where the great curse is memory. Everyone has a grievance, everyone has a grudge, everyone has martyrs to revere and myths to recite, and everyone blames the other side for starting the cycle of mistrust and reprisal.

There is a fifth reason for the decline of civility that does not get enough attention: the increasing unwillingness of lawmakers to bring their families to Washington. There are many causes for this trend. For instance, many congressional spouses now have careers back home, air travel is easier and subsidized by Congress and Washington real estate is expensive. But there is also the view, propounded mainly by conservatives, that Washington is an inherently evil and corrupting place, Gomorrah-on-the-Potomac, filled with special interests and influence peddlers and all manner of demons and dragons. We saw this attitude on display during the midterm elections of 2010, when practically every candidate in both parties—even the incumbents—was running against the capital. So, once they win their seats in Congress, many lawmakers don’t want to move their families to Washington. And even if they do, they’re trapped by their own over-heated rhetoric. How do you tell the folks back home that you actually want to live in Gomorrah and raise your kids there?

Ellen McCarthy grew up in Washington, the daughter of the late Sen. Eugene McCarthy of Minnesota. As a senior staff member of the House Administration Committee, her job is to brief new legislators on life in the capital. She always urges them to move their families to town, but most now spurn her advice. In an interview that I did with her in 2009 for *Bethesda Magazine*,³⁹ McCarthy said that this trend does “terrible things in terms of the fabric of Congress.” Most members race back home every weekend and, therefore, “don’t spend any time with each other, they don’t get to know each other as people, and I think that’s a loss to the country.”

She’s right, it is a huge loss. If, on the weekend, you stand next to a congressional colleague on a soccer field or sit next to him or her in church, are you less likely to vilify that colleague on the floor of Congress during the week? The answer is clearly yes. Evan Bayh emphasized this point in the farewell column that he wrote for the *New York Times*:⁴⁰

When I was a boy, members of congress from both parties, along with their families, would routinely visit our home for dinner or the holidays. This

39 Steven V. Roberts, *Second Home*, BETHESDA MAG., Jan.-Feb. 2009, available at <http://www.bethesdamagazine.com/Bethesda-Magazine/January-February-2009/Second-Home/>.

40 Bayh, *supra* note 17.

type of social interaction hardly ever happens today and we are the poorer for it. It is much harder to demonize someone when you know his family or have visited his home.

In 2010, more than 130 former members of Congress from both parties issued a statement decrying the loss of civility on Capitol Hill. “Congress appears gripped by zero-sum game partisanship,” they wrote. “The goal often seems to be more to devastate the other side (the enemy, no longer the honorable adversary) than to find common ground to solve problems, much less to have a spirited but civil debate about how to do so.”⁴¹ A leader of that effort, former Rep. Dave Skaggs of Colorado, told NPR that shifting living patterns were a major cause of rising animosity among lawmakers. “Over the last 30 years or so, . . . the practice of a new member of Congress moving his or her family to Washington has really gone away,” he said. “When a member from one side of the aisle and another encountered each other with their young children in their arms—suddenly that became the commonality and the basis for getting along, and other things kind of became secondary, as they ought to be.”⁴²

When my wife, Cokie, was growing up in Bethesda, in the house we still live in, one of her best friends was Libby Miller, the daughter of the late Rep. Bill Miller (R. N.Y.), who ran for vice president with Barry Goldwater in 1964. Cokie’s dad was a Louisiana Democrat, Libby’s a New York Republican, but because the families lived near each other and sent their daughters to the same school, they got to know and like each other. The Boggs’ next door neighbors were Ab and Sylvia Hermann, both prominent Republican officials. But my father-in-law and Ab were great pals, they would walk through the neighborhood on warm nights and share a convivial beverage or two, and that relationship would never have been possible if Hale had kept his family back in New Orleans. The Hermanns’ daughter, Jo Ann Emerson, is now a Republican member of Congress from Missouri, and, like Evan Bayh, she mourns the loss of relationships that only develop when political families live in Washington. “There was so much more closeness among all members of Congress,” she told me. “We did things socially, you hardly see any more of that anymore.”⁴³

I cannot exempt my own profession. The news media are partners in this process, the sixth reason for the decline in civility. One of the great powers we have is who we give our microphones to, who we take seriously as sources and analysts. And all too often, we amplify the loudest, shrillest, most sensational voices around. We relish outsized personalities and colorful conflict and, therefore, increase the incentives for people to say outlandish things, because that’s the way they get noticed—and invited back. There’s no better example than Donald Trump, who was always a reality TV star playing a presidential candidate. Against all evidence to the contrary, Trump kept questioning whether Barack Obama had actually been

41 Charles Pope, *More than 130 retired lawmakers urge a return to civility in politics*, OREGONIAN, Oct. 4, 2010, available at http://www.oregonlive.com/politics/index.ssf/2010/10/more_than_130_retired_lawmaker.html.

42 *All Things Considered: Civility War: Ex-Congressmen Ask Peers to Play Nice*, (NPR broadcast, Oct. 10, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=130472194>.

43 Roberts, *supra* note 39.

born in the United States. For weeks he got so much media attention that he shot to the top of public opinion polls measuring possible Republican candidates for president. And the White House, in exasperation, released Obama's official birth certificate from Hawaii.

Trump's candidacy was always a sham, a public-relations stunt that was designed to raise his visibility and boost audiences for his television program. But the media went along because Trump produced eyeballs—for television programs and internet searches. And eyeballs translate into advertising revenues. Google has developed a metric for measuring how often users search for specific terms, and in a month-long period from mid-April to mid-May of 2011, Trump averaged thirty-seven in popularity on a scale of one to one hundred. By comparison, Sarah Palin was at eleven during the same period and Mitt Romney at three.⁴⁴ As Robert Lichter, director of the Center for Media and Public Affairs at George Mason University told *USA Today*, referring to Trump, "He's good copy. . . . There's an unspoken collusion between journalists who are happy to have someone like this to sell papers and increase clicks and Trump [who is] happy to raise his image, which he leverages to make more money."⁴⁵ Trump's prominence in news coverage came as no surprise to anyone who followed the 2010 elections. According to the Project on Excellence in Journalism, the Republican candidate who received—by far—the most press attention was Christine O'Donnell, the Republican nominee for the Senate in Delaware.⁴⁶ O'Donnell wound up losing badly in November, but she generated as much attention as Trump did and for the same reason: she said outrageous things and thus attracted eyeballs to television outlets and Web sites. In particular, she ran a commercial that began, "I am not a witch," aimed at deflecting a previous admission that she had "dabbled into witchcraft" as a younger woman.⁴⁷ At a time when enormous issues were facing the country—a slumping economy, rising health-care costs, two foreign wars—it is an astounding indictment of the news media that they lavished so much attention on such a sideshow.

It's actually worse than that. The television shows (particularly those that air on cable) and Web sites don't just focus on colorful but irrelevant characters like Trump and O'Donnell; they exaggerate conflict and over-simplify issues because they think that's what the public wants. Entertainment values often eclipse news judgment. Hosts like Bill O'Reilly on the right and Chris Matthews on the left are more showmen than they are serious analysts; they have more in common with Jay Leno than they do with Jim Lehrer. And according to the former members of Congress who issued the statement in 2010 on the subject, these shows contribute heavily to the deterioration of civil discourse. "The divisive and mean-spirited

44 Catalina Camia, *Is Donald Trump the first Google trends candidate?* USA TODAY, Apr. 20, 2011, available at <http://content.usatoday.com/communities/onpolitics/post/2011/04/donald-trump-presidential-race-google-trends-seo/1>.

45 *Id.*

46 PEW RESEARCH CENTER, PROJECT FOR EXCELLENCE IN JOURNALISM, THE MIDTERMS' MEDIA MAINSTAYS, http://www.journalism.org/numbers_report/midterms%E2%80%9999_media_mainstays.

47 DAN FARBER, CHRISTINE O'DONNELL TV AD: "IM NOT A WITCH . . . I'M YOU," CBS News Political HotSheet, Oct. 4, 2010, http://www.cbsnews.com/8301-503544_162-20018526-503544.html.

way debate often occurs inside Congress is encouraged and repeated outside: on cable news shows, in blogs and in rallies," they wrote. "Members who far exceed the bounds of normal and respectful discourse are not viewed with shame but are lionized, treated as celebrities, rewarded with cable television appearances, and enlisted as magnets for campaign fund-raisers."⁴⁸

I know what they are talking about first-hand. I used to do a lot of television interviews but grew increasingly uneasy with the whole scene. Bookers would call me and say, "We're thinking of doing a show on [fill in the topic]. What side are you on?" If you said, as I did, that I was an analyst and had no side, they could not get off the phone fast enough. Dr. Richard Land, a leading voice among evangelical Christians, recently told me the story of being called by a producer on the eve of a visit to the United States by the Pope. Asked his view of the Holy Father, Land said that Pope Benedict XVI was a man of great spirituality who he admired greatly. Sorry, the producer responded, we're looking for someone who will say the Pope is the head of a "false religion." Land was appalled but not surprised when the producer finally did find someone who would make that statement on the air. Never mind that the guest reflected a tiny minority view among evangelical Christians. His inflammatory words made "good TV," and that's what the producer wanted.

In my view, many of these cable shows have become the political equivalent of pro wrestling matches. The world is divided into good guys and bad guys, and the staged fights are exaggerated for effect. Some of the cable hosts might as well put on capes and masks and drop the pretense that they're doing or saying anything that is remotely serious. But they are having an impact on the loss of civility and the coarsening way in which Americans talk about politics. During the 2010 campaign, for instance, I was addressing a luncheon hosted by a local radio station, and a beefy character grabbed the microphone and challenged me to say one good thing about Obama's health care plan. I replied that I was an analyst, not a partisan or defender of the plan, but that one argument made sense to me. Sick people would seek medical care, and if they lacked insurance, they would go to emergency rooms, the most expensive form of care. Since we taxpayers would ultimately get stuck with the bill for such emergency-room visits, it was in our "national interest" to provide health insurance for those people and thus reduce the financial drain that they place on the system. "The national interest?" my questioner shot back. "That sounds like fascism." Fascism? Talk about a loss of civility. But I knew where he had learned that language. He had heard it countless times from Glenn Beck and other talk show hosts who toss around incendiary words for one simple reason: to keep their audiences stirred up and tuned in.

The seventh and final reason for the loss of civility is the growth of outside interest groups. Often in collaboration with aggressive and highly-partisan Web sites, these groups have become the guardians and enforcers of the "purity [and] inflexibility" that John Danforth warned about. The case of Blanche Lincoln that I mentioned earlier is a perfect example of how this works. Liberal blogger Jane Hamsher, the founder of FireDogLake, went on the Rachel Maddow Show on MSNBC, a platform for left-wing propaganda, and threatened Lincoln with a

48 Pope, *supra* note 41.

primary fight.⁴⁹ Hamsher called Lincoln a “corporationist” who was “committed... to whatever the insurance industry wanted that day” and insisted that “people on both sides of the aisle were sick of Lincoln’s cozy relationship with banks, insurance, drug companies and agribusiness.” Hamsher then joined forces with Glenn Greenwald, a columnist at Slate.com, to form Accountability Now, a PAC devoted to purging Democrats who strayed from an orthodox liberal line. And they made Lincoln their first target. Anti-Lincoln forces garnered help from many sources: left-leaning Web sites like the Huffington Post and Daily Kos, activists like the Progressive Change Campaign Committee, and unions that poured \$10 million into the campaign of Lincoln’s challenger, Bill Halter. The senator fought back, saying her positions would not “be dictated by pressure from my political opponents, nor the liberal interest groups from outside Arkansas that threaten me with their money and their political opposition; the multitudes of e-mails and ads we have received, unbelievable types of threats about what they are going to do and how they are going to behave.”⁵⁰ She failed. She won the primary against Halter, but the battle left her broke and exhausted, and she lost in November to John Boozman, a strong Republican conservative. The result: one less centrist in the Senate, one fewer lawmaker willing to cross party lines, one more hardliner who only adds to the polarization of that body.

If anything, Republican interest groups are even more adamant in purging anyone who dares to deviate from party orthodoxy. In the spring of 2011, their prime targets were two Republican senators who had joined the “Gang of Six” to negotiate with Democrats over a massive deficit-reduction package. One key player was Grover Norquist, the president of Americans for Tax Reform, who insists that any Republican even mentioning new revenue should be burned at the political stake. In an interview with National Review Online, a popular outlet for conservative views, he attacked Sen. Tom Coburn of Oklahoma for simply talking to the Democrats. “Coburn is negotiating with President Obama’s best friend in the Senate, Dick Durbin,” Norquist fulminated. “They are playing Coburn like a Stradivarius. Durbin is walking him down into the alley where he is going to get mugged.”⁵¹ One can only imagine what Howard Baker would think of such language, but it worked. Coburn eventually left the negotiations, and with him went virtually the last hope for a bipartisan solution to the debt crisis. Sen. Saxby Chambliss of Georgia, the Republican leader of the Gang of Six, faced similar pressure from the right to abandon his attempts at bipartisanship. Erick Erickson, a radio host in Chambliss’ home state, posted a column on his blog, RedState.com, saying, “There Is Time to Take Out Saxby Chambliss.” Erickson explained to the *Washington Post*, “I get calls on my show on a daily basis that he’s stabbing us in the

49 JANE HAMSHER, HOW BLANCHE LINCOLN TEMPTED FATE—AND LOST, HUFFINGTON POST, May 19, 2010, http://www.huffingtonpost.com/jane-hamsher/how-blanche-lincoln-tempt_b_581820.html.

50 JANE HAMSHER, THANKS, BLANCHE LINCOLN!, FDL ACTION, Dec. 9, 2009, <http://fdlaction.firedoglake.com/2009/12/09/thanks-blanche-lincoln/>.

51 ROBERT COSTA, NORQUIST TO COBURN: DROP OUT, NAT’L REV. ONLINE, Apr. 21, 2011, <http://www.nationalreview.com/corner/265416/norquist-coburn-drop-out-robert-costa>.

back—that he’s being Mr. Centrist instead of the conservative he says he is.”⁵² In the world of hyperventilating ideologues like Erickson and Hamsher, “Mr. Centrist” is probably the worst thing you can call anybody. Talking across party lines is the equivalent of “stabbing us in the back.”

At a press conference after the midterm elections, President Obama raised the possibility that divided government could actually enhance civility and bipartisan cooperation:⁵³

No one party will be able to dictate where we go from here. We must find common ground in order to make progress on some uncommonly difficult challenges. . . . I do believe there is hope for civility. I do believe that there is hope for progress and that’s because I believe in the resiliency of a nation that has bounced back from much worse than what it is going through right now.

The American people share the president’s hope. In a study commissioned by the Center for Political Participation at Allegheny College in 2010, more than two-thirds of the study’s participants who were asked, “Which of the following best describes your view of the recent debate over health-care reform?” responded by saying that “Americans should be ashamed,” rather than proud, “of the way our elected officials dealt with the issue.”⁵⁴ More than three out of four respondents (77%) “somewhat” or “strongly” agreed with the statement, “Right now, Washington is broken.”⁵⁵ Daniel Shea, the director of the center, told *USA Today*: “Americans believe in civility . . . and in compromise; they believe in middle-ground solutions.”⁵⁶ Yes, they do. But it is hard to share the President’s optimism. The forces polluting the air over Washington are stronger than the forces trying to clean it up. If any leader, in either party, is serious about restoring a sense of civility to our public life, however, the role model for doing so is right there in front of them. It is there in the life and work of Howard H. Baker, Jr., of Tennessee.

52 Philip Rucker & Lori Montgomery, ‘Gang of Six’ on Verge of Collapse as Republican Sen. Coburn Withdraws, *WASH. POST*, May 17, 2011.

53 SAM STEIN, OBAMA DOUBLES DOWN ON ‘CIVILITY’ IN SOMBER POST-ELECTION REMARKS, *HUFFINGTON POST*, Nov. 3, 2010, http://www.huffingtonpost.com/2010/11/03/obama-doubles-down-on-civ_n_778380.html.

54 CENTER FOR POLITICAL PARTICIPATION, ALLEGHENY COLLEGE, NASTINESS, NAME-CALLING & NEGATIVITY: THE ALLEGHENY COLLEGE SURVEY OF CIVILITY AND COMPROMISE IN AMERICAN POLITICS 15, 41 (2010), available at <http://sitesmedia.s3.amazonaws.com/cpp/files/2010/04/AlleghenyCollegeCivilityReport20102.pdf>.

55 *Id.* at 23, 42.

56 Susan Page, *USA fed up with political incivility*, *USA TODAY*, Apr. 22, 2010, available at http://www.usatoday.com/news/washington/2010-04-21-civility-poll_N.htm.

HOWARD BAKER'S LEADERSHIP IN THE U.S. SENATE: *Lessons in Persuasion, Civility, and Success*

Wendy J. Schiller¹

Watching the U.S. Senate in recent years has been frequently frustrating. It seems as though the 21st-century Senate has succumbed to unprecedented partisan warfare, gridlock, and bickering. The leaders of the opposing parties in the Senate do not work together, and strong party organizations on both sides of the aisle stand as guards against any real hints of bipartisan cooperation. The days when senators could just come to the floor and offer amendments are fast disappearing because the majority leader has learned to manipulate his privileges to the point of prohibiting amendments to most major legislation.² Senate floor debates are designed for YouTube and summarized in 140 characters on Twitter. The job of both party leaders in the Senate has become far more about message management and far less about legislative productivity. The extent of obstruction by all members on any given bill has reached a point where senators are actually discussing the imposition of a limit on the right to filibuster.

If one stands back a bit and reexamines history, however, one sees that the Senate has always been plagued by partisanship and unruly members who want to go their own way. The job of a party leader—minority or majority—was to forge agreement either for or against legislation. That much has not changed, but the goalpost for agreement seems to have been moved literally off the playing field. Has the Senate really ceased to function, or is its current state of affairs due more to the decline of leadership itself? I will argue that it is the latter and that if Americans want real change in the Senate, they need to look at the examples set by former Senate leaders, especially that of Senator Howard H. Baker (R. Tenn.). To start, I begin with a discussion of the rules of the Senate.

LEGISLATIVE STRATEGY: THE RULES OF THE GAME IN THE SENATE

Unlike the House of Representatives, where the procedural design of the institution has evolved to give the majority party control over individual members and the minority party, the Senate grants each senator the right to speak on the chamber floor.³ Consequently, the Senate often operates as a mutual consent institution. Senate leaders rely on unanimous consent agreements to structure floor action on legislation; the leader has to make deals with individual senators and

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2 See Steven S. Smith, *The Senate Syndrome*, in THE BROOKINGS INSTITUTION, ISSUES IN GOVERNANCE, No. 35 (2010).

3 WALTER J. OLESZEK, CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS 26-34 (8th ed. 2011).

constantly weigh the cost of such arrangements against the cost of cooperation.⁴ Given the rules of the Senate, however, any senator can violate such an informal agreement at any time. There are few, if any, guarantees that the majority leader can provide to one senator that every other senator will give up the same amount of power over a particular policy. Since every senator can conceivably “defect” on any given bill, Senate leaders face a continuous collective action problem. Individual senators look to party leadership to solve the ever-present collective action problems in the Senate and, for that purpose, will endure actions on the part of leadership that limit senators’ own individual rights on the floor. The end result is that there are circumstances under which senators will settle for suboptimal policy outcomes in order for the collective group to accomplish a particular goal.

The use of procedure by leadership varies with individual senators and with the conditions under which they operate. In other words, entirely apart from their individual styles, leaders have more or less of an opportunity to be informal depending on certain conditions. When leaders are in power with a president of their own party, and there is general agreement within their party on policy, then we should not see the use of restrictive floor procedures. When leaders are in power with a same-party president and there is discord within the party, we should see leaders resort to restrictive floor procedures to advance the president’s agenda and more importantly, to demonstrate the capacity to govern as a majority party in the Senate. The Democrats’ use of the reconciliation procedure to pass health-care reform in the 111th Congress serves as a recent illustration of how to use procedure to advance policy. The degree to which party leaders will feel pressured to advance their president’s agenda is likely to vary with the overall perceived popularity of that president. When party leaders work with a president of the opposing party, there is less incentive to impose restrictions on senators in their party. In this scenario, opposition senators are more likely, *ceteris paribus*, to be united against a president who differs on policy matters.

Party leaders do have unique floor powers, however, that enable them to run the business of the Senate. The majority leader is recognized first, before all other senators; he has the right to bring a bill to the Senate floor; and he has the right to adjourn, recess, and open the Senate.⁵ Senate majority leaders are granted these special privileges in order to allow them to control and expedite Senate business. But they can also manipulate these privileges to structure the debate on a bill to the point where they can limit the individual powers of senators to amend and debate the bill. Resorting to such a tactic can be risky in terms of future cooperation from senators. A leader who frequently infringes on individual rights may subsequently face senators who retaliate by refusing to grant consent to pending business on the floor.

4 *Id.* at 21; Scott Ainsworth & Marcus Flathman, *Unanimous Consent Agreements as Leadership Tools*, 20 LEGIS. STUD. Q. 177–95 (1995).

5 FLOYD M. RIDDICK & ALAN S. FRUMIN, *SENATE PROCEDURE 1091-97* (1992).

**LEADERSHIP ENHANCEMENTS:
THE EVOLUTION OF THE SENATE MAJORITY LEADER'S
FLOOR POWERS**

The practice of granting first recognition to the majority party leader is not a written rule in the Senate but rather stems from the interpretation of Rule XIX, which governs Senate debate. Senate Rule XIX(1)(a) provides, "When a Senator desires to speak, he shall rise and address the Presiding Officer, and shall not proceed until he is recognized, and the Presiding Officer shall recognize the Senator who shall first address him."⁶ As Gerald Gamm and Steven Smith explain, the practice of first recognition was the culmination of tendencies to consolidate responsibility for managing the Senate, initially in the hands of a president pro tempore, who acted as chair, and then in the hands of party leaders.⁷ Until the late 1930's, the question of managing the Senate and floor recognition did not emerge as a particularly contentious issue because Rule XIX was generally observed, and first recognition of party leaders was used primarily in the morning and the evening to open and recess or adjourn the Senate.

As the 1930's ended, however, senators became increasingly embroiled in disputes over speaking rights on the floor and recognition practices. This was particularly evident in the debates surrounding the anti-lynching bill in 1937.⁸ On August 11 of that year, after some attempts to attach the bill as an amendment to other legislation, Senator Robert F. Wagner (D. N.Y.) moved to proceed to the bill, despite the fact that the majority leader had already announced an ordered list of senators who were scheduled to be recognized in order to bring up legislation. At that time, the Senate operated under the custom whereby senators who wished to speak made their desires known to their respective party leaders, each of whom kept a list and allocated time in advance. The list was given to the presiding officer, who was expected to follow it. Organizing floor time in this manner allowed senators to conduct other business, outside the chamber, and even outside the Senate, while retaining a guarantee of floor time. When Majority Leader Alben W. Barkley (D. Ky.) pointed out that the time of the Senate had already been allocated, the chair (Vice President John Nance Garner) responded that despite the existence of a prearranged speaking list:

the Chair looked around and tried to find either one of the Senators referred to standing. None was standing, but the Senator from New York [Mr. WAGNER] was on his feet and demanding recognition. That is the reason why the Chair could not recognize any other Senator.

....

6 S. RULE XIX(1)(a); see U.S. SENATE RULES COMMITTEE, *SENATE MANUAL: CONTAINING THE STANDING RULES, ORDERS, LAWS & RESOLUTIONS AFFECTING THE BUSINESS OF THE UNITED STATES SENATE*, 106th Cong., S. Doc. No. 106-1, at 18 (1988).

7 Gerald Gamm & Steven S. Smith. *Last Among Equals: The Presiding Officer and the Struggle for Order in the 19th Century Senate*. Paper presented at the Conference on Civility and Deliberation in the Senate, Washington D.C., 1999.

8 See 81 CONG. REC., 8,694-97, 8,839 (1937).

The Chair wants not only the Senator from Kentucky but the entire membership of the Senate to understand that it is the duty of the Chair, as he understands it in this body, differing from what it is in the other body, to recognize the Senator who is addressing the Chair. When three Senators are on their feet demanding recognition, the Chair has the privilege of choosing the one to recognize; but when only one Senator is standing and demanding recognition, the Chair has no choice.⁹

Just two days later, the chair (again, Vice President Garner) went further in his clarification of the practice of recognition by making it clear that when any number of senators were seeking recognition, it would be the decision of the chair to recognize the majority and minority leaders prior to recognizing any other senator. Moreover, the chair would pay heed to a recommendation by the majority leader to recognize specific senators who were seeking time on the floor. Although the chair retained the right to recognize senators, he acknowledged that deference might be paid to a floor leader in making the choice to recognize a specific senator. Vice President Garner stated his reasoning as follows:

The Chair recognized the Senator from Kentucky because he is the leader of the Democratic side of the Chamber. He would recognize the Senator from Vermont [Mr. AUSTIN], acting Republican leader, in the same way. When the Senator from Kentucky yielded to the Senator from Nevada, the Senator from Nevada was on his feet. Had the Senator from Kentucky informed the Chair that he wanted the Senator from Nevada to be recognized, as he was on his feet, the Chair would have recognized him. So the procedure is the same. The Chair would have recognized the Senator from Nevada [Mr. McCARRAN] because the Senator from Kentucky had suggested to the Chair that he would like to have the Senator from Nevada recognized, and that Senator being on his feet and other Senators on their feet the Chair would have recognized the Senator from Nevada. So the result is about the same.

...

... The Senator from Wisconsin is absolutely correct that the Senator from Kentucky cannot farm out his time. However, the Chair would have recognized the Senator from Nevada upon the suggestion of the Senator from Kentucky.¹⁰

This decision was not just a codification of more informal practices; it cemented the party leaders' floor powers by giving them the right of first recognition whenever the Senate was in session, as well as the power to recommend the recognition of other

9 81 CONG. REC. 8,694 (1937).

10 81 CONG. REC. 8,840 (1937).

senators to the chair.

Nearly eight years later, on July 17, 1945, a new dispute erupted about the keeping of the list and recognition to speak on the floor, and the chair, in the person of the Senate's president pro tempore, Senator Kenneth D. McKellar (D. Tenn.), announced that he would use a strict interpretation of Rule XIX and no longer observe a prearranged list.¹¹ On August 1, 1945, Senator James M. Mead (D. N.Y.) objected to the new interpretation on the ground that it concentrated too much power in the hands of the chair (and by implication, the majority party) at the expense of individual senators:

Mr. President, in the interest of democratic rules . . . it occurs to me that we should go back to the practice which was in vogue here for a long time [of using a list]. To do otherwise . . . concentrates too much authority in one man to recognize a Senator or pass him up, an authority to pick out one Senator who happens to be in the Chamber, or one who has sat here patiently all day. . . . [W]e should spread rather than concentrate the authority in this body, so that a Senator, no matter that he be a member of the majority or the minority, or whether he comes from the largest State in the Union or the smallest State, may have an opportunity to participate on an equality with his fellow Members in this Chamber.¹²

The importance of these remarks is that they reflect concerns that the right of first recognition was becoming increasingly a majority party tool to control senators' opportunities to be heard on the Senate floor.

By 1960, senators' determination to strictly follow Rule XIX waned in large part as a response to the increase in the scope of Senate business as well as increased time pressures on individual senators. In response, senators' returned to the use of a list as a way to govern floor time in the Senate. In one instance, Senator Richard Russell (D. Ga.), after having put his name on the list but having been denied recognition, reiterated the point that precedent had been established which gave the majority and minority leaders preferential treatment with respect to recognition but that all other senators had equal rights to the floor.¹³

In 1963, a more substantive fight over recognition occurred when the Senate was considering changes to the requirements for invoking cloture. During a debate when the majority was trying to invoke cloture, Senator Jacob K. Javits (R. N.Y.) sought recognition to make a point of order, and the chair recognized Senator Mike Mansfield (D. Mont.), the majority leader, who, instead, promptly made a successful motion to adjourn. Senator Javits brought the issue up several days later to make an objection that he should have been recognized to make his point of order before the majority leader made a motion to adjourn. Vice President Lyndon Johnson had been in the chair throughout the debate and had recognized the majority leader

11 91 CONG. REC. 7,626 (1945).

12 91 CONG. REC. 8,299-8,300 (1945).

13 106 CONG. REC. 5,709 (1960).

above all other senators. In his defense, Vice President Johnson pointed to the long-standing practice of recognizing the majority leader:

The Chair heard Senators from the Democratic side, and Senators from the Republican side, but the Chair felt that Senators from neither side had yet been raised to the stature of taking over the duties of the majority leader, and that the majority leader was entitled to recognition if seeking it.¹⁴

Of course, having served as majority leader himself, Johnson was vested in the practice of guaranteeing the majority leader's right of first recognition, and in this case, he was aiding his own party. Whatever his motivations, his ruling reinforced the power of the majority leader to retain control over speech making, and by extension, floor procedure in the Senate.

These separate examples over a period of more than twenty-five years are designed to illustrate the relatively short evolution of a powerful right afforded to party leaders in the Senate. The right of first recognition to party leaders arguably evolved out of a desire for a more managed and orderly Senate floor, and senators viewed it as a tool to manage the schedule of the Senate. Over time, though, the right of first recognition to party leaders, notably the majority party leader, has evolved into a much more powerful tool than senators could have anticipated.

CONTEXT: THE CHANGING U.S. SENATE

Howard H. Baker, Jr., of Tennessee entered the Senate in 1967 at a time of social and political turmoil. For Baker, who was in the Republican minority in the Senate led by his father-in-law, Senator Everett M. Dirksen (R. Ill.), politics was a family profession, with his father and step-mother both having served in Congress. Baker was fortunate to have an excellent role model and guide in Senator Dirksen, but more than that, he used his familiarity with politics to forge connections and friendships with senators on both sides of the aisle. He first rose to national prominence during the Watergate hearings as an active but respectful inquisitor of President Richard Nixon's role in the scandal. That reputation—one of character, commitment, and honesty—would serve Baker very well through the remainder of his political life. The remaining portion of this paper discusses Baker's career as Senate minority and Senate majority leader and will illustrate the ways he used the floor setting powers previously discussed to try and advance his personal and partisan policy goals.

TAKING THE REINS:

BAKER AS SENATE MINORITY LEADER, 1976-1980

When Howard Baker was elected Republican leader in late 1976, it was not his first attempt at winning a party office. In both 1969 and 1971, he challenged Senator Hugh Scott (R. Penn.) for the minority leader position and narrowly lost

14 109 CONG. REC. 2,094 (1963).

each time.¹⁵ The 1976 contest for leadership against Senator Robert Griffin (R. Mich.) was just as close, with Baker emerging the victor by just one vote. At the time, Baker's victory was attributed to his appeal as a public spokesperson for the party in the Senate. During his time as minority leader, the Republicans were laboring under a significant numerical deficit; in the 95th Congress (1977-1979) there were 61 Democrats and 38 Republicans, with Senator Harry Byrd of Virginia serving as an Independent Democrat. In the 96th Congress (1979-1981), there were 58 Democrats and 41 Republicans, with Senator Harry Byrd maintaining his status as an Independent Democrat.

Robert Peabody has outlined five jobs that the minority leader performs:

- (1) coordinating the organizational components of the Senate Republican Party;
- (2) cooperating with the majority leader on the scheduling of legislation;
- (3) implementing, modifying, and occasionally thwarting the programs of the majority party;
- (4) contributing to policy innovation; and
- (5) working to convert his party from a minority to a majority.¹⁶

The minority leader still has a job to do as an individual senator, including fulfilling committee obligations, and Senator Baker sat on the Environment and Public Works Committee, the Commerce Committee, the Foreign Relations Committee, and the Committee on Rules and Administration.

One could make the strong argument that starting during the Clinton Presidency, and continuing ever since, the minority party leadership in the Senate focuses on only a subset of those activities, namely thwarting the majority party's policy program and trying to regain majority control of the chamber. The elections of 2010 showed that this strategy can pay off for the minority party, which gained five seats in the Senate, narrowing the Democratic control of the chamber to a margin of 51-47, with one Independent Democrat and one Independent, each of whom caucus with the Democrats.

Still, there are lessons to be learned from how Howard Baker handled the wider range of minority leadership responsibilities, especially in choices to cooperate and oppose major legislation during his time as minority leader. For example, he supported the Panama Canal Treaty but only after he had played a key role in crafting some of its provisions and only after he had consulted with almost all of his Republican colleagues. At the time, James "Scotty" Reston wrote, in a column in *The New York Times*, that:

Howard Baker of Tennessee is a serious man who knows all the cards in the political deck. All he has to do now is shuffle them and decide how to

¹⁵ Robert L. Peabody, *Senate Party Leadership: From the 1950's to the 1980's* in UNDERSTANDING CONGRESSIONAL LEADERSHIP 81 (Frank H. Mackaman ed., 1981).

¹⁶ *Id.* at 83.

play his hand. It will not be easy, but he is the most prominent of the new generation of Republican presidential hopefuls, and how he deals with this question of Panama may very well influence what happens not only to the treaty, but what happens to him at the Republican Presidential nominating convention of 1980.¹⁷

As minority leader, dealing with an opposite party president, Baker engaged in a high level of diplomatic negotiations both in the Senate and directly with the Panamanian leader, General Omar Torrijos, to craft an agreement that would pass the Senate. Baker's influence on the Senate's ratification of this treaty was compared to that of Senator Henry Cabot Lodge (R. Mass.) on the Senate's rejection of the League of Nations treaty in the early part of the twentieth century.

The Panama Canal Treaty (PCT) was ratified in two parts: the Canal Treaty was ratified in March 1978 by a vote of 68 to 32, and the Neutrality Treaty was ratified by the Senate in April 1978 by a vote of 68 to 32.¹⁸ Senator Baker was given considerable credit for this narrow victory because of his support for the PCT. *The New York Times* ran a story with a subheading that read, "His victory was in displaying that he could do more than oppose." He was also singled out for being willing to work closely with the then-Senate majority leader, Robert Byrd (D. W. Va.). In his article for the *Times*, Adam Clymer wrote that:

Mr. Baker's role with Mr. Byrd in shaping the leadership amendments to the treaties provided a shield for other senators. Without him, as both leader and as lightning rod, at least five of the sixteen of the Republican senators who voted "aye" on Thursday would almost surely have been in opposition."¹⁹

The Panama Canal Treaty illustrated the way that Baker handled his job not only as party leader, but also national leader. He believed in the merits of the treaty and successfully persuaded at least some of his fellow Republicans that it was in the national interest to approve it.

The only visible distraction from his leadership role in the Senate for Howard Baker came when he decided to seek the Republican Party nomination for president in 1980. He faced a crowded field, with Ronald Reagan and George H.W. Bush also vying for the nomination, and he was not viewed by the increasingly active conservative wing of the party as one of them. Baker's support of the Panama Canal Treaty and his opposition to a constitutional ban on abortion denied him the opportunity to win support from this group of Republican voters. Baker came in third in both Iowa and New Hampshire, and he announced that he was ending his presidential bid on March 6, 1980.

Baker returned to the Senate and picked up right where he left off, after the late

17 James B. Reston, *Baker and Panama*, N.Y. TIMES, Jan. 8, 1978, at D19.

18 For a video report on this vote, see <http://abcnews.go.com/Archives/video/panama-canal-treaty-1978-9920775>.

19 Adam Clymer, *Baker "Won" on Canal Treaty, but Not Big*, N.Y. TIMES, Mar. 19, 1978, at E4.

Senator Ted Stevens (R. Alaska) had served as acting minority leader in his absence. As the year progressed, Baker worked hard to capitalize on the growing national support for Republicans to ensure that it would translate into Senate campaign victories. As it became more probable that the Republicans would take control of the Senate in 1980, fueled by a new crop of more conservative Republican senators, Baker and Byrd each recognized that the window of opportunity for cooperation on controversial issues was rapidly closing.

REPUBLICAN ASCENDANCY:

BAKER AS SENATE MAJORITY LEADER, 1980-1984

When Howard Baker assumed the mantle of Senate leadership in 1981, alongside a newly elected Republican president, he had already set the stage for party unity among Republicans. Between 1977 and 1980, Republican Party unity averaged 70 percent with a steady increase as the 1980 election year approached.²⁰ Senator Baker had spent the prior four years as minority leader cultivating relationships with his colleagues. He was selected as majority leader by his colleagues because they were familiar with his persuasive and consensus approach to leadership.²¹ Having shared the experience of being in the minority with these senators for most, if not all, of their careers, Majority Leader Baker used the fact that the Republicans had regained the Senate after having spent two decades in the minority to emphasize the importance of governing as a majority.²²

As skilled as Baker would turn out to be, the senatorial landscape that existed in early 1981 was not without dangerous obstacles to party unity. Think for a minute about reconciling the views represented within a political party in the Senate that included Ted Stevens, Jesse Helms, Strom Thurmond, John Chafee, Lowell Weicker, John Heinz, and Mark Hatfield, and adding Dan Quayle, Charles Grassley, Al D'Amato, and Arlen Specter, among others. In 1981, there was a much wider spectrum of ideology and policy preference in that Republican Party than exists today, with no shortage of strong personalities.

As the new majority leader, Baker had the distinct advantage of coming to power with a very popular president and eighteen freshmen senators of his own party. The challenge for Baker was that many of these new Republican senators were much more conservative than he was, as was President Reagan. In addition, the same groups that had worked against Baker in the presidential primaries, e.g., the National Conservative Political Action Committee (NCPAC), did not view him be one of them, and Paul Weyrich, who had quickly emerged as a key player in Republican politics, urged Republican senators not to elect Baker as majority leader. When Weyrich was quoted as saying that Baker was "a roll-over-and-play-dead-type leader," Baker responded by saying, "If they think Howard Baker's going

20 Roger H. Davidson, *Senate Leaders: Janitors for an Untidy Chamber*, in LARRY DODD & BRUCE OPPENHEIMER, CONGRESS RECONSIDERED 247 (Fig. 10-2) (3d ed. 1985).

21 Bill Keller, *GOP Tennessean Likely to Lead Senate: Baker Expected to be New Majority Leader*, CONG. Q. WKLY. REP., Nov. 8, 1980, at 3304.

22 RICHARD F. FENNO, JR., THE EMERGENCE OF A SENATE LEADER 48-57 (1991).

to roll over and play dead for them, they're mistaken."²³

Although these freshmen were more conservative than Baker, there were two reasons to expect that they might cooperate with him. First, they were elected with President Reagan and perceived a connection between the success of his program and their own electoral fortunes. Second, they were inexperienced and were most in need of leadership favors, e.g., good committee assignments.

To the benefit of all senators, Baker made changes to how the Senate operated, bringing more predictability and transparency to the Senate schedule. A firm schedule and somewhat reduced Senate workload would allow senators to engage in fundraising and trips back home to shore up their reelection prospects. A disproportionate number of Republicans came from the Midwest and western states, so these changes were especially important to them in terms of advance travel planning. He also was careful to try to resolve jurisdictional disputes across committees behind closed doors, so that key legislation could proceed without getting bogged down. Committee chairs knew that their concerns would be heard, and all senators knew that although they might not win their battle every time, they believed they were treated fairly. As Senator Orrin Hatch (R. Utah) put it several years later: "The hallmark of his leadership has been fairness and consideration. You can rely on his word."²⁴

Still, balancing a group of senators who had just regained the majority and who did not always agree on issues such as debt ceilings, tax cuts, school prayer, and abortion, and managing such a large freshman class was a significant test of leadership skills.

Carrying Presidential Water

Just as his predecessor had done, Senator Baker assumed the post of majority leader with a same-party president, Ronald Reagan, who promised a new set of policies designed to limit the size of government and energize the economy. As a majority leader with significant experience, Senator Baker played a key role in recommending that the president focus primarily on economic issues and not get sidetracked by social or moral issues in the early part of his presidency. He also provided an invaluable link to the president by informing him where members of the party stood on issues. As majority leader, Baker had control over the Senate schedule, and he could ensure that key pieces of legislation made it to the Senate floor. But he was not dictatorial, even though he had the greatest share of responsibility for enacting the president's policy agenda. Senator Baker was careful to consult regularly with committee chairs, as well as other influential Republican senators, about their agendas and policy preferences.²⁵

Given his strong position, Baker rarely resorted to the kind of severe procedural tactics, e.g., filling the amendment tree, that Senator Byrd had used as majority

23 Keller, *supra* note 21, at 3304.

24 Diane Granat, *Ruling Rambunctious Senate Proves to be Thorny Problem for Republican Leader Baker*, CONG. Q. WKLY. REP., July 16, 1983, at 1432.

25 Davidson, *supra* note 20, at 238-39.

leader because he had created strong internal party unity.²⁶ One reporter wrote that, under Baker, “the Senate has been transformed into a tightly knit unit that sees itself as only one platoon in a Republican army.”²⁷ And Baker extended this governing style to his dealings with the Democrats and Senator Byrd, who was then minority leader. According to Baker:

When I became Majority Leader I figured the best thing I could do was to try to strike a deal [with Senator Byrd] that neither of us would ever intentionally surprise the other, to which he readily agreed. We never did—which made for a great personal relationship.²⁸

Senators Baker and Byrd did maintain a relatively peaceful coexistence. During the years 1981 through 1984, there were few floor fights between the two men. It was in Byrd’s interest to behave this way because of the political configuration of Congress and the Presidency. Senator Byrd was in the minority in the Senate with a Republican president in the White House and a Democratic-controlled House of Representatives; if the Democratic House managed to pass legislation, Byrd needed to be in a position to bargain with Baker and the White House. Antagonizing Baker would have compromised the probability of bipartisan cooperation. For Byrd, the strategy was to protect the Senate minority, stall parts of the Republican agenda that Democrats opposed, and look for opportunities to form coalitions with the more moderate Republican senators in the majority.

The end of 1981 brought a peak in Republican Party unity in the Senate, reaching 85 percent. However, by the end of 1981, and escalating in 1982, the conservative flank of the Republican majority had become less cooperative. It became more difficult for Senator Baker to rely on his considerable powers of persuasion. Having successfully enacted President Reagan’s economic agenda, the conservatives wanted to enact their social agenda as well. Moreover, individuals like Senator Jesse Helms (R. N.C.) took advantage of senatorial rights to offer amendments on abortion and school desegregation, which were so divisive that they threatened the underlying unity of the Republican Party in the Senate. As Baker acknowledged, he had not done enough to stop senators like Helms:

I had hoped that we could do the president’s program . . . and then turn to a free-standing debate on these social issues That was my plan. The president supported that plan. But that hasn’t worked.²⁹

26 Wendy J. Schiller, Trent Lott’s New Regime: Filling the Amendment Tree to Centralize Power in the U.S. Senate. Paper presented at the Annual Meeting of the American Political Science Association (Sept. 2000).

27 Irwin Arief, *Abortion Fight: Taste of Things to Come?*, CONG. Q. WKLY. REP., Sept. 12, 1981, at 1745.

28 Letter from Howard H. Baker, Jr., to the author and Curtis Kelley, Governmental Studies Program, The Brookings Institution (May 5, 1993) (on file with the author). The author and her colleague, Curtis Kelley, had written to Senator Baker to comment on his April 27, 1993, *Washington Post* Op-Ed commentary, entitled “Rule XXII: Don’t Kill It!” on the use of procedure in the Senate and to send him a draft Op-Ed article that they had written on the same subject. For Baker’s Op-Ed commentary, see Howard H. Baker, Jr., *Rule XXII: Don’t Kill It!*, WASH. POST, Apr. 27, 1993, at A17. Baker responded with a brief letter, cited here.

29 Arief, *supra* note 27, at 1744.

Because the party was far less unified on these issues than they had been on economic issues, Majority Leader Baker found himself fighting controversial amendments and filibusters generated or threatened from within his own party. The majority of these contentious debates occurred on abortion, desegregation, and school prayer. In 1981, Baker filed only one cloture motion against members of his own party, but just one year later, he filed eleven cloture motions, ten of which were against members of his own party. In 1983 and 1984, the number of cloture motions filed against Republicans alone dropped, but Baker found himself filing motions to stop bipartisan filibusters instead (see Table 1).

TABLE 1
LEVELS OF ACTIVITY BY SENATE MAJORITY LEADERS, 1981-1994

<u>Majority Leader</u>	<u>Amendments</u>	<u>Cloture Motions^a</u>	<u>Tabling Motions</u>
Baker			
1981	19	1 (1 R)	5 (2 R, 3 D)
1982	24	11 (10 R, 1 D)	17 (7 R, 10 D)
1983	22	9 (2 R, 5 RD, 2 D)	21 (9 R, 12 D)
1984	89	14 (1 R, 6 RD, 8 D)	15 (3 R, 12 D)
Dole			
1985	55	10 (4 R, 3 RD, 3 D)	13 (4 R, 9 D)
1986	70	11 (2 R, 5 RD, 4 D)	1 (1 D)
Byrd			
1987	73	12 (10 R, 2 RD)	1 (1 D)
1988	112	10 (9 R, 1 RD)	0
Mitchell			
1989	24	6 (2 R, 4 RD)	2 (2 R)
1990	9	3 (3 R)	0
1991	25	7 (6 R, 1 R)	0
1992	7 ^b	11 (9 R, 1 RD, 1 D)	0
1993	14	5 (5 R)	0
1994	21	3 (3 R)	0

^a Duplicate cloture motions on the same bill were counted as 1 cloture motion to measure the number of filibusters, threatened filibusters, and general conflict on a single bill. Numbers in parentheses are the motions listed according to the party affiliation(s) of the member(s) against whom they were filed.

^b One of these amendments actually consisted of 192 minor amendments offered en bloc to a housing market reform bill.

Despite the discord within the party on social issues, the main focus of the Republicans, and President Reagan, was still on economic and budgetary issues. Because the economy remained the priority, Baker did not believe that the benefits of imposing restrictive floor procedures on his party outweighed the costs of derailing action on the economy. In other words, social issues were simply not important enough to President Reagan, or to Baker, to risk future cooperation on issues that were more important, e.g., the budget. And Baker was right in making this calculation; even in the most contentious moments of these later years, Republican Party unity remained around 80 percent during this time in large part as a result of his leadership skills.

In fact, the strongest use of leadership prerogatives that Baker ever made was to limit the practice of observing the “hold.” A hold is permitted by a custom, not a written rule of the Senate, and occurs when a senator raises an informal objection to the majority leader to the consideration of a bill on the Senate floor. The majority leader keeps the identity of the objecting senator secret for a period of time to see if a compromise can be worked out to allow the bill to proceed. Rather than allowing senators to casually obstruct major legislation in this way, Baker forced them to state their objections in person.

Baker also eliminated the practice of stacking roll-call votes, even on separate measures, all on one or two days, which senators had liked because it allowed them to spend more time off the Senate floor. Baker’s rationale was to keep back-to-back roll-call votes on the same or related measures but to abandon such votes on unrelated matters because too often the Senate was empty when senators knew there would be no roll-call votes on a given day or on multiple days.

As majority leader, Howard Baker also took advantage of his right of first recognition to offer a lot of amendments on behalf of his own party members and in some cases used that recognition to fill an amendment tree, but he did so only after amendments had been offered by other Republican or Democratic senators. One example is the Fiscal Year 1985 Continuing Resolution. Senator Byrd had offered his so-called “Grove City” initiative, a civil rights measure intended to overturn the U.S. Supreme Court’s decision in *Grove City College v. Bell* (1984)³⁰ as an amendment to the Continuing Resolution, and Baker used his right of recognition to offer several subsequent “killer amendments” (anti-gun control, anti-busing, and tuition tax credits) to the Continuing Resolution on behalf of Senator Hatch. Using this tactic is referred to as “offering killer amendments.” A “killer amendment” is one that, if adopted, is expected to cause the underlying bill or amendment to fail because the content of the amendment is opposed by the supporters of the underlying bill or amendment.³¹ In this case, however, Baker’s tactics were not directed solely at

30 465 U.S. 555 (1984). In *Grove City*, the Supreme Court held that a private college which did not receive any direct federal funding but a substantial number of whose students were the recipients of federally funded scholarships was subject to the anti-gender-discrimination requirements of Title IX of the Education Amendments of 1972. CHARLES TIEFER, CONGRESSIONAL PRACTICE AND PROCEDURE 514, 672 (1989); *The 98th Congress: A Review*, THE CRISIS, Dec. 1984, at 32.

31 See James M. Enelow & David H. Koehler, *The Amendment in Legislative Strategy: Sophisticated Voting in the U.S. Congress*, 42 J. POL. 396, 401 (1980); John D. Wilkerson, “Killer” Amendments in Congress, 93 AM. POL. SCI. REV. 535 (1999).

the minority party because the coalitions that had formed on the issue included members of both parties on each side.³²

As majority leader, Baker relied more on persuasion and informal compromise to run the Senate, but he was clearly not afraid to exert his leadership powers to streamline Senate business and enact his party's policy agenda. For example, when Baker took action on the hold, he considered it a prerogative of the leader to recognize or not recognize the hold; today, it seems that all senators view it as their individual right, not a privilege bestowed by the leadership. In 2011, this was a major issue in the Senate, with proposals from several senators, notably Tom Udall (D. N.M.) and Claire McCaskill (D. Mo.), to do away with the "secret" hold altogether and return to a practice similar to the one Baker had imposed.³³ At the start of the 112th Congress, the Senate agreed to limit the practice of allowing senators to put "secret" holds on bills; now, when they want to keep a bill from coming to the Senate floor, senators must publicly announce their intent to filibuster it.³⁴ At the same time, in an effort to limit the number of filibusters and cloture votes, Majority Leader Harry Reid struck a deal with Minority Leader Mitch McConnell to stop the practice of filling the amendment tree (which Reid had used a record 44 times as majority leader) if McConnell would stop objecting to the consideration of bills on the Senate floor. These sorts of compromises reflect the wisdom that Howard Baker brought to his tenure as majority leader more than thirty years ago in an effort to make the Senate a more productive institution.

Majority Leader as a Policy Initiator

The role of the majority leader in times of unified government typically emphasizes a party agenda crafted in conjunction with the White House, so there is not much room for individual policy innovation. Howard Baker recognized, however, that there were elements of Senate governance that should be changed, notably opening up the Senate to television cameras. In 1981, two years after the House had decided to allow television cameras into its chamber, Baker introduced S. Res. 20, a resolution allowing the Senate's proceedings to be televised. Baker's rationale at the time was that, by adopting this change, the Senate would place more emphasis on quality deliberations and that senators would have a greater incentive to adhere to a schedule of legislative business. Baker also believed that if the public could actually see what happened on the Senate floor, they would have more—not less—respect for elected officials.

The majority leader, however, faced strong resistance on this question from his Senate colleagues. Senators Russell Long (D. La.), who was ranking member of the Senate Finance Committee, and Minority Leader Byrd led the opposition and used the amendment procedure to attach specific rules changes that would set limits and

32 See CONG. REC. S27487-97 (daily ed. Sept. 27, 1984).

33 Dan Friedman, *Senate's Returning Democrats Unanimously Favor Filibuster Reform*, NAT'L J., Dec. 22, 2010, available at <http://nationaljournal.com/congress/senate-s-returning-democrats-unanimously-favor-filibuster-reform-20101222?print=true>.

34 Sean Lengell, *Senate OKs Small Reforms to Filibuster, "Hold" Rules*, WASH. TIMES, Jan. 27, 2011, available at <http://www.washingtontimes.com/news/2011/jan/27/senate-oks-small-reforms-to-filibuster-hold-rules/>.

conditions on the use of television in the Senate chamber. Proposing rules changes to make televised coverage of the Senate's proceedings possible was a clever strategy on the part of Long and Byrd because they relied on senators' general resistance to rules changes to build a broader resistance to television in the Senate than would likely have been the case without such changes.³⁵ The proposal to televise the Senate was brought up in 1982 and 1984, and a majority of Republicans in the Senate supported it each time, but a majority of the Senate's Democrats opposed it, and it was successfully filibustered both times. It was not until 1986 that the measure passed, which was two years after Senator Baker had left the Senate. Ironically, it was Senator Byrd who became the chief proponent of the proposal after Baker left. Byrd said that he changed his mind after having seen how much coverage the House received after it began televising its proceedings and that he did not want to see the Senate subsumed under the House mantle in the eyes of the public.

In the twenty-five years since television came to the Senate, scholars and media experts could argue indefinitely about the medium's impact on that body's deliberations, on voter evaluations of the Senate, and on public policy making generally. But in an age in which Americans can watch their government in action on their cell phones, television in the Senate makes government at least appear to be more accessible, even if in reality it may not be. And Senator Howard Baker had the foresight and prescience to see how communications and politics were changing, as early as 1981. He knew that the Senate could not maintain its position of power in the legislative branch, and the federal government more generally, if the institution resisted modernization.

CONCLUSION:

LESSONS LEARNED FROM HOWARD BAKER'S LEADERSHIP IN THE SENATE

There are a number of important lessons that leaders in the Republican and Democratic parties in the 112th Congress can learn from Howard Baker's example.

(1) *Tone down partisan rhetoric.*

The topic of political discourse has received new and intense attention after the attempted assassination in January 2011 of Congresswoman Gabrielle Giffords (D. Ariz.) and the death of six others who were attending a congressional town meeting with her. Politicians, pundits, Washington observers, and the congresswoman herself had previously pointed out that the tenor of political discourse was nastier and more likely to incite violent activity than in prior decades. Whether that is true or not is, of course, a matter of debate, but what is true is that Howard Baker succeeded as majority leader by setting an example of civility and open discussion that today's congressional leaders would do well to emulate. Notably, Senator Baker did not ever let his frustrations get personal, at least in public, and understanding how to draw the line between the political and the personal is increasingly a lost art in the Senate. In Baker's day, members of opposing parties would socialize in

35 Randall L. Calvert & Richard F. Fenno, Jr., *Strategy and Sophisticated Voting in the Senate*, 56 J. POL. 349-76 (1994).

some way, or perhaps lunch together in the Senate dining room, or work out in the congressional gym together. Now, those interactions seldom occur, and the vast majority of the interactions among senators from opposing parties takes place on the floor or in committee, each of which is structured by partisan division. The conventional view of the Senate today is that it simply does not work anymore or is ill-suited to the needs and demands of twenty-first century legislating. Barring an unlikely reform in the structure of the Senate, through Constitutional amendment or internal rules changes, public confidence in the Senate as an institution may continue to decline, which poses a threat to the efficacy of members of that body on both sides of the aisle.

Senate leaders can, however, take incremental steps to diffuse these intense partisan tensions, starting with the decisions like that of Senator Mitch McConnell (R. Ky.) in 2010 to abide by the “no compete clause.” The Senate’s majority leader, Harry Reid, faced a tough reelection campaign in Nevada in 2010, running against a Tea Party/Republican candidate named Sharon Angle. Despite calls for McConnell to travel to Nevada and actively campaign against Reid, he refused, citing the informal tradition whereby leaders do not actively campaign on behalf of their counterparts’ opponents. Indeed, within recent memory, only one leader, Majority Leader Bill Frist (R. Tenn.), actively violated this norm when he went to South Dakota to campaign on behalf of the Republican Senate candidate in that state, John Thune, who went on to defeat the sitting Senate Minority Leader, Tom Daschle, in 2004. McConnell’s step may seem trivial in the broader scheme of Senate relations, but it is an important symbolic gesture that follows in a Baker-like tradition of leading the Senate.

(2) *Recognize federal legislative responsibilities.*

The spillover effects of the intensely partisan division that plagues the U.S. Senate today can be seen in the inability of the Congress to pass basic appropriations bills, and more recently, in the repeated struggles of the Congress to pass increases in the debt ceiling. In 1981, Senator Baker had to work hard to persuade the more conservative members of his new majority party to support a bill to raise the debt ceiling, which essentially allows the federal government to borrow more money to fund its operations. Newly elected conservatives had run on a platform of limited government and promised to cut spending, so voting for increasing the debt ceiling flew in the face of their campaign promises. Baker nevertheless was successful in getting these senators to support their president, which was essential for both Baker and Reagan in the first year of Republican control of the Senate and the White House.³⁶

In the summer of 2011, Republican leaders in the House and Senate, especially the Speaker of the House, John Boehner (R. Ohio), faced similar challenges in terms of internal opposition to additional federal spending. Republican members of the House and Senate who were elected in 2010 ran on clear platforms supporting spending reductions and a smaller federal government. The key difference between 2011 and thirty years ago was that the opponents of raising the debt ceiling did not

36 Davidson, *supra* note 20, at 244.

owe any allegiance to the sitting president, but they did face the same enormous pressure not to allow the government to default on its financial obligations.

Indeed, the Senate minority leader, Mitch McConnell (R. Ky.), acknowledged that his party caucus members had to choose responsible governing over partisan politics when he stated that “we’re certainly not going to send a signal to the markets and to the American people that default is an option.”³⁷ In order to get the most conservative members of his party to approve a debt ceiling increase, Senator McConnell worked with Senate Majority Leader Harry Reid and Speaker Boehner to shepherd a deal that outlined a series of cuts to federal spending over ten years and created the Joint Select Committee on Deficit Reduction, which consisted of twelve members divided equally between the two parties and the two chambers. This deficit reduction committee was charged with the responsibility of specifying those cuts and was given a November 2011 deadline to arrive at a plan. Absent any agreement, the cuts will go into effect automatically as of January 2013. Ultimately, the deficit reduction committee failed in its mission, leaving the prospect of dramatic across the board spending cuts looming over Congress for the remainder of the 112th Congress. The failure of the deficit reduction committee also had spillover effects on the appropriations process; at the end of 2011, the Senate struggled to enact appropriations bills, separately and bundled, to fund the government for the remainder of FY 2012.

(3) Defend the power of the Senate in a separation-of-powers system.

As majority leader, Howard Baker was highly cognizant of the dual responsibilities he had to govern effectively as the leader of the Republican Party in the Senate and to help enact President Reagan’s policy agenda. In forging that path, Baker had to manage the internal expectations of members of his party, the president’s needs, and the desires of strong interest groups that exerted pressure on both the legislative and executive branches of government. At the same time, he had to deal with an opposite-party House led by Speaker Tip O’Neill (D. Mass.), who was a forceful and outspoken advocate of the Democratic agenda. In maintaining the focus on economic recovery on all sides, Baker managed to retain and enhance the influence of the Senate in the policy-making process, even while enacting parts of the president’s agenda. His firm resistance to the more conservative social agenda put forth by party activists held internal division at bay for the first few years of his leadership tenure and enabled him to consolidate unity in his own party and to work more closely with Democrats in the Senate and the House.

More broadly, by ensuring that the Senate was a functional and productive chamber, Baker avoided negative comparisons to the majority-driven House of Representatives. Because the House is majority-centered, and there is little extensive debate on the House floor, the Senate is the chamber that is expected to discuss the pros and cons of legislation in more depth and give the public and the media a broader picture of what is included in legislation that comes before

37 Lori Montgomery and Paul Kane. *McConnell Outlines New Proposal on Debt Ceiling*. WASH. POST, July 12, 2011. available at http://www.washingtonpost.com/business/economy/debt-talks-show-growing-gap-between-white-house-gop/2011/07/12/gIQAAbKuiAI_story.html.

it. In that way, the Senate has the opportunity to portray itself as a deliberate and responsible chamber within the legislative branch of the federal government. Abusing the right of obstruction or employing convoluted parliamentary procedures has the effect of reducing the Senate to nothing more than a roadblock, rather than according the institution its rightful role as an equal partner in the crafting and debating of legislation. The year 2011 produced far too much of this behavior from both party leaders in the Senate. So much so that Senator Michael Bennett (D. Colo.) was driven to make a presentation on the Senate floor entitled “Congress Hits Rock Bottom” in which he argued that the failure to work together in the Senate to respond to voters’ basic needs was dissolving support for the Senate and the House.³⁸ Perhaps then it is no coincidence that in 2011 Congress experienced some of its worst public approval ratings in its history; only 12 percent of the American public approved of its job performance.³⁹

As both minority and majority leader, Howard Baker recognized that the Senate’s influence in a separation-of-powers system with a bicameral legislature would be severely curtailed if it were viewed solely as an obstructionist institution. Modern leaders of the Senate should understand that the inability of the Senate to function as a deliberative chamber is something that can be remedied with a bipartisan effort. For an excellent blueprint on how to accomplish that goal, they should study Senator Howard H. Baker, Jr.’s record as a Senate leader and follow more closely in his footsteps.

38 http://www.huffingtonpost.com/2011/11/16/senator-bennet-discusses-_n_1098230.html. Senator Bennett went on to say that the day had come when the Internal Revenue Service, an historically vilified federal agency, had an approval rating four times as high as Congress.

39 http://www.realclearpolitics.com/epolls/other/congressional_job_approval-903.html.

REFERENCES

- Ainsworth, Scott, and Marcus Flathman. 1995. Unanimous Consent Agreements as Leadership Tools, *Legislative Studies Quarterly* 20:177-95.
- Calvert, Randall L., and Richard F. Fenno, Jr. 1994. Strategy and Sophisticated Voting in the Senate. *Journal of Politics* 56:349-76.
- Davidson, Roger H. 1985. Senate Leaders: Janitors for an Untidy Chamber? *Congress Reconsidered*, 3d ed. Lawrence C. Dodd and Bruce Oppenheimer, eds. Washington, D.C.: Congressional Quarterly Press.
- Fenno, Richard F., Jr. 1991. *The Emergence of a Senate Leader: Pete Domenici and the Reagan Budget*. Washington, D.C.: Congressional Quarterly Press.
- Gallup, George H. 1985. *The Gallup Poll*. Wilmington: Scholarly Resources Inc.
- Gallup, George H. 1987. *The Gallup Poll*. Wilmington: Scholarly Resources Inc.
- Gamm, Gerald, and Steven S. Smith. 1999. Last Among Equals: The Presiding Officer and the Struggle for Order in the 19th Century Senate. Paper presented at the Conference on Civility and Deliberation in the Senate, Washington D.C.
- Oleszek, Walter J. 2011. *Congressional Procedures and the Policy Process*, 8th ed. Washington, D.C.: Congressional Quarterly Press.
- Peabody Robert L. 1981. Senate Party Leadership: From the 1950's to the 1980's, *Understanding Congressional Leadership*, Frank H. Mackaman, ed. Washington D.C: Congressional Quarterly Press.
- Riddick, Floyd M., and Alan S. Frumin. *Riddick's Senate Procedure*. Washington, D.C.: U.S. Government Printing Office.
- Schiller, Wendy J. Trent Lott's New Regime: Filling the Amendment Tree to Centralize Power in the U.S. Senate. Paper presented at the Annual Meetings of the American Political Science Association, September 2000.
- Smith, Steven S. 1989. *Call to Order*. Washington, D.C: The Brookings Institution.
- . 2010. The Senate Syndrome, *Issues in Governance*, No. 35. Washington D.C: The Brookings Institution, 1-30.
- U. S. Senate Rules Committee. 1988. *Senate Manual: Containing the Standing Rules, Orders, Laws & Resolutions Affecting the Business of the United States Senate*. 106th Cong., S. Doc. No. 106-1. Washington, D.C: U.S. Government Printing Office.

JUSTICE HOWARD BAKER

Jeffrey Rosen¹

Thank you so much. It's a great pleasure to be here in this distinguished company and an honor to address a fascinating counterfactual in American history: How would the Supreme Court of the United States have been different if Howard Baker, rather than William Rehnquist, had succeeded Justice John Marshall Harlan? On October 19, 1971, Howard Baker was offered a Supreme Court seat by President Richard Nixon. And on October 21, after having dithered for a day, Senator Baker decided to accept the seat, but by that time President Nixon had changed his mind and offered the nomination instead to William Rehnquist. This is a good reminder of the importance of decisiveness, although Senator Baker was ambivalent about the offer from the beginning.

I'd like to review the remarkable human story of Nixon's search for a successor to Justices John Marshall Harlan and Hugo Black, who resigned at around the same time. Like much in the Nixon White House, the story has an element of farce. And after that, I want to think through with you how the Court and the country might have changed if Senator Baker had accepted Nixon's offer one day earlier.

The narrative that follows is taken from the definitive account of Nixon's struggle to replace Harlan and Black, *The Rehnquist Choice*, by John Dean. As Dean reports, Nixon considered no fewer than thirty-six candidates to fill the vacancies left by two retiring justices, Hugo Black and John Marshall Harlan; they included Spiro Agnew, Robert Byrd, Arlen Specter, William French Smith, and Caspar Weinberger. Initially, Nixon wanted to replace Justice Black with Representative Richard Poff, a moderate conservative from Virginia, whom Dean, then White House counsel, respected. But Poff took himself out of the running because he feared the ensuing publicity would force him to tell his son, then 12, that he had been adopted. (A few weeks after Poff withdrew, a newspaper column by muckraking Jack Anderson forced him to tell the boy anyway.)²

As White House aides scrambled for candidates to replace Poff, Nixon made a determined effort to put the first woman on the Court. He decided to nominate Mildred Lillie of the California Court of Appeals. But the American Bar Association committee, led by Lawrence Walsh, rated Lillie not qualified, adding that she was probably as good as any of the women in America who could be considered. This was 1971 after all.

Dean wants to take the credit (and the blame) for being the first to float the name of William Rehnquist, then an assistant attorney general in charge of vetting the other Supreme Court candidates with whom Dean had worked when he himself had been an associate deputy attorney general. But as the other

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2 See Jeffrey Rosen, *Rehnquist's the One*, N.Y. TIMES, Nov. 4, 2001.

candidacies collapsed, the man Nixon called “Renchburg” won his heart for his extreme conservatism and obvious ability. Then finally, when Senator Howard Baker dithered one day too many before accepting the nomination, Nixon decided on Rehnquist, largely because he was the last person standing.

That’s the outline of this great story, now let’s enjoy the details. Here is the chronology. On September 17, 1971, Justice Black announces he’s going to resign, and on September 23, Justice Harlan announces his own resignation. On October 2, Richard Poff withdraws from consideration. On October 12, Nixon says he will announce his selection for both vacancies the following week. On October 18, Attorney General John Mitchell asks Lewis Powell if he will accept Hugo Black’s seat, and on October 19, he asks Howard Baker if he will accept Harlan’s seat. On October 20, Richard Moore convinces Nixon to consider Rehnquist, not Baker. On October 21, Baker calls Mitchell back to accept the seat, but by that time, Nixon has changed his mind, withdraws the offer, and appoints Rehnquist instead.

The first mention of Senator Baker occurs after Richard Poff’s withdrawal on October 2, 1971. Happy with the media reaction to Poff’s withdrawal, Nixon and Mitchell agree that his replacement should be someone from the border states. “Baker,” says Nixon. “No, I’m talking about [West Virginia’s Senator Robert] Byrd,” says Mitchell. Nixon stresses that he wants to make clear to the Senate that “if you turn down one of our [Southern] congressmen, we’ll give them another.”³

So that is Baker’s entry into the game for the first time. Then, on October 17, Leonard Garment, the White House counsel, gives Nixon a memo recommending two people, Howard Baker and Caspar Weinberger: “In the case of Baker and Weinberger, you have personal knowledge of their intelligence, level of energy, ability to organize and present information and ideas, and argue a case.”⁴ Nixon is intrigued. “Howard [Baker wouldn’t] be bad,” suggests the President’s chief of staff, H. R. Haldeman, and Nixon replies, “Howard would be fine,” although “he’s never going to be the leader in the Senate.”⁵

As the conversation continues, Nixon has further praise for Baker. Agreeing that Senator Byrd would “get the burn,” Nixon likes the fact that Baker is in his forties and says that “Howard is a fine individual. . . . he’s a very persuasive political guy and you know that Court is political as hell. He’s a good leader. He’d be a God damn persuasive judge.” Nixon’s only hesitation about Baker is that the Republicans might lose a Senate seat.⁶ Still, he likes Garment’s idea, and the two men are basically agreed on the possibility of it, but Mitchell doesn’t know how Baker would react to an appointment.

October 19 thus is the crucial day when Baker is offered the seat but hesitates before accepting it. Nixon is convinced that the combination of two Southerners—Nixon and Powell—would have a big political impact and assumes that because of senatorial comity, Baker would be confirmed. But Nixon still doesn’t know much

3 JOHN W. DEAN, *THE REHNQUIST CHOICE: THE UNTOLD STORY OF THE NIXON APPOINTMENT THAT REDEFINED THE SUPREME COURT* 134 (2001).

4 *Id.* at 189.

5 *Id.* at 190.

6 *Id.* at 193.

about Baker and wants to know how long he's practiced law. Someone tells Mitchell to get out the *Congressional Directory*. Haldeman comes in with a *Congressional Directory* and reports that Baker is forty-five, went to the University of Tennessee College of Law, was in the Navy, and worked at a law firm in Knoxville.⁷ Satisfied with the response, Nixon dispatches Mitchell to tell Baker he is being considered for the Court.

Nixon calls Mitchell, who reports that Baker is sitting in his office. As soon as Baker leaves, Mitchell calls Nixon to report that "[w]e sort of knocked Howard off his feet with surprise" and that Baker is concerned about the justices' low salary (then \$60,000 a year), and also about his eyesight.⁸ Nixon instructs Mitchell to pursue Baker, nevertheless.

By the next day, October 20, Baker has not called Mitchell back, to the Attorney General's frustration. Nixon, sympathetic to Baker's financial concerns, suggests to Mitchell that "sixty thousand for the rest of his life, even these days . . . ain't bad, huh?"⁹ After lunch, in the late afternoon, Nixon asks for the latest report, and Mitchell says that Baker still hasn't called. By this point, Nixon is becoming impatient with Baker's dithering. "He just can't screw around forever."¹⁰ A few minutes later, Richard Moore, a Nixon political aide, comes into Nixon's office and talks up William Rehnquist. Nixon assumes Baker will accept the nomination and likes the fact that he and Powell will be perceived as opposing busing, but he begins to have second thoughts about Baker in light of Moore's advocacy of Rehnquist. A few minutes later, Nixon talks to Mitchell, who reports that Baker is on an airplane coming back to the capital from Knoxville but hasn't left word about why he left Washington or what his response will be. "Maybe we leave him off the list," says Nixon. "I still think the Rehnquist thing is a damn good possibility, if he doesn't go."¹¹ Then Nixon's doubts overtake him. "God damn it, Baker shouldn't diddle us along like this," he says.¹²

By 7:40 that evening, Mitchell reports to the President that Howard Baker is coming to see him in a few minutes. Nixon makes clear that he can still have the job if he wants it but that Mitchell shouldn't push Baker. Nixon also instructs him to find out whether Baker has any troubles that could explain his procrastinating. Just after 10 p.m., Mitchell calls Nixon again and reports that Baker has asked for more time to consult his family before making a final decision.

That final delay proved to be fatal to his candidacy. The following morning, at 9:30 a.m., Mitchell reports to the President that "Baker wants to go." Nixon isn't pleased. "Well God damn it, sure you couldn't talk him out of it, huh?" Mitchell says Nixon can change his mind if he wants to go the other way. After a long pause, seventeen seconds of silence, Nixon decides he wants to let Baker off the hook.

7 *Id.* at 206.

8 *Id.* at 207-8.

9 *Id.* at 222.

10 *Id.* at 225.

11 *Id.* at 235.

12 *Id.* at 237.

“Now do you think we are in a position of telling him no? We just feel that under the political considerations that you’ve raised [about who his Senate replacement would be], Howard, are such that you shouldn’t go.”¹³ Mitchell agrees that this would allow Baker to maintain his dignity, and Nixon says, “I have a feeling I’m going to go the other way.” Mitchell agrees to “turn Baker off” and calls back a few minutes later to say that Baker has accepted the decision with good grace. “I think it was with some relief, actually, on his part, but very warm and very gracious.” “Good,” replies Nixon. Rehnquist is the nominee.¹⁴

So that’s the story. Let’s now think through the historical counterfactual: How would the Court and the country have been different if Senator Baker had said yes one day earlier? What would his judicial philosophy have been? I gather that Senator Baker has not been interviewed on this subject—it would be a great contribution to history if he were—he might have served for forty years and might still be serving there today. My hypothesis is that he would have been more in the mode of Justice Sandra Day O’Connor than Rehnquist, more of a pragmatic conservative dedicated to states’ rights but also deferential to the political prerogatives of Congress and the president, showing a willingness to find middle ground and to compromise, rather than displaying the doctrinaire strict constructionism that Rehnquist was known for, especially in his earlier years on the Court.

Think of the many cases over the past forty years that might have come out differently. I’ve been told how committed Senator Baker was to enforcing *Baker v. Carr*,¹⁵ the Supreme Court’s great voting rights case. I wonder if he would have voted on the other side of the Court’s 5-4 cases challenging congressional power, from the *Lopez* case,¹⁶ involving the gun free schools act, to the *Morrison* case,¹⁷ striking down parts of the Violence Against Women Act, and how he might vote in the cases on the horizon involving health care reform and financial regulation. Would Baker have been on the other side of the *Citizens United* campaign finance case?¹⁸ The Senator knows how hard it is to achieve landmark bipartisan legislation, and, like O’Connor, he might have voted to uphold the McCain Feingold law.

What about *Bush v. Gore*?¹⁹ There, Justice O’Connor was not inclined to compromise, although initially there was some wavering on the part of Justice Kennedy. Senator Baker, perhaps, might have understood that this was arguably a political question. His respect for congressional prerogatives might have led him to resist the Court’s taking the case at all.

There are a series of cases raising issues that divide the Court today—racial preferences, for example. It is not implausible to think that, given the Senator’s understanding of the challenges of civil rights enforcement and his deep

13 *Id.* at 245.

14 *Id.* at 246.

15 369 U.S. 186 (1962).

16 *U.S. v. Lopez*, 514 U.S. 549 (1995).

17 *U.S. v. Morrison*, 529 U.S. 598 (2000).

18 *Citizens United v. Federal Election Comm’n*, 558 U.S. — (2010).

19 531 U.S. 98 (2000).

understanding of Southern politics, he might have been more sympathetic to local experimentation.

On *Roe v. Wade*,²⁰ I gather that Senator Baker has a deep respect for precedent, and I wouldn't be surprised if he were with the plurality in *Casey v. Planned Parenthood*²¹ that upheld *Roe v. Wade*. When it comes to partial-birth abortions, by contrast, he might have been sympathetic to Congress's prerogatives to restrict late-term choice and protect early-term choice.

In the simplest case, in all the cases that have switched from the liberal to the conservative direction with the replacement of Justice O'Connor by Justice Samuel A. Alito, Jr., they might have come out the other way if Senator Baker had been on the Court. More broadly, though, how would conservative legal philosophy have been different if Baker had been on the Court? There are several cross-cutting strains among conservative legal activists over the past thirty years—libertarian conservatives like Justice Kennedy, Tea Party conservatives like Justice Clarence Thomas, and pro-executive power conservatives like Justices Antonin Scalia and Alito and Chief Justice John Roberts, who favor national uniformity over states' rights and tend to follow business interests.

Where would Senator Baker fit in? I imagine that although he might have shown some interest in federalism, like the pragmatic states' rights advocates, Rehnquist and O'Connor, he would have been closer to the pro-executive power conservatives, more concerned about uniform national rules than about dismantling the New Deal. With his concern for bipartisanship and precedent, he would have been suspicious of efforts to strike down the regulatory state at its core. With his passionate defense of the Martin Luther King holiday, I cannot imagine that he would have joined 5-4 decisions striking down affirmative action and voting districts for minorities, let alone questioning the constitutionality of the amendments to the Voting Rights Act, as Justice Clarence Thomas has done.

One thing, however, is clear. William Rehnquist's influence on the Court was large. As Chief Justice, he moderated his youthful reputation as the lone dissenter and was willing to provide the sixth vote to uphold decisions he had once criticized, such as the one requiring cops to read suspects their Miranda rights. But Rehnquist combined that pragmatism with a crusading strict constructionism. Senator Baker's influence, I imagine, would have been similarly great. And both the Court and the country might have been a less polarized place if he had accepted Nixon's offer of a Supreme Court seat only twenty-four hours earlier.

20 410 U.S. 113 (1973).

21 505 U.S. 833 (1992).

THE SENATE WATERGATE COMMITTEE:

Its Place in History and the Discovery of the White House Tapes

*James Hamilton*¹

INTRODUCTION

I am pleased to be here to honor Senator Howard Baker, with whom I worked closely during the Watergate Committee's investigation and whom I have long admired.

My topic is the Senate Watergate Committee and its place in history, a place secured in part because of its discovery of the White House tapes. I want to tell you about how those tapes were discovered, because it is a good tale and because it also illustrates some of the broader points that I want to make this morning.

Watergate is a topic that I know first-hand for it consumed a year-and-a-half of my life. It was a time of little sleep and greatly reduced social life. It was a time when my tennis game went to hell.

It was also a unique experience. My main assignment, being responsible for the investigation of the Watergate break-in and cover-up, was at the time about the best job for a young lawyer in America. I very much appreciate being given that opportunity by Senators Sam Ervin and Howard Baker, and Chief Counsel Sam Dash.

I. THE WATERGATE HEARINGS IN HISTORICAL CONTEXT

Congressional investigations, of course, have played a significant role in American life for most of the nation's history.² That point can be made just by mentioning a few of the major investigations of the last century. Indeed, to recall their names is to remind that congressional investigations are very much the stuff of our history.

In the years 1912-1913, there were the "Money Trust" investigations by a House Banking and Currency Subcommittee. These investigations focused on concentrations of economic power in the hands of men such as J.P. Morgan and John D. Rockefeller and led to the passage of major antitrust laws—the Clayton Act and the Federal Trade Commission Act.³

In the early 1920's, the Senate investigated the Teapot Dome bribery and graft scandals in the Harding Administration, which involved both the Attorney General

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2 On congressional investigations generally, see JAMES HAMILTON, *THE POWER TO PROBE: A STUDY OF CONGRESSIONAL INVESTIGATIONS* (1976); James Hamilton, Robert F. Muse, & Kevin R. Amer, *Congressional Investigations: Politics and Process*, 44 AM. CRIM. L. REV. 1115-76 (2007).

3 For the Money Trust investigation, see HAMILTON, *supra* note 2, at 6-7; JOEL SELIGMAN, *THE TRANSFORMATION OF WALL STREET: A HISTORY OF THE SECURITIES AND EXCHANGE COMMISSION AND MODERN CORPORATE FINANCE* 51 (1982); TELFORD TAYLOR, *GRAND INQUEST: THE STORY OF CONGRESSIONAL INVESTIGATIONS* 63-65 (1955).

and the Secretary of the Interior.⁴ Will Rogers branded the scene the “great morality panic of 1924.”⁵

In the 1930’s, in a precursor of the investigations of recent times, the Senate Banking and Currency Committee, led by the committee’s chief counsel, Ferdinand Pecora, examined manipulations of the stock market during the Great Depression. The result was the passage by Congress of the major securities legislation that governs the markets today.⁶

Starting in 1938 and running past mid-century were the so-called “loyalty investigations,” which sought to discover the extent of Communist activity and influence in American life. These investigations often used methods now held in disrepute. The investigative abuses of Senator Joseph McCarthy, who chaired the Senate Committee on Government Operations, were revealed in the explosive Army-McCarthy hearings. Eventually McCarthy was condemned by the Senate for his conduct. Richard Nixon first came to prominence during the House Un-American Activities Committee’s investigation of accused Soviet spy Alger Hiss.⁷

More useful were the 1950-51 hearings of the Senate Special Committee to Investigate Organized Crime headed by Senator Estes Kefauver of Tennessee, which examined the illicit activities of many gangland figures, such as crime boss Frank Costello. These were among the first, and most significant and widely viewed, of the early televised congressional hearings.⁸

During 1987, there was the Iran-Contra investigation conducted jointly by select committees of both houses of Congress. This investigation concerned the sale of arms to Iran and the distribution of the proceeds to rebels in Nicaragua.⁹ They made the scheme’s mastermind, Marine Colonel Oliver North, a national figure.

In the 1990’s, there was a spate of investigations:

- The 1990-91 Keating Five hearings by the Senate Ethics Committee, which examined whether five prominent senators had improperly

4 For the Teapot Dome investigation, see HAMILTON, *supra* note 2, at 7.

5 *Id.* at 7; BURL NOGGLE, *TEAPOT DOME: OIL AND POLITICS IN THE 1920S* at vii (1962), quoted in Gary A. Fine, *Reputational Entrepreneurs and the Memory of Incompetence: Melting Supporters, Partisan Warriors, and Images of President Harding*, 101 AM. J. SOCIOLOGY 1159, 1174 n.17 (1996).

6 For the Pecora investigation, see HAMILTON, *supra* note 2, at 7-8; TAYLOR, *supra* note 3, at 65-67.

7 For the McCarthy investigations and the House Un-American Activities Committee’s hearings, see HAMILTON, *supra* note 2, at 8-9; see also TED MORGAN, *REDS: MCCARTHYISM IN TWENTIETH-CENTURY AMERICA* 187-222, 428-504 *passim* (2003); THOMAS C. REEVES, *THE LIFE AND TIMES OF JOE MCCARTHY* 207-15, 459-637 *passim* (1982).

8 For the Kefauver Committee’s investigation of organized crime, see HAMILTON, *supra* note 2, at 9-10; CHARLES L. FONTENAY, *ESTES KEFAUVER: A BIOGRAPHY* 164-186 (1980); TAYLOR, *supra* note 3, at 240. For a generally negative view of the Kefauver Crime Committee, see WILLIAM H. MOORE, *THE KEFAUVER COMMITTEE AND THE POLITICS OF CRIME, 1950-1952* (1974).

9 For the Iran-Contra investigation, see *Report of the Congressional Committees Investigating the Iran-Contra Affair: Hearings before the H. Select Comm. To Investigate Covert Arms Transactions with Iran and the S. Select Comm. On Secret Military Assistance to Iran and the Nicaraguan Opposition*, 100th Cong., 1st Sess., H.R.REP. NO. 100-433, S. REP. NO. 100-216 (1987).

done favors for savings-and-loan mogul, Charles H. Keating, Jr., who had contributed heavily to all of them.¹⁰

- The 1991 confirmation hearing of Supreme Court Justice Clarence Thomas, which heard allegations of sexual harassment by his former aide, Anita Hill.¹¹
- The campaign finance hearings held in 1997 by the Senate Committee on Governmental Affairs, chaired by Senator Fred Thompson (R. Tenn.), which involved, e.g., the extent of foreign money that made its way to the Clinton reelection campaign and business-as-usual events such as a fundraiser at a Buddhist temple.¹²
- And finally, the impeachment proceedings against President Clinton.¹³

Congressional investigations continue unabated in this century. Just in the last several years there have been major investigations into our latest financial crisis and the recent oil spill in the Gulf of Mexico.¹⁴ And now that the Republicans have taken control of the House, many investigations into the conduct of the Obama Administration may follow.

II. THE WATERGATE COMMITTEE INVESTIGATION

A. *The Significance of the Watergate Investigation*

But none of these other investigations, as momentous and important as they may have been, concerned more significant issues or commanded the attention of the nation more than the Senate Watergate Committee investigation. None dealt more with the fabric of what we are as a nation, and none were conducted with more success. Let me spend a little time considering why all of this was so.

10 For the Keating Five hearings, see http://topics.nytimes.com/topics/reference/timestopics/subjects/k/keating_five/index.html.

11 For the Thomas confirmation hearings, see Michael J. Gerhardt, *Divided Justice: A Commentary on the Nomination and Confirmation of Justice Thomas*, 60 GEO. WASH. L. REV. 969 (1992); Donald P. Judges, *Confirmation as Conscientiousness-Raising: Lessons for the Supreme Court from the Clarence Thomas Confirmation Hearings*, 7 ST. JOHN'S J. LEGAL COMMENT. 147 (1991).

12 For the Senate Governmental Affairs Committee's campaign finance investigation, see *Final Report of the Senate Committee on Governmental Affairs: Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns*, 105th Cong., 2d Sess., S. REP. NO. 105-167 (1998).

13 For the Clinton impeachment proceedings, see *THE IMPEACHMENT AND TRIAL OF PRESIDENT CLINTON: THE OFFICIAL TRANSCRIPTS, FROM THE HOUSE JUDICIARY COMMITTEE TO THE SENATE TRIAL* (1999).

14 For the congressional investigations into the financial crisis and the Gulf oil spill, see, e.g., U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, 111TH CONG., *WALL STREET AND THE FINANCIAL CRISIS: ANATOMY OF A FINANCIAL COLLAPSE* (2010); Jim Snyder, *Congress Opens Probe into Gulf Coast Oil Spill*, THE HILL, May 10, 2010, available at <http://thehill.com/blogs/e2-wire/677-e2-wire/96865-congress-opens-oil-spill-probe>.

Part of the reason, of course, was the magnitude of the wrongdoing being investigated. Watergate, it must be remembered, involved not just the break-in at the Democratic National Committee's headquarters in the Watergate office building and the subsequent cover-up, but also massive illegal corporate contributions to the Nixon reelection campaign; a wide-ranging series of dirty tricks, some quite puerile, designed to sway the presidential election of 1972; and an unlawful scheme to use the resources of the executive branch to reelect President Nixon.

Watergate also involved a cast of characters worthy of fiction. There was President Nixon, as enigmatic as the best-known person in America perhaps could be. Nixon was a man of considerable ability, but as every new release of tapes of his conversations reveals, he was beset by dark demons that overwhelmed both his judgment and moral principles.

Watergate had the snarling duo of presidential aides, John Reichmann and Charles Colson, who were public relations nightmares for the Administration. Reichmann could not speak to the Committee without curling his upper lip in a sneer. Colson was notoriously reported as saying he would walk over his grandmother to reelect Nixon.

Some would add President Nixon's Chief of Staff, Bob Haldeman, to this twosome. But in my dealings with Haldeman, I found that I rather liked him, which made me question both my own judgment and character.

And then we had the Watergate burglars, which included four tough Cuban-Americans, with Bay of Pigs and CIA backgrounds. Also involved in the burglary was the maniacal Gordon Liddy and the shadowy Howard Hunt. Hunt was a former CIA agent. Liddy was an operative of the Committee to Reelect the President, affectionately referred to, at least by the Watergate Committee majority staff, as CREEP. Neither Liddy or Hunt seemingly had ever seen a clandestine, nefarious scheme they could not fondly embrace, no matter how bizarre and bound for failure it might be.

And finally, on the other side, was a genuine folk hero, Sam Ervin, who, with his pungent humor, his rectitude, his Southern drawl, and his iconic, dancing eyebrows was the right man for this troubled, historical time.

The Senate Watergate investigation was also successful because of good staff work. Chief Counsel Sam Dash insisted on a rigorous, fearless investigation, and he received that from his staff. But Sam also knew how to tell a story to draw the public into the investigation and to convey its import. That is what the hearings of the Spring and Summer of 1973 did. Those hearings were the best soap opera on television, and the nation was glued to the tube. One day around 60 million people heard White House Counsel John Dean testify about Nixon's role in the cover-up and about how he told Nixon that there was a cancer growing on the presidency.

The Senate Watergate investigation also was successful because of the partnership between Senator Ervin and Senator Baker, which I observed closely during my stint on the Committee staff. There obviously was a strong friendship and tremendous mutual respect between these two extraordinary men. And each seemed committed to making the investigation as non-partisan as possible.

They succeeded in this goal in a remarkable way regarding an investigation as controversial as any in American history. Consider, for example:

- that the massive Watergate Final Report that condemned a Republican administration was unanimous,
- that the decision to subpoena the President for the White House tapes was unanimous, and
- that the decision to sue the President when he didn't comply was by unanimous vote on a motion made by Senator Baker.

Can one even imagine such unanimity on such a highly charged issue in today's highly partisan climate?

Senator Ervin paid tribute to Senator Baker in his book on Watergate. Ervin noted that Senator Baker was a "stalwart East Tennessee Republican" with a "strong sense of loyalty to the Republican Party." "I suspect," Ervin wrote, "that the White House undertook to bring much pressure on him to influence his conduct as a member of the committee." "If it did," Ervin said, "it *failed* in its purpose." He added: "As vice chairman, Senator Baker rendered faithful service to the committee in its quest for the truth ... and earned my enduring gratitude."¹⁵

This is not to say that there were not some tensions within the Committee. It would have been miraculous if there had not been. But as a Democratic staff member, I felt that the investigation essentially was a non-partisan effort and that I was working for Senator Baker as well as Senator Ervin.

Permit me a personal reflection about Senator Baker that showed he also considered that I was on his team.

In 1974, when we were wrapping up the investigation, in court against the President about the tapes, and beginning work on the Final Report, I came down with a bout of kidney stones that sent me to the hospital—an experience I would not recommend. One Committee member took the time to visit me there—Senator Baker. I am sure he has long forgotten that act of kindness. But I have not.

B. The Discovery of the White House Tapes: Part I

There is a final reason the Senate Watergate investigation was successful, and that is because we discovered the White House tapes that brought down a President. In the few minutes remaining, I want to tell you how that came about. It was no accident.

There were clues that something like the taping system existed. For instance, John Dean testified that, in an April 5, 1973, conversation with the President, Nixon went behind his chair to a corner of an office in the Executive Office Building and, in a nearly inaudible tone, said that he was probably foolish to have discussed Hunt's clemency with Colson. This gave Dean an inkling that the conversation was

15 SAM J. ERVIN, JR., *THE WHOLE TRUTH: THE WATERGATE CONSPIRACY* 25 (1980) (emphasis added).

taped. Ironically, it was later revealed that the recording device in that office had run out of tape before that conversation occurred, and it was not recorded.

Moreover, as Fred Thompson recounts in his book on Watergate, before Dean testified, then-White House counsel Fred Buzhardt called him and gave him in great detail the White House version of Nixon's conversations with Dean and others. Thompson prepared and distributed a memo of his conversation with Buzhardt, which at least suggested that there was some kind of record of the conversations.¹⁶

In any event, on Friday, July 13, 1973, the Committee's staff interviewed Alexander Butterfield. I gave the order to interview Butterfield because he had been an assistant to the President and in Haldeman's ambit. But demonstrating my usual perspicacity, I decided not to go to the interview, because I thought that he had nothing important to say.

At the end of the over three-hour interview, Deputy Minority Counsel Don Sanders, who had Fred's memo, asked Butterfield if there was any basis for the implication in Dean's testimony that White House conversations were recorded. Butterfield, an honest man, said yes and revealed the existence of the White House taping system. Actually, he was surprised that we hadn't known already, because we had interviewed others who also knew—Haldeman and Larry Higby.

I learned of this testimony early the next morning, Saturday, July 14, when Sam Dash called to tell me about it.

C. *The Watergate Committee Leaks: A Brief Digression*

Now I must digress to discuss a galling incident.

As is well known, the Watergate Committee was plagued by leaks. Senator Baker once remarked that, although the Senate Watergate Committee did not invent the leak, we had elevated it to its highest art form. The running joke was that the Capitol Hill press corps would go out of business if a certain senator's Xerox machine were to break down.

So maybe it was not surprising that, as they recount in their book, *All the President's Men*, Bob Woodward and Carl Bernstein also learned of the tapes on Saturday, July 14, even before many Committee members and senior staff knew about it. Amazingly, however, *Washington Post* executive editor Ben Bradlee initially thought this was only a "B plus" story, not worthy of immediate attention, so nothing about the tapes was published by the *Post* until after Butterfield's testimony.¹⁷

Who leaked this information, I don't know for sure. But the senior majority staffer in the session with Butterfield was later best man in Bob Woodward's wedding.¹⁸

16 FRED D. THOMPSON, *AT THAT POINT IN TIME: THE INSIDE STORY OF THE SENATE WATERGATE COMMITTEE* 83 (1975).

17 CARL BERNSTEIN & BOB WOODWARD, *ALL THE PRESIDENT'S MEN* 330-31 (1974).

18 THOMPSON, *supra* note 16 at 82.

D. The Discovery of the White House Tapes: Part II

When Sam Dash called me early on Saturday, July 14, he said, let's go tell John Dean what we've just learned. A little later, Sam picked me up, and we drove to Dean's townhouse in Alexandria, Virginia.

John and his glamorous wife, the always well put-together Mo, met us at the front door. John had a quizzical look on his face, for he did not yet know the purpose of our visit.

We went upstairs to their living room. John and Mo sat on a couch. After some preliminary conversation, Sam sat down to their left. I stood before John and Mo by the mantelpiece where I could look directly at John. I wanted to see his reaction when Sam told him what we now knew.

When Sam finally did, John broke into a wide smile, for he knew the tapes essentially would confirm his damning testimony about Nixon. As John recounts it in his book, *Blind Ambition*, he then said to Sam:

Sam, do you know what this means, if you get those conversations? It would mean my ass is not hanging out there all alone. It means that you can verify my testimony. And I'll tell you this, you'll find out that I've undertestified, rather than overtestified, just to be careful.¹⁹

On Monday morning, July 16, Ervin, Baker, Dash, and Thompson met and decided to put Butterfield on the stand that afternoon. I was dispatched to summon him. When I told Butterfield that his presence was required that day, he was distinctly displeased. Indeed, he refused to appear. He said that he was preparing for a trip to Russia on Federal Aviation Administration business, of which he was then the chairman, and that he was too busy to attend.

I relayed Butterfield's response to Senator Ervin. Ervin grew agitated. His eyebrows cavorted; his jaw churned. Finally he said to me: "Tell Mr. Butterfield that, if he is not here this afternoon, I will send the Senate sergeant at arms to fetch him."

Now, I have carefully refrained from discussing the law of congressional investigations so far in these remarks. It is too early in the morning for a discourse on law. But I must do so briefly now.

The Senate has the constitutional power, if a lawful order or subpoena is ignored, to send its sergeant at arms to arrest the miscreant and to imprison him in the Capitol. This power has not been used since World War II, having essentially been replaced by use of the contempt of Congress statute that allows criminal prosecution for disobedience. Nonetheless, the power still exists.²⁰

But this power only can be exercised by a vote of the full Senate. Sam Ervin did not have the right, on his own, to dispatch the sergeant at arms to arrest Butterfield. Ervin, a great constitutional scholar, undoubtedly knew that, but he nonetheless

¹⁹ JOHN DEAN, *BLIND AMBITION* 332 (1976).

²⁰ See generally, HAMILTON, *supra* note 2, at 85-91; Hamilton, Muse & Amer, *supra* note 2, at 1132-33.

instructed me to deliver his message to Butterfield, which, having located him in a barber chair, I did faithfully.

That message changed his mind, and later that afternoon Butterfield, now contrite and neatly coifed, arrived at the Committee to give his electrifying testimony. The subpoena I served on him for that testimony still hangs in my office.

Before Butterfield's testimony, Senator Baker approached Sam Dash and asked Sam to let Fred open the questioning, because minority aide Don Sanders had asked the fateful question to Butterfield. Sam thought about this request for a while and then, as he describes in his book, *Chief Counsel*, reluctantly agreed, because he thought it was only "fair."²¹

I have heard Fred say that asking that question was a big boost to his political career. I wonder if Sam, an ardent, unabashed liberal Democrat until the day he died, would have so graciously agreed to Senator Baker's request had he been prescient enough to realize the later political advantage it afforded. I'm certain Sam would have been pleased to assist Fred in becoming a prominent actor. But a Republican Senator, probably not.

It was, however, a good thing for the Committee that Fred took the lead in questioning Butterfield. It demonstrated, as Senator Baker knew it would, that the investigation was non-partisan, and that Republicans and Democrats alike wanted all the facts to come out, no matter how dire the results were for the Nixon Administration. Perhaps it also helped achieve unanimity in the votes to subpoena and sue the President.

It is another irony of Watergate that the Senate Committee, although it discovered the tapes, never actually obtained them but had to settle for transcripts. The D.C. Circuit found that the case involved not just a political question but was justiciable—that is, it could be decided by a court—and that the President's executive privilege was not absolute, but was subject to a balancing test. But the Court ultimately held that the President's interests in protecting the tapes outweighed the Committee's need for them.²²

The ruling was frustrating and odd, because the transcripts were public and the House Judiciary Committee, which was conducting impeachment proceedings concerning the President, had the actual tapes. Nonetheless, precedent was established that was recently applied in the House Judiciary Committee's suit against Bush White House officials, Harriet Miers and Joshua Bolten. The U.S. District Court for the District of Columbia, relying on the Select Committee's case, held that the suit against Miers and Bolten could proceed, that the President did not have an absolute executive privilege, and that the House had a right to the testimony and materials it sought.²³ In 2008, I wrote an amicus brief in the *Miers* case supporting the House on behalf of, among others, Senator Dan Inouye, who had been a member of the Watergate Committee. Nearly forty years earlier, I had

21 SAMUEL DASH, *CHIEF COUNSEL: INSIDE THE ERVIN COMMITTEE—THE UNTOLD STORY OF WATERGATE* 184 (1976).

22 Senate Select Comm. on Presidential Campaign Activities v. Nixon, 498 F.2d 725 (D.C. Cir. 1974).

23 Comm. on Judiciary v. Miers, 558 F. Supp. 2d 53 (D.D.C. 2008).

written the briefs in the Senate Watergate Committee case, proving, I guess, that in Washington we are all recycled.

But this recent opinion is only a very small part of the legacy of the Senate Watergate Committee. It also spawned significant legislation, for example, the central elements of the Nation's campaign finance laws and the Ethics in Government Act of 1978, including the misused, now discarded, but not lamented Independent Counsel statute.²⁴

But beyond that, the Senate Watergate Committee is an enduring model of how to do things the right way, how to investigate thoroughly and fairly, and how to seek the truth in a non-partisan manner. Much of that legacy is due to the beneficial partnership that Senator Ervin and Senator Baker forged. That is one reason why it is most appropriate to honor Senator Baker by this symposium, and to hope that maybe, just maybe, his example of civility and cooperation may influence some of the more reckless, short-sighted partisans on both sides of the aisle who today inhabit Capitol Hill.

24 Pub. L. No. 95-521, § 601(a), 92 Stat. 1824, 1867-73 (1978).

HOWARD BAKER AND THE MEANING AND LEGACY OF WATERGATE: *An Overview*

Rick Perlstein¹

Early in 1973, the editor of the magazine *Intellectual Digest* was asked what might be the biggest surprise to the prisoners of war just then returning from North Vietnam. He answered, “that for the first time Americans have had at least a partial loss in the fundamental belief in ourselves. We’ve always believed we were the new men, the new people, the new society. The last best hope of earth, in Lincoln’s terms. For the first time, we’ve really begun to doubt it.”²

The televised hearings of the United States Senate’s Select Committee to Investigate Campaign Practices that spring and summer—also known as the “Watergate Committee” or the “Ervin Committee,” after its chairman, Senator Sam J. Ervin, Jr. (D. N.C.), are justly considered one of the most important events in recent American history—Constitutional history, legal history, presidential history, senatorial history, and political history. For me, however, they are most fascinating as a document in America’s *moral* history. The hearings in which Senator Howard H. Baker, Jr., played so important a part inaugurated a national symposium on the question, Was America still the last best hope on earth?

Start on January 20, 1969. A new President, in his inaugural address, announced that the keynote of his new administration would be morality: After the chaos and confusion of the 1960s, he promised to “bring us together”—to “build a great cathedral of the spirit—each of us raising it one stone at a time, as he reaches out to his neighbor, helping, caring, doing.”³ To the millions of Americans who loved Richard Nixon, in fact, he *embodied* morality; morality in the sense of rectitude, of right living, of law and order. *Immorality*—the coddling of miscreants, the countenancing of chaos, the dissolution of moral codes—they associated with the other party, the Democrats; the party whose Democratic National Committee (DNC) had just moved its headquarters, in 1969, into the swankiest address in Washington, the mixed-use office, residential, and retail complex on the Potomac River known simply as the Watergate.

When seven burglars and accomplices, including James W. McCord, a retired CIA employee and the chief of security operations for Nixon’s reelection campaign, were caught on June 17, 1972, breaking into those headquarters, many Americans were prepared to believe exactly what the President’s campaign manager, John Mitchell, formerly the Attorney General of the United States, said about them: McCord and the other people involved “were not operating either in our behalf

1 Rick Perlstein is the author of *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (2001) and *Nixonland: The Rise of a President and the Fracturing of America* (2008). He also is a contributor to *Newsweek*, *The American Prospect*, and *The Nation* and a former writer for *The Village Voice* and *The New Republic*.

2 TODAY Show, Feb. 22, 1973, viewed by the author at the Vanderbilt University News Archive, Nashville, Tennessee.

3 RICHARD M. NIXON, SPEECHES, WRITINGS, DOCUMENTS 158 (Rick Perlstein ed. 2008).

or with our consent.”⁴ The cover story the White House began circulating was that these were ideologically unhinged anti-Castro Cubans who were irrationally terrified of the prospect of the same sort of Communist takeover in America. It worked. DNC chairman Larry O’Brien, wrote one syndicated columnist, was “grab[bing] onto this astonishing episode for political gain, and mak[ing] all sorts of outlandish charges such as the one that there is a developing clear line to the White House in the case. Humor is blessed relief in a messy episode like this one.”⁵ The *Chicago Tribune* didn’t run an article about the DNC break-in on the front page until the end of August of 1972.⁶ In October, White House allies in Congress easily shut down a proposed House inquiry into Watergate. Right up to election day, Carl Bernstein and Bob Woodward of the *Washington Post* produced a line of scoops indicating staff and financial ties between the Watergate defendants and the top levels of the White House and Nixon campaigns. But they ran next to falsely equivalent stories about irregularities in the presidential campaign of the Democratic nominee, Senator George McGovern. The Gallup public-opinion polling organization published the results of an election-eve poll asking, “Which candidate—Nixon or McGovern—do you think is more sincere, believable?” Nixon won, 59 percent to 20 percent.⁷

The White House got away with it. Nixon’s second term got off to a propitious start. Near the end of January 1973, after he had announced the Paris Peace accords ending the Vietnam War, his approval rating was 67 percent⁸—not exactly the mark of an incipient national villain.

The trial of the Watergate burglars and accomplices began scarcely more than ten days before Nixon’s second inaugural with a strikingly narrow indictment and a weak government prosecution. Presiding at the trial was an obscure federal judge named John J. Sirica, who kept on badgering defendants and witnesses about matters beyond his brief: “*Who paid them? . . . What was the purpose[?]*”⁹ He wondered why, every time cross-examination led to Nixon’s reelection headquarters, or to questions regarding the hundreds of thousands of dollars other investigations had already established had been laundered through Mexico, memories grew vague.¹⁰ Be that as it may, most of official Washington was ready to end their concern with the Watergate affair with the seven men’s convictions. Judge Sirica was cornered at a cocktail party and asked whether he was being paid off to discredit Nixon’s

4 Bob Woodward & Carl Bernstein, *GOP Security Aide Among 5 Arrested In Bugging Affair*, WASH. POST, June 19, 1972, at A1.

5 RICK PERLSTEIN, *NIXONLAND: THE RISE OF A PRESIDENT AND THE FRACTURING OF AMERICA* 684 (2008).

6 TIAN-JIA DONG, *UNDERSTANDING POWER THROUGH WATERGATE: THE WASHINGTON COLLECTIVE POWER DYNAMICS* 28 (2005).

7 GALLUP OPINION INDEX, REP. NO. 88 at 7 (Oct. 1972).

8 GALLUP OPINION INDEX, REP. NO. 92 at 3 (Feb. 1973).

9 *U.S. v. Barker*, 514 F.2d 208, 213 (D.C. Cir. 1975) (quoting excerpts from opening statements by defendants’ counsel and from questions by Judge Sirica).

10 JOHN J. SIRICA, *TO SET THE RECORD STRAIGHT: THE BREAK-IN, THE TAPES, THE CONSPIRATORS, THE PARDON* 73 (1979).

reelection by the McGovern campaign.¹¹

The Senate had voted 77-0 to establish the Ervin Committee¹²—but the very fact that the decision was unanimous was an indication that the proceedings were not expected to be particularly controversial. Pundit Stewart Alsop called Ervin “far and away the best of the Senate’s . . . character actors.”¹³ Ervin himself thought it “simply inconceivable” that President Nixon would be found to be involved in Watergate.¹⁴

Then, however, a twist: before his sentencing, Watergate conspirator McCord revealed in a letter to Judge Sirica that “[t]here was political pressure applied to the defendants to plead guilty and remain silent. . . . [p]erjury occurred during the trial of matters highly material to the very structure, orientation, and impact of the government’s case . . .,” and that “[o]thers involved in the Watergate operation were not identified during the trial.”¹⁵ The case was blown wide open, just before the Ervin hearings were set to begin.

That made the May 17 opening session, carried live on all three networks and PBS, the hottest ticket on television. The Committee’s proceedings on that day, however, and for the first few weeks, for that matter, turned out to be mostly a rather boring show. Mousy young bureaucrats were grilled about the allocation of office space. “Wouldn’t you really rather watch *Jeopardy!* than watch Senator Ervin chew on pencils,” one angry housewife wrote to her local newspaper.¹⁶

From the beginning, however, other housewives argued differently. “Never have I enjoyed watching television more than in the last few weeks. . . . I’ve served notice to my family. I do not intend to sauté an onion, dust a table top, nor darn a sock while those hearings are on. I wouldn’t miss a word for the world.”¹⁷ And when the hearings began calling the most critical witnesses toward the end of June, the melodrama really began. When presidential assistant John Dean testified on June 26—calmly, studiously, and in great detail, holding up with great forbearance against difficult cross-examination from the senators and their staffs—about his first-hand knowledge of President Nixon’s intimate involvement, despite his denials, of the criminal cover-up to keep the Watergate conspirators quiet—the hearings became a national obsession. *Time* magazine named the stakes: “If Dean’s claims are true—and his supporting details as well as some of his circumstantial documents were impressive—that would make Nixon’s . . . denials outright lies.”¹⁸

11 JOSEPH C. GOULDEN, *THE BENCHWARMERS: THE PRIVATE WORLD OF THE POWERFUL FEDERAL JUDGE* 188 (1974).

12 STANLEY I. KUTLER, *THE WARS OF WATERGATE: THE LAST CRISIS OF RICHARD NIXON* 256 (1992).

13 ROBERT W. MERRY, *TAKING ON THE WORLD: JOSEPH AND STEWART ALSOP, GUARDIANS OF THE AMERICAN CENTURY* 515 (1997).

14 SAM J. ERVIN, JR., *THE WHOLE TRUTH: THE WATERGATE CONSPIRACY* 19 (1980).

15 FRED EMERY, *WATERGATE: THE CORRUPTION OF AMERICAN POLITICS AND THE FALL OF RICHARD NIXON* 270 (1995).

16 “Today’s Living,” *LOUISVILLE COURIER-JOURNAL*, June 2, 1973.

17 Letter to the editor, *WASH. POST*, June 1, 1973.

18 *The Hearings: Dean’s Case Against the President*, *TIME*, July 9, 1973, available at <http://www.time.com/time/magazine/article/0,9171,907488-3,00.html>.

The question of whether those claims were true—whether the public should believe the President’s word, or the word of this mousy and obscure man testifying in exchange for partial criminal immunity—became even more melodramatic, even more the national obsession, when it was revealed in open hearings on July 16 that President Nixon had taped every word uttered in the Oval Office.¹⁹

This all is by now very familiar. Less well-remembered, but even more crucial for the sort of broad-gaged cultural history of America in the 1970s that I am endeavoring to write, were those almost random moments in which the deepest questions about America’s moral self-image suddenly came to the fore. These, I hypothesize, even as much as the forensic questions of what the President knew and when he knew it, were what kept Americans glued to their televisions during the “Watergate Summer” of 1973.

For instance, when Senator Baker grilled Herb Porter, the young treasurer of the Committee to Re-Elect the President, bearing down not on *what* he had done to further the dirty tricks operation against the Democratic candidates during the 1972 presidential election, but *why* he had done it. “Did you ever have any doubt in your mind about the propriety of this? . . . Not the illegality, but the propriety of it.”

The young man hedged and dodged. Senator Baker sharpened the question:

“Did you ever have any qualms about what you were doing . . . ?”

Porter’s answer—“I kind of drifted along”—was the sort of thing that became a touchstone for American water-cooler conversations that summer. Why did he “drift along?” “In all honesty, probably because of the fear of group pressure that would ensue, of not being a team player.”

“What caused you to abdicate your own conscience and disapproval, if you did disapprove, of the practices of [the] dirty tricks operation?”

“Well, Senator Baker, my loyalty to this man, Richard Nixon . . .”²⁰

Americans had seen Senate witnesses sounding like mafioso in televised hearings before—but these had been hearings on the mafia, held by Senator Estes Kefauver (D. Tenn.) more than two decades earlier. These witnesses, though, were “all the President’s men” who were hemming and hawing about crimes they had committed, perjury they had suborned, bribes they had made with money they had laundered, and all the rest. What is more, many were willfully refusing to acknowledge they had done anything wrong. When Jeb Stuart Magruder was pressed—once more by Senator Baker—why he persisted in planning the Watergate break-in even though he had acknowledged that “it was illegal and that it was inappropriate and that it may not work,”²¹ he brought up a minister he knew in college: William Sloane Coffin, the anti-war chaplain of Yale. Coffin, rationalized Magruder, “tells me my ethics are bad. Yet he was indicted for criminal charges. He recommended on the Washington Monument grounds that students burn their draft cards. . . . Now

19 MICHAEL A. GENOVESE, *THE WATERGATE CRISIS* 41-42 (1999).

20 *Presidential Campaign Activities of 1972, Watergate and Related Activities, Phase I: Watergate Investigation, Bk. 2: Hearings Before the S. Select Comm. on Presidential Campaign Activities, 93rd Cong. 648-49 (1973)* (testimony of Herbert Lloyd Porter).

21 *Id.* at 813.

here are ethical, legitimate people whom I respected. . . . breaking the law without any regard for any other person's pattern of behavior or belief. . . . So, consequently . . . when these subjects came up and although I was aware they were illegal, . . . we had become somewhat inured to using some activities that would help us in accomplishing what we thought was a cause, a legitimate cause."²²

Well, what of it?

The Watergate Committee hearings provided a stage for the debate about these most basic questions: Who was right? Who was wrong? Was Jeb Stuart Magruder just talking like a weasel? Or was he making a legitimate point about how the insurgencies of the 1960s had loosened the bonds of law and order and paved the way for Watergate?

It was, in any event, a mess. On July 23, Senator Joseph Montoya (D. N.M.) asked another young witness, White House assistant Gordon Strachan, what advice he had for young people thinking of going to Washington and entering government service. Strachan's response got the biggest laughter of all the hearings—embarrassed, embarrassing laughter: “[S]tay away.”²³

Was America still the last, best hope of earth? Or was it something else? If so, what? The questions were suddenly proliferating everywhere in 1973. In that summer's annual Soap Box Derby race in Akron, Ohio, the winning entrant was discovered to have outfitted his car with a battery-enhanced magnet. An op-ed writer in the *Los Angeles Times* responded with anger—that the boy had been disqualified. “CHEATING ALWAYS PART OF SOAP BOX FUN,” he argued, calling what the boy did “enterprise.”²⁴

A new phrase was creeping into the national conversation: *energy crisis*. Suddenly, there were rumors that the summer might bring gas rationing: in some places, like Southern California and New Jersey, because of dangerous levels of air pollution; in others, like the Midwest, because supplies of gasoline were said to be running low. The rumors were widespread that this was the result of a conspiracy on the part of oil companies—the same sort of companies being revealed every day in the Watergate hearings to have funneled hundreds of thousands of dollars in illicit cash to the Nixon reelection campaign. In September, at the close of Watergate Summer, the Republican governor of Oregon issued an edict banning commercial and decorative electric signs at night. In October came the OPEC oil embargo, tripling the price of fuel. It happened the same week President Nixon fired special prosecutor Archibald Cox, and the scary White House Chief of Staff, Alexander Haig, who came to work every day in a general's uniform, ordered the FBI to seal the office of the Attorney General. “There was a real sense,” said one of Cox's aides, that “a fascist takeover could be imminent.” There were even rumors that the Pentagon planned to turn off the eternal flame at the gravesite of President

22 *Id.* at 814.

23 *Presidential Campaign Activities of 1972, Watergate and Related Activities, Phase I: Watergate Investigation, Bk. 6: Hearings Before the S. Select Comm. on Presidential Campaign Activities, 93rd Cong. 2478 (1973)* (testimony of Gordon Strachan).

24 Rick Perlstein, *That Seventies Show*, THE NATION, Nov. 8, 2010, at 25, available at <http://www.thenation.com/article/155492/seventies-show>.

Kennedy to save energy. A letter-writer to the *Times* thought that an excellent idea: “Wouldn’t it seem logical to use that gas for a better use such as heating homes or office buildings rather than just burning it to no real purpose whatever?”²⁵

Now everything was up for grabs. Such moments inaugurated one of the keynote discussions of American in the 1970s: was the American Century over? Should it have ever begun?

It was the kind of discussion, inaugurated in Watergate Summer, that very much paved the way for the candidacy and victory of Ronald Reagan in 1980.

CINCINNATUS OF TENNESSEE:

Howard Baker as White House Chief of Staff

David B. Cohen and Charles E. Walcott¹

I am . . . pleased to announce that Howard H. Baker, Jr., has agreed to serve as Chief of Staff to the President of the United States. Howard Baker is a distinguished American who has served as majority and minority leader of the United States Senate, a leader of the Republican Party, and a man of unquestioned integrity and ability. I am enormously pleased that he is willing to take on this responsibility and to help me organize the White House staff for an aggressive two years of work. Howard and I have been friends for a number of years. I have the utmost respect and admiration for him . . . I look forward to having him work with me in the months ahead.²

—President Ronald Reagan, *February 27, 1987*

CINCINNATUS OF TENNESSEE

Lucius Quinctius Cincinnatus was a hero of the early Roman republic. In the year 458 B.C., the city of Rome was attacked by its neighbors, the Aequi and the Volscians. The city's independence was at stake. Cincinnatus, who previously had been Rome's leader, had retired to his farm, but in its hour of need, Rome called on him to resume that leadership role. Cincinnatus agreed, left the farm, came to Rome, led its armies to a stunning victory, and retired back to his farm, all in sixteen days. To the Romans, the enduring legacy of Cincinnatus was not only his patriotic willingness to serve in desperate times, but his modesty in relinquishing power when he was finished.³

There are many parallels between Cincinnatus and Howard Baker. Baker was not on a farm when the call came asking him to join the Reagan White House in its hour of need, but he was with his family at a zoo, which is pretty close. He was not a former president but had been a U.S. Senator, Senate majority leader, and a presidential aspirant. The country was not being invaded in 1987, but the Administration of President Ronald Reagan was in deep trouble; indeed, the word "impeachment" had been whispered in the media and in the halls of Congress, while advisers to Baker himself were consulting the Twenty-fifth Amendment to the Constitution because the President seemed out of touch. The President knew he

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2 Ronald Reagan, Statement on the Resignation of Donald T. Regan and the Appointment of Howard H. Baker, Jr., as Chief of Staff, Feb. 27, 1987, THE AMERICAN PRESIDENCY PROJECT (John T. Woolley & Gerhard Peters eds.), <http://www.presidency.ucsb.edu/ws/?pid=33911>.

3 For Cincinnatus and his legacy, see MICHAEL J. HILLYARD, CINCINNATUS AND THE CITIZEN-SERVANT IDEAL: THE ROMAN LEGEND'S LIFE, TIMES, AND LEGACY (2001).

had problems. When he called Baker and was informed by his wife Joy that he was at the zoo with the grandchildren, Reagan joked, "Well, tell him I need him because we've got a zoo up here."⁴ Finally, Howard Baker was not an interim dictator, as Cincinnatus was, but, as the contrast between Baker and his predecessor reveals, as White House chief of staff, he was assuredly one of the most important officials in the United States government.

THE REAGAN WHITE HOUSE AND THE IRAN-CONTRA MESS

In order to appreciate the task that Baker was asked to take on, we need to review just how dire the situation that confronted him really had become and how Reagan had become ensnared by the Iran-Contra scandal. In transitioning between his first and second terms, Reagan had made significant changes in personnel in his Administration and in his White House. Gone now were the "troika" of advisers who had ably, if at times contentiously, served him in the White House for four years.⁵ Edwin Meese, the President's policy overseer, had become Attorney General. Michael Deaver, the mastermind behind the President's "Teflon" image, had left to go into the lobbying business. James Baker, Reagan's first chief of staff and, arguably, first among White House equals, had become Secretary of the Treasury. In moving to Treasury, James Baker had swapped jobs with the incumbent Treasury Secretary, Donald Regan, and Regan had become White House chief of staff. Then the troubles began.

Don Regan's tenure as chief of staff was problematic in several ways. From the beginning, it was intended to be different from his predecessor's. Touted in the business press as a "streamlined, corporate-style White House," Regan's staff was a clear hierarchy, with none of the perceived messiness of the "troika" arrangement.⁶ Nor did Regan share any of James Baker's fondness for delegating responsibility. While the lines of accountability were simplified, the staff in the chief's office grew, and any staffers who might challenge him were eventually removed. Regan's staff, loyal and dependent upon their boss but basically implementers and not thinkers, came to be known widely in the White House as the "mice." According to journalist Hedrick Smith:

Regan operated more like a corporate CEO or a Marine officer (he had been both) than a politician accustomed to the ways of sharing power. He personally held all the key levers in the White House power structure. His hand-picked aides controlled the president's paper flow and schedule but were so meek and dutiful that they were quickly nicknamed the "mice."

4 LOU CANNON, *PRESIDENT REAGAN: THE ROLE OF A LIFETIME* 730 (1991).

5 For excellent descriptions of "the Troika," see *id.*; Lou Cannon & Lee Lescaze, "The Trio' Still Rules But With Less Clout," *WASH. POST*, Mar. 21, 1982, at A1; Lou Cannon & Lee Lescaze, *Reagan's Decision-Making Process Still a Mystery*, *WASH. POST*, Mar. 22, 1982, at A1.

6 E.g., see JANE MAYER & DOYLE McMANUS, *LANDSLIDE: THE UNMAKING OF THE PRESIDENT, 1984-1988*, at 40-41 (1989); Ann Reilly, *Don Regan Recruits His White House Staff*, *FORTUNE*, Mar. 4, 1985, available at http://money.cnn.com/magazines/fortune/fortune_archive/1985/03/04/65651/index.htm.

Given a free rein in the president's political household, Regan tolerated no competing power centers inside the White House. . . . Gradually, the White House apparatus came to reflect more loyalty to Regan than to the president.⁷

Regan was indeed the boss, and he deemed no one, save the President, to be his equal. Regan was gruff and assertive—traits that many concluded were inappropriate in a sensitive White House position in which he was not a Number 1, but rather a Number 2. As chief of staff, his job was not to preempt decisions but rather to ensure that all relevant interests and points of view became involved in the decision-making process. Instead, he tended to try to protect Regan from the clash of ideas, which he felt made the President uncomfortable. To some, Regan seemed to be acting more like a prime minister than a mere chief of staff, and he actually boasted about his decision-making power.⁸ As Ed Rollins, Assistant to the President for Political Affairs under both James Baker and Regan put it, “He figured, if Ronald Reagan didn’t want to be president all the time, he would be.”⁹ Regan’s assertiveness and propensity to claim credit placed him on the bad side of the President’s wife, and Nancy Reagan would ultimately be influential in forcing him out of the White House. Ironically, however, in the crisis that came to consume the Reagan White House, what was known as the Iran-Contra affair, Don Regan’s contribution to the problem lay less in what he did than in what he failed to do.

In fact, Iran-Contra lay at the root of the problems that Howard Baker encountered as Regan’s successor. Though they involved extreme secrecy, complex deal-making, shady characters, and a certain disregard for the niceties of the law, the Iran-Contra dealings were fairly simple in outline.¹⁰ The first part involved Iran. In 1985, the Iranian-sponsored group Hezbollah was holding six captured U.S. citizens hostage. President Reagan wanted to free them. The chance seemed to come in the person of Manucher Ghorbanifar, a self-described representative of “moderates” in the Iranian government (and a known liar who was listed on an official CIA “fabricator notice.”). The moderate Iranians, Ghorbanifar suggested, could use their influence in the Iranian government to persuade Hezbollah to release the hostages. In exchange for this, the so-called moderates wanted only

7 HEDRICK SMITH, *THE POWER GAME: HOW WASHINGTON WORKS* 325-26 (1988).

8 See ADRIANA BOSCH & DAVID McCULLOUGH, *REAGAN: AN AMERICAN STORY* 302 (2000) (quoting recollection of Ed Rollins, who had served as Reagan’s 1984 campaign manager, that “Don Regan was a tyrant. And he was miscast as a chief of staff and never thought of himself as staff. He thought of himself as Deputy President. Said to me one day, ‘I can make 85 percent of the decisions the President makes.’ And I said to him, I said, ‘Don, I just ran a campaign in 50 states. I didn’t see your name on the ballot anywhere.’”); CANNON, *supra* note 4, at 721 (quoting longtime Reagan political adviser Stuart Spencer as having said of Regan, “[H]e became a prime minister, he became a guy that was in every photo op, he wasn’t watching the shop.”); MAYER & McMANUS, *supra* note 6, at 42; RICHARD REEVES, *PRESIDENT REAGAN: THE TRIUMPH OF IMAGINATION* (2005) (caption to photograph 10 of illustrations following p. 270, containing unattributed statement that “the arrogant former Treasury Secretary . . . boasted that he made 85 percent of the President’s decisions.”).

9 MAYER & McMANUS, *supra* note 6, at 42.

10 For useful overviews of the scandal, see THEODORE DRAPER, *A VERY THIN LINE: THE IRAN-CONTRA AFFAIRS* (1991) and MAYER & McMANUS, *supra* note 6.

the chance to buy U.S. anti-tank weapons. Reagan Administration officials, led by National Security Advisor Robert (“Bud”) McFarlane and his aide, Lieutenant Colonel Oliver North, agreed to the deal. Israel would directly provide the arms, while the United States would resupply them and keep the proceeds from the sales. All this was arguably illegal, given an existing arms embargo on Iran. Nonetheless, the National Security Council (NSC) officials went ahead. Whether, and to what extent, Ronald Reagan knew of all this or understood its import, remains debatable, though the President and Regan were present at crucial meetings at which the operation was discussed. The President, to the consternation of most, admitted that the transactions—eventually a complex series of them involving eight separate arms shipments—did take place, but he denied the seemingly obvious conclusion that the United States had attempted to trade arms for hostages. In any event, the effort was largely a failure. Only three hostages were ever released, and in the meantime three more were captured. Worse for the Reagan Administration, the plot was exposed by a Lebanese magazine in November, 1986.¹¹

The second part of the “affair,” the Contra part, arose as the White House conspirators found a creative way to use the profits from the arms sales. Probably no cause was dearer to Ronald Reagan’s heart than that of the “Contras” of Nicaragua, a rebel band seeking to overthrow the leftist Sandinista government of that country. To their opponents, including many in the United States, the Contras were guerrillas who were guilty of drug trafficking and persistent human rights abuses. To the Reagan Administration, they were “freedom fighters,” engaged in the overthrow of a Communist-backed government. Legislative majorities being largely of the former opinion, Congress had passed the Boland Amendment, barring U.S. government support for the Contras. In the Reagan White House, the reaction to that was to sponsor a “stand alone” operation, dubbed “the Enterprise,” whereby the Contras could continue to be armed and trained. Funding for this came from various private sources, but also came to include the proceeds from the arms sales to Iran. Hence, the “Iran-Contra” affair.

Central to the Iran-Contra operation were the efforts of certain top officials in the Reagan White House. McFarlane and North were clearly instigators, and when McFarlane left, his replacement, his former deputy Vice Admiral John Poindexter, continued the program. But, a great deal of the responsibility also fell on the shoulders of Regan. One consequence of a hierarchical staff organization is that, since little is fully delegated, the hierarchical leader can be credited or blamed for just about everything. The Iran-Contra initiative was not Regan’s idea, but he did nothing to stop it. One of the key elements of a chief of staff’s job—perhaps *the* key responsibility—is to be a guardian, which means to protect the interests of the President. In this, Donald Regan failed, not because he took control, but because he did not.

Failure to protect the President was the ultimate crime in the eyes of one other major White House personage: First Lady Nancy Reagan. Nancy Reagan had

11. MAYER & McMANUS, *supra* note 6, at 293.

developed a long-standing distrust of Donald Regan. Essentially, she was not convinced that he put her husband's political requirements ahead of his own. As the disclosures and turmoil surrounding the Iran-Contra initiative worsened, she resented what seemed to be Regan's efforts to deflect the blame onto others and became firmly convinced that he had to leave the Administration.¹² To that end, she not only lobbied the President, but also brought in close friends and allies to help. Regan's opponents even began to lobby the press with damaging leaks. Don Regan resisted, and the other old Irishman, Ronald Reagan, was not convinced.

Finally, though, the President in November 1986, at the suggestion of Donald Regan's aides, appointed a commission comprised of former U.S. Senator John Tower (R. Tex.), former Secretary of State Edmund S. Muskie, and former National Security Advisor Brent Scowcroft—the so-called Tower Commission—to investigate the leaks. When the Tower Commission issued its report in February 1987, it found that Regan bore central responsibility for the crisis that had gripped the White House. It concluded, "More than almost any chief of staff in recent memory, he [Regan] asserted personal control over the White House staff and sought to extend his control to the National Security Advisor. He was personally active in national security affairs and attended almost all of the relevant meetings regarding the Iran initiative. He, as much as anyone, should have insisted that an orderly process be observed. . . . He must bear primary responsibility for the chaos that descended upon the White House when such disclosure did occur."¹³

"Chaos" was not too strong a word. The White House had become an "every man for himself" operation and clearly needed to be totally reconstructed, beginning with replacement of the chief of staff and his retainers. This did not happen smoothly. Don Regan felt wronged and said so. But hanging up on the First Lady and the release of the Tower Commission Report made the outcome inevitable.¹⁴ Regan was persuaded to resign in a meeting with Vice President Bush. Angry that the President didn't fire him himself and that news had leaked that Howard Baker would be replacing him, Regan refused to remain at his post even for a few days to allow for an orderly transition and, instead, penned a one-sentence letter that read simply and curtly: "I hereby resign as Chief of Staff to the President of the United States."¹⁵ Regan departed the White House the same day, Friday, February 27, 1987.

12 See, e.g., RICHARD REEVES, *PRESIDENT REAGAN: THE TRIUMPH OF IMAGINATION* 366-67 (2005).

13 JOHN TOWER, EDMUND MUSKIE, & BRENT SCOWCROFT, *THE TOWER COMMISSION REPORT* 81 (1987).

14 See CANNON, *supra* note 4, at 725, 729; REEVES, *supra* note 12, at 366-67, 384.

15 DONALD T. REGAN, *FOR THE RECORD: FROM WALL STREET TO WASHINGTON* 371-72 (1988); RONALD REAGAN, *AN AMERICAN LIFE* 538-39 (1990).

**CINCINNATUS TO THE RESCUE:
HOWARD BAKER AS CHIEF OF STAFF**

A White House in Disarray

Upon Regan's abrupt departure, Attorney General Ed Meese telephoned Howard Baker at his Washington law office and urged him to come to the White House immediately. Baker demurred, saying that Reagan wanted him to wait until Monday. Meese insisted: "Howard, I think you better get over to the White House. There's no one in charge."¹⁶ Howard Baker hadn't wanted to be chief of staff. When he got to the White House and appraised the situation, his apprehension was justified—the former regime was in tatters, and there were doubts about the President's competence. Baker's mandate was first to assess the President's mental state and then to reconstruct the top echelons of the White House staff and try to save Reagan's presidency.

The White House staff was dysfunctional and in disarray. Regan had been feared by his staff, who were viewed by many colleagues as minions of a chief of staff who had attempted to be a prime minister. Baker had to shake up the staff and reorganize the White House. He brought with him two close associates who had worked with him over the years: James Cannon and Tom Griscom. Cannon and Griscom were immediately given the assignment of interviewing as many White House staff as they could and of making a general assessment of the situation. Their findings were not encouraging—the staff system had broken down, and the place was in utter disarray. Cannon, a veteran of the Ford White House, observed that it was "Chaos. There was no order in the place. The staff system had just broken down. It had just evaporated. There was no pattern of analysis, no coming together . . . I took a look at some of the staff's paperwork and was stunned at their incompetence. They were rank amateurs."¹⁷

Baker understood that the process and personnel in the White House had to change, and fast. In order to alleviate the paralysis that had set in, Baker had to clean house and repair the White House culture. He had to put people in place that were loyal to Baker and Reagan, not Regan. "When I first got Don Regan's staff together," Baker recalled,

they were obviously apprehensive and even some were hostile. I began by saying, "Look, you're not all fired immediately, but some of you will be fired. Some of you will be changed . . . In order to serve the President well, I've got to have my own people, people I already know and trust."¹⁸

16 MAYER & McMANUS, *supra* note 6, at 385.

17 *Id.* at viii-ix.

18 Howard H. Baker, Jr., Interview, Aug. 24, 2004, Transcript at 9, Ronald Reagan Oral History Project, Miller Center of Public Affairs, University of Virginia, available at http://web1.millercenter.org/poh/transcripts/ohp_2004_0824_baker.pdf.

One of the keys to Baker's new system was bringing in Kenneth Duberstein as deputy chief of staff. Duberstein was an experienced Reagan hand who had previously headed the legislative affairs shop in the first term. Baker also brought in Tom Griscom as communications director and A. B. Culvahouse as White House counsel and point person on Iran-Contra. Baker had initially wanted Griscom to serve as the President's press secretary, but Reagan, having just hired Marlin Fitzwater for that position, kept Fitzwater in place.¹⁹

Reengaging Reagan

Baker's immediate task was to assess Reagan's mental and physical health. The reports that Baker and his people received about the President's condition were alarming—alarming enough that, at a meeting at Baker's home on Sunday, March 1, Cannon, Griscom, and others broached the possibility of invoking the Twenty-fifth Amendment.²⁰ Two of Reagan's aides told Cannon and Griscom that the President was "inattentive . . . , inept . . . , [and] lazy" and that staff regularly forged Reagan's initials on important documents.²¹ Cannon informed Baker that aides had told him that Reagan "wasn't interested in the job. They said he wouldn't read the papers they gave him—even short position papers and documents. They said he wouldn't come over to work—all he wanted to do was to watch movies and television at the residence."²²

Baker's reaction was to instruct his inner circle to observe the President closely and see if there was any evidence supporting the claim of Reagan's impairment.²³ Much of Baker's first day on the job was spent observing Reagan, and he later told reporters that "I didn't see an AWOL President."²⁴ Years later, Baker observed that reports of Reagan's impaired mental state had been "really inaccurate I never thought Reagan was impaired I think he was fully functional, and after the first staff meeting I gathered up the senior staff and said, 'Boys, this is a fully functioning and capable President and I don't want to hear anymore talk about that.'"²⁵

Baker did, however, observe a President he characterized as "down . . . [and] despondent but not depressed."²⁶ The cure for Reagan's malady, in Baker's opinion: get Reagan reengaged. So Baker laid out what he termed a "significant speaking program and public events" for the President.²⁷ He increased the number of

19 See generally MARLIN FITZWATER, *CALL THE BRIEFING! REAGAN AND BUSH, SAM AND HELEN: A DECADE WITH PRESIDENTS AND THE PRESS* (1995).

20 The Twenty-fifth Amendment establishes procedures by which the Vice President becomes "Acting President" when the President is unable to discharge the powers and duties of his office. See U.S. CONST. amend. XXV, § 4.

21 J. LEE ANNIS, JR., *HOWARD BAKER: CONCILIATOR IN AN AGE OF CRISIS*, 2d ed., at 213-14 (2007).

22 MAYER & MCMANUS, *supra* note 6, at ix.

23 BOB WOODWARD, *SHADOW: FIVE PRESIDENTS AND THE LEGACY OF WATERGATE* 126 (1999).

24 ANNIS, *supra* note 21, at 214.

25 Baker Interview, *supra* note 18.

26 *Id.*

27 *Id.*

appearances by the President outside the Beltway—both to get Reagan involved and to escape the gaze of a White House press corps that was obsessed with Iran-Contra.²⁸ *Washington Post* reporters Lou Cannon and David Hoffman observed at the time that:

President Reagan has embarked on an intensive campaign, publicly and privately, to demonstrate that he has changed his management approach as a result of the Tower commission's critical report on the Iran-contra affair, White House officials say.

In the six weeks since Howard H. Baker Jr. became his chief of staff, Reagan has been more visibly involved in the activities of his administration than at any other time during his second term.

"It's been good for him," Baker said in an interview. ". . . He appears to me to be happy, and he seems to be enthusiastic, and I think that is accounted for in part by the fact that he is more active now and more directly in contact."

The visible signs of Reagan's new approach are that he attends more meetings, hears divergent views and more freely answers policy questions.²⁹

Baker told Culvahouse that he had three goals in mind for the waning days of the Reagan presidency: (1) survive Iran-Contra if possible *and* if it's deserved, (2) obtain an arms agreement with the Soviet Union, and (3) elect a Republican president in 1988.³⁰ In order to help achieve these goals, Baker refocused the strategy and tactics of the Administration by assuming a more conciliatory approach to the Democratic-controlled Congress in domestic affairs and focusing on deficit-reduction.³¹

Baker as Chief

Modern presidential chiefs of staff assume four major roles as chief: *administrator* of the White House process, *adviser* to the President, *guardian* of the President's interests, and *proxy* for the President on Capitol Hill and in the media. Baker's two predecessors, James Baker and Donald Regan, had widely varying styles and levels of success in the job.³² Howard Baker's personality, style, and methods of operation were a stark contrast from those of the man he replaced. Regan, a former Marine and Wall Street CEO, viewed himself, or at least operated as, a prime minister. Regan also delegated little and ruled through fear. He and his staff were a bottleneck for information and people—everything went through Regan,

28 ANNIS, *supra* note 21, at 217.

29 Lou Cannon & David Hoffman, *Reagan Seeks to Show Take-Charge Approach*, WASH. POST, Apr. 12, 1987, at A1.

30 WOODWARD, *supra* note 23, at 127.

31 Lou Cannon & David Hoffman, *Baker Defines Reagan Agenda*, WASH. POST, Mar. 15, 1987, at A9.

32 E.g., see David B. Cohen, *From the Fabulous Baker Boys to the Master of Disaster: The White House Chief of Staff in the Reagan and G.H.W. Bush Administrations*, 32 PRES. STUD. Q. 463-83 (2002).

and the President was cut off from many within the Administration.

Baker's style and view of Reagan were very different from Regan's. Baker did not rule through fear but through respect and collegiality. He gave subordinates great leeway and expected accountability in return. He opened up the process—though all paper and people flowed through Baker and his deputy; he was not a bottleneck but a facilitator. The staff felt comfortable with him and felt as if they had access to both the Chief of Staff and President when needed.

Unlike Regan, Baker was comfortable delegating authority.³³ He trusted Ken Duberstein to manage the day-to-day affairs of the White House while Baker focused on the big picture and grand questions.³⁴ Tom Griscom described Baker's style as "responsibility and accountability. He'd give you a lot of responsibility as long as you were accountable and kept him informed. . . . Senator Baker's style, interestingly, was very much like President Reagan's, which was also one of delegation."³⁵ The *National Journal's* Dirk Kirschten described the process:

After five weeks on the job as chief of staff, Howard H. Baker Jr. is emerging as a genial ringmaster who has generously delegated managerial chores among a handful of key aides. Baker, as an established political figure in his own right, stands out from the crowd as the most senior presidential confidant and counselor. But his prime mission is to assure that a range of advisory voices is heard in the Oval Office. Unlike his predecessor, Donald T. Regan, who sought to formalize the West Wing chain of reporting relationships, Baker is using a staffing strategy that counts upon cooperation among team players of supposedly coequal standing. As befits a creature of the legislative branch, his style of operation tends toward the collegial rather than the hierarchical.³⁶

Baker embraced the role of adviser or counselor to the president. With his decades in the Senate and highly accurate political antennae, he provided much needed political and policy advice on both domestic and foreign policy issues and was involved in all the major policy decisions of 1987-1988. Baker's political experience and wisdom were another stark contrast to those of his immediate predecessor, who was a creature of Wall Street, not the Beltway. From Reagan's Bitburg Cemetery speech to the arms-for-hostages deal, Don Regan was often politically tone-deaf.

That is not to say that Howard Baker always had perfect instincts. From the fiascos surrounding the failed Supreme Court nominations of Robert Bork and Douglas Ginsberg to telling Tom Griscom to remove the "tear down this wall" line

33 Thomas Griscom Interview, White House Transition Project, July 19, 1999, available at <http://www.archives.gov/presidential-libraries/research/transition-interviews/pdf/griscom.pdf>.

34 See MARTHA JOYNT KUMAR, *MANAGING THE PRESIDENT'S MESSAGE: THE WHITE HOUSE COMMUNICATIONS OPERATION 145* (2007).

35 Griscom Interview, *supra* note 33.

36 Dick Kirschten, *Aides Need Not Scale a Pyramid Now They're Running in Circles*, NAT'L J., Apr. 4, 1987, at 824.

from Reagan's Brandenburg Gate speech (a suggestion which was not heeded), Baker himself admits that not all his advice was sage.³⁷

All chiefs of staff are expected to be guardians of the president's political interests. Regan failed miserably and publicly in this role by not doing what he could to kill Iran-Contra in its infancy. Baker's political antennae guarded against a repeat of Regan's performance. Moreover, Baker also ensured that he was constantly scanning the horizon for potential problems, and one way that he accomplished this objective was to require that all papers addressed to or sent by the President, including presidential speeches, went through Baker.³⁸

One of the most unpleasant responsibilities of the chief of staff in his capacity as guardian of the President's political interests is to perform tasks for the President such as firing Administration personnel, disciplining subordinates, or saying no to people. Though some chiefs, such as President George H.W. Bush's first chief of staff, John Sununu, relished this role, Baker did not.³⁹ But he had to do this at times. Baker recounted this aspect of the job:

One of the unhappy responsibilities as chief of staff was that Ronald Reagan was emotionally incapable of firing anybody. More than once he'd come to me and say, "Now Howard, tell me, how long has that fellow worked for us?" I'd say, "Mr. President, let me make sure I understand what you're asking. Are you suggesting that perhaps he's worked here long enough?" Sometimes he'd say, "Yes, I think so." Then it would be my duty and responsibility to summon that person and tell them that the President did not require their services any longer, and can we be helpful in your future endeavor?⁴⁰

A final major role that chiefs of staff take on in the modern White House is that of presidential proxy. The chief often has to be the legislative or political point person for the White House in its relations with Capitol Hill and the media. Chiefs are often called upon to oversee or directly negotiate items such as the federal budget with Congress, and Baker did this. He personally negotiated budgetary and other important legislative items with Congress. Baker's years of Senate service served him well in this role—he already had credibility and respect on the Hill. For example, Senator Daniel Patrick Moynihan (D. N.Y.) commented that Baker's appointment "changed the equation" with regard to Democrats not cutting off the final installment of aid to the Contras for the year.⁴¹ Representative Leon Panetta (D. Cal.), who would go on to serve as chief of staff in the Clinton Administration,

37 Baker Interview, *supra* note 18.

38 *Id.*

39 David B. Cohen, *George Bush's Vicar of the West Wing: John Sununu as White House Chief of Staff*, 24 CONGRESS & THE PRESIDENCY 37-59 (1997).

40 Baker Interview, *supra* note 18.

41 Helen Dewar, *Democrats Altering Strategy for Cutoff to Contra Funding: 'Howard Baker Changed the Equation'*, WASH. POST, Mar. 4, 1987, at A8.

commented at the time that “Baker understands Congress; he knows the importance of negotiations.”⁴²

Accomplishments During Baker’s Tenure

Though relatively brief, Baker’s tenure as chief of staff in the Reagan White House was one of accomplishment. Perhaps most importantly (but often overlooked), Ronald Reagan survived the Iran-Contra scandal. At the time, it was not clear that he would, and in fact many in the media used the “I” word when the scandal first broke. Baker’s proactive approach—essentially assigning White House counsel A. B. Culvahouse to act as the chief’s own special prosecutor within the White House to poke, prod, and investigate—was a masterstroke that helped restore credibility both within and outside the Administration. He also urged the President to go public, to talk about what went wrong, and to take responsibility for the ill-fated initiative, and in Baker’s first week of duty, Reagan addressed the topic of Iran-Contra in a prime-time, nationally televised address in which he took full responsibility for the scandal:

. . . I take full responsibility for my own actions and for those of my administration. As angry as I may be about activities undertaken without my knowledge, I am still accountable for those activities. As disappointed as I may be in some who served me, I’m still the one who must answer to the American people for this behavior. . . .

. . . . A few months ago I told the American people I did not trade arms for hostages. My heart and my best intentions still tell me that’s true, but the facts and the evidence tell me it is not. As the Tower board reported, what began as a strategic opening to Iran deteriorated, in its implementation, into trading arms for hostages. This runs counter to my own beliefs, to administration policy, and to the original strategy we had in mind. There are reasons why it happened, but no excuses. It was a mistake.⁴³

Reaction on the Hill to the speech was positive:

House Minority Leader Bob Michel (R-Ill.), who watched Reagan’s speech with Baker at the White House, found himself humming and singing as he walked the congressional corridors. Even Democrats had to admit something smelled different. “Howard Baker will get votes for the President,” says Senator James Sasser, a Tennessee Democrat. “He is more popular in Congress than either the President or his policies.”⁴⁴

42 Peter Osterlund, *Congress and Reagan: Speech Didn’t Remove Key, Divisive Issues*, CHRISTIAN SCI. MONITOR, Mar. 6, 1987, at 3.

43 Ronald Reagan, Address to the Nation on the Iran Arms and Contra Aid Controversy, Mar. 4, 1987, THE AMERICAN PRESIDENCY PROJECT (John T. Woolley & Gerhard Peters, eds.), available at <http://www.presidency.ucsb.edu/ws/?pid=33938>.

44 Gloria Borger, *The Hard Road Ahead on the Comeback Trail*, U.S. NEWS & WORLD REP., Mar. 16, 1987, at 16.

The speech, combined with release of the Tower Commission Report and White House staff changes, was crucial to the nation's moving forward from Iran-Contra and to the quashing of any further impeachment speculation.

Also key to moving past Iran-Contra was the improvement in relations between the Reagan White House and Congress. Baker's years of service in the Senate and the respect that he had earned during his tenure on the Hill were crucial in thawing relations between the White House and the Democratic-controlled Congress. Just a week after Baker's appointment, members of Congress from both sides of the aisle were growing positive:

Republicans and Democrats alike were delighted with the appointment. Relief was acute among members of the president's own party, who saw the Baker appointment as the first indication in weeks that Reagan had the instincts and capacity to revive his presidency. Members of Congress were especially happy. "It's as though the president reached out and picked one of our own," said Rep. Dick Cheney, ranking Republican on the House Select Committee on Iran and White House chief of staff under President Ford. From the Democratic camp, power broker Robert Strauss observed, "This makes the White House a player again."⁴⁵

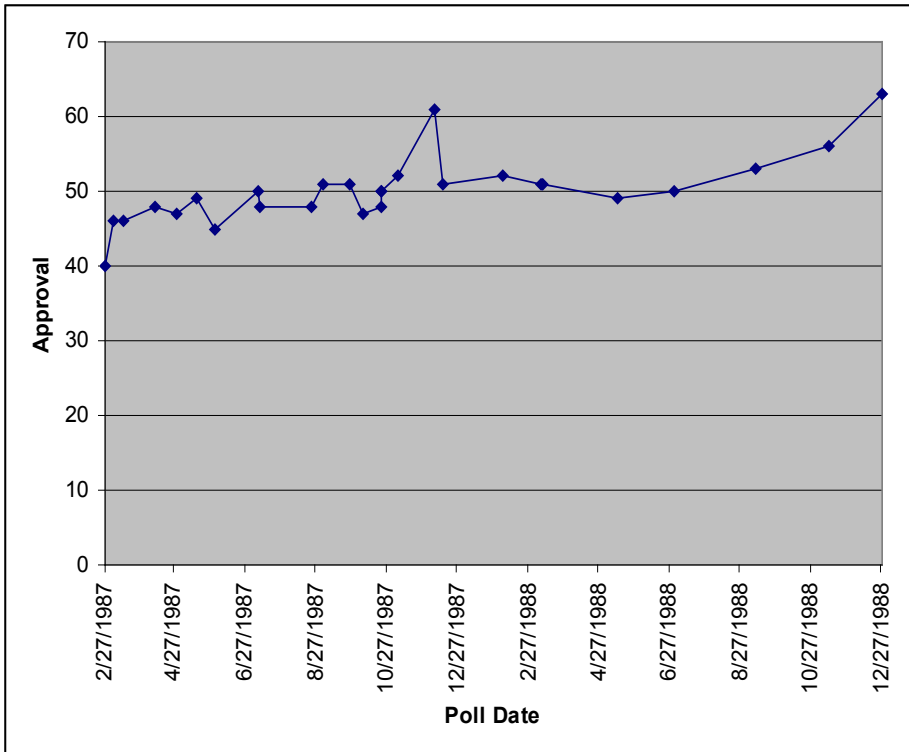
Baker's relations with Congress also allowed the Administration to move quickly and confidently on groundbreaking foreign policy issues with the Soviet Union. Over a period of several months after Baker's arrival at the White House, the Reagan Administration negotiated and completed a historic agreement with the Soviet Union in the area of arms control. The Intermediate Nuclear Forces (INF) Treaty was signed by President Reagan and Soviet General Secretary Mikhail Gorbachev at the White House on December 8, 1987. By providing for the elimination of all ground-launched ballistic and cruise missiles with ranges of between 500 and 5500 kilometers, the INF Treaty represented the first time that the United States and the Soviet Union had agreed to eliminate an entire class of nuclear weapons. On May 27, 1988, the INF Treaty was ratified by the U.S. Senate by a vote of 93 to 5. President Reagan brought the ratification documents with him to Moscow in May of 1988 as the leaders of the two superpowers engaged in their fourth arms-control summit. Though no other major breakthroughs between the United States and the USSR were accomplished there, as a public relations event, the summit was an enormous success.

Perhaps a more tangible measurement of the success of the new chief of staff was Reagan's rising popularity during Baker's tenure. Reagan's approval ratings surged during the last two years of his presidency, and much of this was due to Baker's quick action upon his arrival at the White House. On the day of Donald Regan's resignation, Reagan's popularity (as measured by Gallup) hovered at around 40%. During Baker's tenure, Reagan's approval ratings were regularly more than 50% and reached 61% at one point. At the end of Baker's sixteen-month service

45 Bill Barol, *One for the Gipper: Baker Signs On*, NEWSWEEK, Mar. 9, 1987, at 22.

as chief of staff, Reagan's approval rating was 50%, and a few weeks before Reagan himself left office, the President's approval rating was 63% (see Figure 1 below).⁴⁶

FIGURE I
REAGAN APPROVAL RATING, FEB. 27, 1987-DEC. 27, 1988



SOURCE: Gallup data compiled by JOHN T. WOOLLEY & GERHARD PETERS, THE AMERICAN PRESIDENCY PROJECT, available at <http://www.presidency.ucsb.edu/data/popularity.php?pres=40&sort=time&direct=ASC&Submit=DISPLAY>.

Failures During Baker's Tenure

Baker's tenure as chief of staff, however, was not without challenges and mistakes. Perhaps the most visible misstep was that of President Reagan's failed nominations of Robert Bork and Douglas Ginsburg to the U.S. Supreme Court. Having had discussions with his old colleagues in the Senate, Baker knew that Bork, a brilliant jurist and a champion to conservatives but a pariah to liberals, would be a tough sell in the Democratic-controlled Senate. But Reagan wanted

⁴⁶ Figure created by the authors from Gallup data compiled by John T. Woolley & Gerhard Peters, THE AMERICAN PRESIDENCY PROJECT, available at <http://www.presidency.ucsb.edu/data/popularity.php?pres=40&sort=time&direct=ASC&Submit=DISPLAY>.

Bork. This was one instance in which Reagan did not listen to his chief's counsel. Howard Baker explained that:

We had made an evaluation of the prospects for the nomination in the Senate. That was part of the briefing of the President. But the President had high confidence that he could move anything. . . . He took account of the fact that there were big storm warnings about Bork ahead of time but it was very Reagan-like to say, "I want to do it anyway," and he did.⁴⁷

On October 23, 1987,⁴⁸ the U.S. Senate rejected Bork's appointment by a vote of 58-42.

Bork's replacement was Douglas Ginsburg, a federal appeals court judge, former deputy assistant attorney general, and law professor. Attorney General Ed Meese wanted Ginsburg; Baker pressed for Anthony Kennedy, another federal appeals court judge who would eventually take a seat on the high court.⁴⁹ Reagan agreed with Meese. Journalist Steven Roberts observed:

President Reagan's nomination of Judge Douglas H. Ginsburg for the Supreme Court has renewed tensions between White House factions and has frustrated Howard H. Baker Jr., the White House chief of staff, Administration officials said today

One Republican politician with close ties to the White House said Mr. Baker and his staff were "really upset" by the choice of Judge Ginsburg, which Mr. Baker thought would run into considerable opposition, but that the chief of staff had accepted the President's decision and would work for the judge's confirmation.⁵⁰

Among other problems, Ginsburg's habit of smoking marijuana with his law students forced him to withdraw his nomination after only a week and caused considerable embarrassment for Reagan.⁵¹ Clearly, in the rush to replace Bork, Ginsburg had not been vetted well enough.

Baker was also a punching bag for the hard Right of the GOP. Many conservatives distrusted the conciliatory senator from Tennessee and felt he was much too accommodating to Democrats and the Soviets.⁵² Conservatives also accused Baker

47 Baker Interview, *supra*, note 18.

48 133 CONG. REC. 29121-29122 (Oct. 23, 1987); Edward Walsh & Ruth Marcus, *Bork Rejected for High Court: Senate's 58-42 Vote Sets Record for Margin of Defeat*, WASH. POST, Oct. 24, 1987, at A1.

49 Lou Cannon, *Ginsburg Nomination May Trigger New Fight*, WASH. POST, Oct. 30, 1987, at A1.

50 Steven V. Roberts, *Ginsburg Choice Renews Tension Between Factions in White House*, N.Y. TIMES, Oct. 31, 1987, at 1.

51 See Lou Cannon & Helen Dewar, *Judge Kennedy to be High-Court Nominee*, WASH. POST, Nov. 11, 1987, at A1, A19.

52 See BOB SCHIEFFER & GARY PAUL GATES, *THE ACTING PRESIDENT* 85, 332-33 (1989).

of the ultimate heresy: of not letting Reagan be Reagan. Pat Buchanan, the political commentator who had served as White House Communications Director under Regan, captured the sentiment of conservatives when he wrote:

... The president is paying a heavy price for having deeded over so generous a slice of his political inheritance to a party establishment whose disenfranchisement, after all, was supposed to be first order of business of the Reagan Revolution.

... The central failing of the moderate Republicans—the Baker Boys and the White House staff—is that they do not understand the Reagan coalition; they do not understand “cause” politics; they do not understand the philosophical struggle on-going in America. They are living in a simpler past.

... A decent, honorable man of the middle, Howard Baker does not understand the us-versus-them politics of the flank that today dominates both parties.⁵³

Reagan had the foresight to figure out that he would take heat from conservatives for picking Baker as chief but chose him anyway. The day he telephoned Baker to ask him to be chief of staff, Reagan wrote in his diary: “I’d probably take some bumps from our right wingers but I can handle that.”⁵⁴

Cincinnatus Returns to Private Life

Howard Baker survived the wrath of the Right and exited the White House on his own terms. Having felt that his work in restoring the Reagan legacy had largely been accomplished, Baker left his post on June 30, 1988.⁵⁵ Both his wife Joy and his stepmother were ill—during his time as chief of staff, Baker often returned to Tennessee to help care for Joy.⁵⁶ It was time to go home and stay home. For the final half-year of the Reagan presidency, Baker handed the reigns off to Ken Duberstein, his deputy chief of staff, who had served a sixteen-month apprenticeship. Ronald Reagan summed up Baker’s service to his Administration and to the country in his weekly radio address two days after Baker went back home:

One man who has contributed more than his share to our country left government service this week. For a year and a half, Howard Baker has been my Chief of Staff here at the White House. He’s served with great

53 Patrick J. Buchanan, *How the Baker Boys Toppled Reagan: The GOP Needs Attack Dogs, Not These Compromising Cocker Spaniels*, WASH. POST, Nov. 1, 1987, at C1-C2.

54 RONALD REAGAN, *THE REAGAN DIARIES* 478 (Douglas Brinkley, ed., 2007).

55 Steven V. Roberts, *Aides Say Baker Felt Task Finished*, N.Y. TIMES, June 16, 1988, at A20.

56 See ANNIS, *supra* note 21, at 228.

distinction, helping me guide important legislation through Congress, as well as helping me at the summits with Mr. Gorbachev in Washington and Moscow. Serving with distinction is nothing new for Howard Baker. He did it for almost two decades in the United States Senate, the last 4 years as majority leader. I know I'll miss him around the White House.⁵⁷

Like Lucius Quinctius Cincinnatus, when duty called, Howard Baker served his country. When his job was finished, he voluntarily surrendered the reigns of power and returned to private life in Huntsville, Tennessee. Though he had once been Reagan's competitor for the 1980 GOP presidential nomination and though it had cost him any chance to run for the White House in 1988, Baker agreed to serve as chief of staff because the President asked him and needed him. In so doing, Howard Baker helped rescue not only Ronald Reagan's presidency but the President's legacy as well.

⁵⁷ Ronald Reagan, Radio Address to the Nation on the Resignation of Howard Baker as Chief of Staff to the President and the Administration's Agenda, July 2, 1988, THE AMERICAN PRESIDENCY PROJECT (John T. Woolley & Gerhard Peters, eds.), available at <http://www.presidency.ucsb.edu/ws/?pid=36078>.

THE PRESIDENT'S NOMINEE:

Robert Bork and the Modern Judicial Confirmation Process

*Keith E. Whittington*¹

The 1987 battle over the nomination of Judge Robert Bork to the U.S. Supreme Court continues to affect American politics. Bork's failed nomination was the first in over fifteen years, and on its face Bork's troubles did not seem comparable to those Richard Nixon's doomed nominations of Clement Haynsworth and G. Harrold Carswell. The explicitly ideological and partisan struggle over the Bork nomination seemed distinctive. The fight was embittering and seemed to set the tone for, or perhaps simply symbolize, a new era of contested judicial nominations. Rightly or wrongly, it remains a touchstone for modern difficulties and challenges in the confirmation process.

President Reagan's inability to place Bork on the Court still has consequences for the judiciary itself. Lewis Powell's seat that Bork was nominated to fill eventually went to Anthony Kennedy. Of course, Justice Kennedy has long been a pivotal vote on a closely divided Supreme Court, and he continues to serve on the Court over two decades after Bork's defeat. Had Bork filled that seat instead, the current Court would look quite different. Justice Samuel Alito or Chief Justice John Roberts might now be the median justice on the Court instead of Justice Kennedy.

In considering the Bork nomination and what it tells us about modern Supreme Court appointment politics, this article is divided into three parts. The first part begins by considering the opportunities that the president has to place justices on the Court and by doing so to influence the direction of the Court and constitutional law. The second part examines some factors that made the early Senate a much riskier environment than the modern Senate is, while also revealing the extent to which divided government is now the critical variable in the confirmation calculus. The third part focuses on the Bork nomination itself and the division between conservatives and moderates within Republican ranks as the Reagan administration tried to make the most of its opportunity to fill a seat on the Court.

I.

In his classic article on the Supreme Court's relationship to the rest of the political system, the political scientist Robert Dahl echoed the sentiment of the turn-of-the-century fictional bartender Mr. Dooley: The Supreme Court follows the election returns. Mr. Dooley was not very specific about why the Court would do that, but writing in the middle of the twentieth century, Dahl pointed to the mechanism that he thought tied the Court to the electorate. The Court is staffed through a political appointments process. As Dahl pointed out, over the Court's history a new justice is appointed on average every twenty-two months. With those odds in mind, a president might expect to appoint two justices during a single term of office and four justices if reelected. Most presidents might reasonably start

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their administration optimistic about their ability to “tip the balance on a normally divided Court” (Dahl 1957, 284).

Things have changed a bit since Dahl wrote at the dawn of the Warren Court. Recently, there has been some fretting over how long justices serve and conversely how often new vacancies appear on the high bench (Cramton and Carrington 2006; Crowe and Karpowitz 2007). With a half-century distance on Dahl, the numbers have changed a bit. Across American history as a whole, we would now say that on average a vacancy has opened up on the Court every twenty-five months. The historical average is obviously being driven up somewhat by the modern experience, where vacancies have become somewhat more precious. Even thinking in these simple terms, a president could not readily expect to appoint two justices during a single term of office or four during two terms.

One way that Dahl highlighted the frequency of vacancies on the Court was by looking at the interval between appointments to the Court. Table 1 replicates and updates his own findings on this. Taking into account all the successful Supreme Court nominations in American history, the table shows the distribution of appointments by how much time passed between appointments. As Table 1 highlights, the majority of appointments to the Court have come in close succession to one another. In most cases, relatively little time passes before the president is able to place a justice on the Supreme Court. Nearly half of the appointments have come within a year of the preceding one. There have been occasions when the country has gone for relatively long periods without an appointment to the Court—as long as a decade—but such occasions are exceedingly rare in American history. It is perhaps

**TABLE 1:
THE INTERVAL BETWEEN APPOINTMENTS TO THE SUPREME COURT**

Intervals in Years	Percent of Total Appointments	Cumulative Percentage
Less than 1	43%	43%
1	23%	66%
2	10%	76%
3	10%	86%
4	7%	93%
5	5%	98%
...
11	2%	100%

NOTE: The table excludes the six appointments made in 1789. It measures by day of nomination to the Senate. The results differ somewhat from Dahl’s calculation, presumably due to how appointments were measured. The extreme outliers are between the appointments of Duvall and Thompson in the Jeffersonian era and of Breyer and Roberts in the modern era.

SOURCE: “Supreme Court Nominations, 1789-present,” <http://www.senate.gov/pagelayout/reference/nominations/reverseNominations.htm>

not surprising that recent discussions of judicial terms limits emerged during one of these historical outliers. Even with another half century of experience, Table 1 still reinforces Dahl's point that Supreme Court appointments happen frequently, and most presidents might reasonably expect to have a significant influence on the shape of the Court by adding new justices to the bench.

But from the perspective of an individual president, averages may matter less than the variation. As Dahl (1957, 285) wryly noted, Franklin Roosevelt had "unusually bad luck" in not being able to make an appointment to the Court during his entire first term of office. The consequences of Roosevelt's unusually bad luck for both the country and the political institutions involved were rather severe. Other presidents have had unusually good luck. Eisenhower made five appointments to the Court in two terms; Richard Nixon made four in less than two terms; Taft made six in his two terms as president. History also shows that the timing of vacancies matters. Vacancies near the end of a presidential term have often proven difficult to fill (Whittington 2007). It matters when vacancies occur.

Another way of looking at this is to consider the distribution of Supreme Court appointments across four-year presidential terms of office. Table 2 provides that distribution. The table highlights four-year terms rather than individual presidencies or presidential administrations since the concern is with how appointments are distributed across electoral cycles. Dahl emphasized the average length of time between appointments, but from the perspective of a newly elected president with an uncertain prospect of reelection, what have been the prospects of filling seats on the high bench? The story in Table 2 looks a little different.

TABLE 2:
NUMBER OF SUPREME COURT APPOINTMENTS PER PRESIDENTIAL TERM

Number of Appointments per Term	Percent of Total Appointments	Cumulative Percentage
0	18%	18%
1	20%	38%
2	32%	70%
3	14%	84%
4	9%	93%
5	5%	98%
6	2%	100%

NOTE: The table excludes the six appointments made in 1789 and includes only nominees who took a seat on the Supreme Court.

SOURCE: "Supreme Court Nominations, 1789-present," <http://www.senate.gov/pagelayout/reference/nominations/reverseNominations.htm>

Nearly a fifth of presidential terms have passed without a single Supreme Court appointment being made. Nearly forty percent of presidential terms have seen one or fewer new Supreme Court justices assume their robes.

Once we take into account the variance in the frequency of Supreme Court appointments, Franklin Roosevelt's first term begins to look a little less like "unusually bad luck." His poor luck was shared by many presidents, including Thomas Jefferson, James Madison, Andrew Johnson, Woodrow Wilson, Calvin Coolidge, and Jimmy Carter. The relatively small interval between appointments that appears in Table 1 in part reflects a clustering that can occur with appointments. The opportunities that Andrew Jackson, Abraham Lincoln, U.S. Grant, Benjamin Harrison, William Howard Taft, and Franklin Roosevelt had to make large number of appointments to the Court in rapid succession drove up the percentage of appointments in the categories at the top of Table 1. But those are not the normal presidential administrations. Those presidents were able to have an outsized influence on the Court. Opportunities that fell to them might well have been denied to others. In some cases, of course, presidents were specifically blocked from being able to make judicial appointments, as was the case with Andrew Johnson who was filling out Abraham Lincoln's second term and had Supreme Court vacancies taken away from him by a hostile Congress. But consider that in a single term of office William Howard Taft was able to make six appointments to the Court, while in the three previous terms William McKinley and Theodore Roosevelt were only able to make a total of four appointments. The distribution of appointments across time is lumpy, and presidents cannot necessarily expect many opportunities to influence the composition of the Court.

Every Supreme Court appointment is precious. Over the long-term, Dahl's point remains true that the elected branches will put their mark on the judiciary through the appointments process. For any individual president, the prospect of a vacancy, or two, in any given term of office remains highly uncertain. Vacancies cannot be taken for granted, and the possibility of influencing the Court through a carefully chosen appointment cannot be taken lightly by an administration that cares about the future of constitutional doctrine.

II.

Dahl also simplified things by largely ignoring the details of the appointment process. His focus was on a "national lawmaking majority" or "political coalition." With Progressive and New Deal battles in mind, his basic point was both important and salient—that conservative political parties appointed more conservative justices, and liberal political parties appointed more liberal justices, and when a political party controlled the lawmaking institutions of the national government, it had fairly quickly been able to turn the Court in its favor by appointing its own party faithful to the bench. Dahl could afford to ignore the details of the appointment process—that is, the division between the president and the Senate—but we cannot. Those divisions have consequences now that they did not have at earlier points in American history.

Over the course of American history, twenty-seven presidential nominees to the U.S. Supreme Court have been rejected by the Senate.² That is just under a fifth of the total number of names that presidents have put before the Senate. Dahl happened to be writing during a period of historic success in presidential nominations to the Supreme Court, however. With the notable exception of the dramatic failure of Herbert Hoover's nomination of Judge John Parker to the Court in 1930, the first half of the twentieth century was a period of relatively smooth sailing for Supreme Court appointments. The American experience more generally suggests that presidents often have difficulty getting their choices for the Court through the Senate.

The details of the appointment process might not matter to Dahl's central concern if failures are idiosyncratic. That is ultimately our quarry as well. In what ways might presidents need to worry about the Senate when they do have the opportunity to try to fill a vacancy on the Supreme Court?

TABLE 3:
SUPREME COURT NOMINATIONS BY PARTY CONTROL,
1789-2010

	Divided Government	Unified Government
Number confirmed	18	105
Number not confirmed	8	19
Failure rate (%)	31%	15%
NOTE: Number confirmed includes individuals who declined to serve. President and Senate majority party identity is nominal. For details, see Whittington 2006.		

Divided government has been an uncommon but difficult environment for Supreme Court nominations. Relatively few nominations have been made during periods of explicitly divided government, but these situations account for a high percentage of the failures in presidential nominations to the Supreme Court. A third of all failed Supreme Court nominations have occurred when the president and the Senate are in the hands of different political parties. The failure rate for Supreme Court nominations is twice as high during periods of divided government as it is during periods of unified government. Moreover, the relative success of

² The focus here is on official nominations to the U.S. Senate that are clearly rejected by direct action or deliberate inaction. For details, see Whittington 2006, 410.

unified government has not historically required large, filibuster-proof majorities but has been emerged even with fairly slim partisan majorities.

Looking at the raw numbers, divided government would appear to be bad news for Supreme Court nominees. Unified government would appear to be a much safer environment, though not completely secure. As with the frequency of Supreme Court nominations, however, the historical averages regarding divided and unified government are misleading. There are some important differences over time that have shaped the strategic environment within which presidents make Supreme Court nominations.

Some have argued that the nineteenth-century Senate was a more aggressive gatekeeper than the more modern Senate (Tulis 1997). Certainly it is true that a quarter of the nominees to the Supreme Court prior to 1900 were rejected. By contrast, just under ten percent of the nominees since 1900 have been rejected. Something is different about the early Senate compared to the more modern Senate.

Two differences can be briefly noted here, one relating to the electoral calendar and the other relating to party behavior. The fixed American electoral calendar means that some vacancies may arise near a presidential election, or even during the lame-duck period after a new president has been selected. This window for late-term and lame-duck vacancies and appointments was much larger prior to the adoption of the Twentieth Amendment to the Constitution in 1933, which shortened congressional terms and set the inauguration day at January 20th rather than the traditional date of March 4th. We might expect that Supreme Court nominations made near or after presidential elections would have a more difficult time making it through the Senate confirmation process than nominations made in the middle of the legislative session. As the session nears its end, obstruction becomes a more attractive strategy. The time to move a nominee through the process is limited, and there is a possibility that the opposition can simply wait out the president and hold the vacancy over to the next presidential administration. In the middle of a term, there is no prospect that a vacancy will eventually be filled by a different president. The Senate must ultimately come to terms with the sitting president and the type of nominees that he favors, giving the president a much greater advantage in his dealings with the Senate.

In practice, late-term appointments were much more common early in American history than they have been more recently. The last lame-duck nomination, for example, occurred in 1892, when Republican President Benjamin Harrison tried to fill a vacancy on the Supreme Court after he had been defeated by Democrat Grover Cleveland. Harrison was eventually successful, but only after negotiating with the Democratic minority to nominate one of their own to fill the seat, former Democratic Senator Howell Jackson, who had been appointed to the federal circuit court during Cleveland's first term as president (Friedman 1983, 40). In total, presidents have made nineteen Supreme Court nominations within six months of an upcoming presidential election or after an election. All but two of those came before 1900. On the whole, they have distinctly higher failure rates than other nominations. Upwards of half of those nominations have failed to be confirmed, compared to just over ten percent of nominations made at other points during

the presidential term (Whittington 2006, 417). These few nominations have an outsized effect on our image of the nineteenth-century Senate as a bulwark against presidential choices to fill judicial vacancies. The nineteenth-century Senate's track record for rejecting presidential nominees for the Court is inflated by these historically unusual late-term appointments.

Party behavior as it relates to Supreme Court nominations has not been entirely uniform across American history either. Table 3 calls our attention to the relatively large failure rate of Supreme Court nominees during periods of divided government. But it is also notable how many failures, in absolute terms, have occurred during unified government. In the nineteenth century, presidents quite often had difficulty getting Supreme Court nominees past their own co-partisans in the Senate. That experience is (mostly) reflective of features of politics that are unlikely to be prominent today. During periods of party instability and fragmentation, some presidents were only nominally members of the same political party as the Senate majority, and the government was unified in name only. President John Tyler may have been a kind of Whig, but the Whig leadership in Congress regarded him as an apostate and a pretender to the office of chief executive (Morgan 1954). Tyler was also persistent. He had six nominations rejected by the Whig Senate in rapid succession, before finally winning confirmation for a respected Whig jurist after a Democrat won the presidential election of 1844. In other cases, senators of the same party were willing to send the president back to the well in making a Supreme Court nomination if the original nominee offended party interests or factional cohesion. Republican senators used the nomination of Ebenezer Hoar to the Supreme Court by President Grant as an opportunity to extract payback for Hoar's civil service crusade while attorney general (Warren 1922, 3:223-229).

These additional factors in the historic experience with Supreme Court confirmations are summarized in Table 4. The table highlights that the appointments process was much riskier prior to 1900 than it has been since 1900. Nonetheless, there have been some notable shifts over time in the appointments process. Late-term nominations have always been exceedingly risky, and they were once quite common. They have virtually disappeared from modern politics. The resignation of Chief Justice Charles Evans Hughes to accept the 1916 Republican nomination for the presidency and the resignation of Chief Justice Earl Warren on the eve of the 1968 election in an ill-fated attempt to prevent Richard Nixon from choosing his successor are the only modern exceptions and emphasize their exceptional nature. Nominations now come in the middle of presidential terms. As Table 4 highlights, it was once the case that during the middle of their terms, presidents had to fear the Senate when it was controlled by their own party but not when it was controlled by the opposite party. The sole exception during divided government was when the lame duck Whig Senate rejected the nomination of the hated Roger Taney to be associate justice out of spite. Andrew Jackson only needed to wait a few months to try again. (As it happened, the position of chief justice opened up during the interval.) By contrast, a quarter of the nominees made during divided government in the middle of a presidential term have gone down in defeat since the turn of the twentieth century. No matter what else could be said about

TABLE 4:
SUPREME COURT NOMINATIONS BY TIMING AND PARTY CONTROL,
1789-2010

	Divided Government		Unified Government	
	<i>Late-Term</i>	<i>Not Late-Term</i>	<i>Late-Term</i>	<i>Not Late-Term</i>
<i>Pre-1900</i>				
Number Confirmed	0	6	8	50
Number Not Confirmed	4	1	5	11
<i>Post-1900</i>				
Number Confirmed	0	12	1	46
Number Not Confirmed	0	3	1	2
NOTE: "Late-Term" nominations include all nominations made within six months of a presidential election or after the election. For details, see Whittington 2006.				

those failed nominees, they certainly were not as politically polarizing as Roger Taney in 1835. Even as modern nominations have become riskier during divided government, they have become easier during periods of united government. Since 1900, only John Parker and Harriet Miers have failed to win confirmation when sent to a same-party Senate in the middle of a presidential term.

Divided government has become a crucial factor affecting judicial nominations. This was not always the case. Presidents had difficulty from the opposition party when they tried to make nominations near the end of their terms, but traditionally the opposition did not resist the president's choice for the Supreme Court when the president was staying in place. Modern appointment politics is distinctly different. The focus is more ideological and, as a consequence, more partisan. The opposition party is now concerned with playing the spoiler on ideological grounds and negotiating with a sitting president for a better nominee, just as the allied party once did on factional and patronage grounds.

III.

The Reagan administration came into office in 1981 anticipating the possibility of vacancies on the Supreme Court and hoping to make the most of them. Planning started early and was unusual in the extent to which judicial philosophy was prioritized over other political and personal goals. Unlike many other presidents, Reagan did not look to personal acquaintances and friends as his primary pool for potential nominees, nor did he identify strong preferences for particular demographic characteristics in his nominees. He opened the door for his subordinates to canvass the options to identify the best candidates who would carry the administration's constitutional views into the Supreme Court.

President Jimmy Carter had been shut out from making an appointment to the Supreme Court. The Reagan administration was given an immediate opportunity to influence the Court when Justice Potter Stewart sent word soon after the inauguration that he planned to retire. The job of identifying a nominee was divided between the White House and the Justice Department. The Justice Department took the lead in conducting the research on the nominees, meaning that Attorney General William French Smith's ultimate choice of Judge Sandra Day O'Connor would likely dominate the deliberations of the White House Counsel's office. Chief Justice Warren Burger had called O'Connor to the attention of both the Justice Department and the White House, catapulting her to the top of the list of female candidates (Yalof 1999, 135-36).

Robert Bork was on the White House short-list in 1981. When Edwin Meese became attorney general, the process for considering judicial nominees was revamped, and Bork was placed on the Justice Department's short-list for any Supreme Court vacancy. The Justice Department gave little attention to issues of confirmability when assessing candidates and regarded Bork and Antonin Scalia as equally attractive. In 1986, the White House pushed Scalia over Bork in part to avoid adding to a confirmation fight that was already expected for William Rehnquist (Yalof 1999, 150-54).

Bork had missed his chance at being nominated in 1986 in part because of concerns that the combination of him and Rehnquist would be hard to push through the Senate. In 1986, the Republicans controlled the Senate. The Democrats managed to hold up Rehnquist's appointment to be Chief Justice, and they cast a historically large number of votes against his appointment, but in the end they had little chance of derailing his confirmation. History suggested that the biggest risk the White House faced in 1986 was division within its own party. If the administration could avoid a revolt from its own ranks, then it should expect to win confirmation for its nominees during periods of unified government. In a narrowly divided Senate, the Republicans lost only two senators on the Rehnquist vote (Charles Mathias and Lowell Weicker), while picking up sixteen Democratic votes.

The situation was quite different when Justice Powell retired in 1987. Bork was still on the short-list and favored by both Justice Department and White House officials as a strong advocate for the administration's conservative constitutional philosophy. The president personally indicated that he wanted Bork to be in the

mix for the Powell vacancy (Wermiel, Seib, and Birnbaum 1987, 24). But the Republicans had lost control of the Senate in the 1986 midterm elections, and Reagan's personal clout had been damaged by the Iran-Contra scandal that emerged in the fall of 1986. If there was reason to be concerned about his confirmability in 1986, it should have been significantly heightened in 1987. The administration no longer had to hold its own party. Administration officials now had to win over the other party, or at least a significant component of it.

The White House had the advantage of being able to nominate other individuals who shared its philosophy to the vacancy, minimizing the value to the Senate of obstructing any single nominee. But if the Democrats doubted the resolve of the White House to keep up the fight, or if they regarded a given nominee as uniquely unsuitable, then obstruction could still work to their advantage. Just as Robert Bork was almost uniquely attractive to members of the conservative legal movement, he was a particular lightning rod to interest groups of the legal left. Keeping him off the Court might well have been valuable to activists on the left even if the president were ultimately successful in appointing a similarly conservative justice to fill the vacancy. If there was no "similar justice," then fighting the nomination becomes all the more worthwhile. If the bullpen of plausible conservative nominees was sufficiently thin, then Reagan might be forced to move to a more moderate nominee simply because he had exhausted his list, even laying aside any desire on the administration's part to compromise and seek out a more confirmable nominee. In fact, the internal candidate lists do not suggest that the administration had many potential nominees in mind who would have been the functional equivalent to Scalia or Bork. Once those names were exhausted, compromises had to be made. Any other selection was unlikely to be fully satisfying to conservative goals (Yalof 1999, 156-57). Just as Richard Nixon found few attractive candidates who could meet his optimal political criteria for Supreme Court nominations (e.g., sitting Republican Southern judges) in the late 1960s, so Reagan found few well-credentialed conservatives suitable for promotion to the Supreme Court in the 1980s. For Democrats in the Senate, defeating Bork would almost necessarily mean moving down the list to someone like Anthony Kennedy.

White House personnel had also undergone significant changes since Bork was passed over in favor of Scalia in 1986. By the time of the Powell vacancy in 1987, the White House had a new counsel, Arthur Culvahouse, and chief of staff, former Senate majority leader Howard Baker, both of whom would be closely involved in any Supreme Court appointment. The White House now put more consideration into problems of confirmability, including the possibility that a long confirmation fight would distract political resources that might have been needed elsewhere late in the president's second term and after the Iran-Contra scandal. The administration committed to nominating Bork, but the decision was not as straightforward as it would have seemed in 1986.

For conservatives inside and outside the administration, Baker's hesitation and tentativeness about the Bork nomination indicated a lack of commitment (Evans and Novak 1987). Baker certainly did not hide his view that Bork was a "controversial" nominee who would have a hard time being confirmed (Anonymous

3 July 1987; Anonymous 6 July 1987). Conservatives accused Baker of preferring more moderate goals for the Court. They thought he should challenge the Senate and rally conservatives behind the appointment. As conservatives quickly recognized, the Bork confirmation was going to be a political battle, and they preferred to put pressure on senators to support their nominee just as liberal groups were putting pressure on senators to oppose the nominee. Free Congress Foundation president Paul Weyrich complained that Baker just did not “understand the national coalition that put Reagan in office. The price is a presidency without punch” (Gerstenzang and Fritz 1987).

The White House recognized that they needed to sell the nominee to the Democratic majority if they were going to be successful. Not unreasonably, they assumed conservatives and Republicans would eventually support the nominee. But Republicans no longer controlled the Senate. Mobilizing conservatives would be unlikely to secure a majority vote either in the Judiciary Committee or on the chamber floor. The pivotal votes were held by more moderate Democrats.

Baker thought the administration needed to vet the names of some potential nominees with the Senate, and Baker and Meese visited several senators with a list in hand. Baker portrayed these visits as a process of genuine consultation and an effort to get feedback. Some Democratic senators viewed these visits as pro forma announcements that Bork would be the nominee. In either case, the administration quickly decided to move forward with Bork, and nothing that the senators had said was regarded as decisive in indicating that he could not be confirmed (Yalof 1999, 159-60; Vieira and Gross 1998, 11).

With a coalition of liberal interest groups and prominent liberal senators like Ted Kennedy coming out in strong opposition to the Bork nomination, Baker and the White House chose a more low-key approach to winning over enough Democratic votes to secure confirmation. White House officials remained convinced that most Democratic senators would not let ideological disagreements prevent them from voting in favor of a qualified judicial nominee. Senators had once indicated as much about Bork himself, but were quickly backing off such statements now that the nomination was becoming a reality (Yalof 1999, 158). The White House brought in lobbyist Tom Korologos to help sell the nomination. As he emphasized, “the votes they needed were from the moderates” (Vieira and Gross 1998, 36). In order to win those votes, the White House thought, Bork needed to be packaged as a mature, mainstream jurist, not as a conservative intellectual. Baker, for example, went to the NAACP convention to urge the organization not to commit itself to defeating the nomination (Cottman 1987). The goal was to defuse the opposition and convince moderates that they had no reasonable basis for opposing the nomination. Rather than contributing to making the Bork confirmation debate an ideological battle with Bork positioned with as a conservative firebrand poised to overthrow swaths of established precedents—as many conservative activists wanted—Baker hoped to reframe the discussion in more traditional terms as about legal qualifications (Annis 2007, 221). If moderates could be dissuaded from joining in an ideological vote, then the White House could afford to lose more the more liberal senators and still win a majority in a Democratic Senate.

The effort was unsuccessful. The public campaign against Bork had framed him as an extremist. Liberal interest groups had put substantial pressure on wavering senators to vote against the nominee. The president had just lost support in the 1986 elections and had little leverage with which to persuade the newly elected Democrats or moderate Republicans (Annis 2007, 222-25). In particular, the president had just lost ground in the South, where he had actively campaigned against the southern Democratic senators whose votes were now pivotal to the Bork confirmation (Annis 2007, 223). Those senators owed a greater debt to their African-American constituents who were now being mobilized by the NAACP and others against Bork than to conservative groups who had favored Republican candidates in the 1986 elections (Wermiel, Seib, and Birnbaum 1987, 24). Going into the nomination, the administration worried most that Bork would primarily suffer from old scandals, such as his involvement in the firing of the Watergate special prosecutor. In the end, the opposition was content to focus on ideological disagreements. They built the case that that was enough to oppose a Supreme Court nominee. They had already developed that argument when blocking some of the Reagan administration's nominations to the lower courts. Some individuals, they contended, were simply too far out of the mainstream to be confirmable. That argument was now applied to Robert Bork, despite his earlier success in being appointed to the federal circuit court. In the end, the White House had to fall back to the confirmable Anthony Kennedy, the candidate favored by Howard Baker all along (Ostrow and Gerstenzang 1987).

The idea that some individuals are too far out of the mainstream to be confirmable and that senators should take into account ideology when casting their votes on judicial nominees is now commonplace. It was not readily predictable that so many senators would act on that view when Bork was nominated. Such developments were underway, but the Bork confirmation battle solidified them and made them much more visible. It is now routine for nominees like Alito and Roberts to lose a large number of votes from the other party. If those same nominations were made during a period of divided government, it seems likely that they would be defeated.

IV.

Presidents cannot take their opportunities to make appointments to the Supreme Court for granted. Although some presidents have been able to significantly reshape the Court through the appointments process, many others have had relatively little influence on the Court. Vacancies do not appear regularly, and when they do appear, presidents are not always able to use them to shift the direction of the Court.

One constraint on the ability of presidents to influence the Court is the participation of the Senate in the confirmation process. Across its history, the Senate has often rejected presidential nominees to the Supreme Court, but many of those rejections now appear idiosyncratic or driven by political considerations of little long-term interest. The emergence of the close ideological examination of judicial nominees by the modern Senate is a noteworthy and historically distinctive

phenomenon. It is only in the modern era that successful Supreme Court nominees routinely receive large numbers of negative votes from their ideological opponents. It is only in the modern era that divided government poses serious threats to Supreme Court nominees in the middle of the presidential administration. The ideological polarization of the parties and the surrounding interest groups focused on the judiciary has increased the odds of Bork-like fights. As White House Chief of Staff, Howard Baker tried to dampen the political fires so that the debate over the Bork nomination could take place on the neutral ground of legal credentials and intellectual qualifications. Neither side of the political divide was interested in limiting the terms of the debate.

REFERENCES:

- Annis, J. Lee, Jr. 2007. *Howard Baker: Conciliator in an Age of Crisis*, 2d ed. Knoxville: University of Tennessee.
- Anonymous. 3 July 1987. "Senate Battle Feared; Aides Say Baker Frets about Bork." *San Francisco Chronicle*, 16.
- Anonymous. 5 July 1987. "Baker Expects Heated Senate Debate on Bork." *San Francisco Chronicle*, 6.
- Cottman, Michael H. 1987. "Be Fair to Bork, Baker Urges NAACP." *Newsday* (July 10): 9.
- Cramton, Roger C., and Paul D. Carrington, eds. 2006. *Reforming the Supreme Court: Term Limits for Supreme Court Justices*. Durham, N. C.: Carolina Academic Press.
- Crowe, Justin, and Christopher F. Karpowitz. 2007. "Where Have You Gone, Sherman Minton? The Decline of the Short-Term Supreme Court Justice." *Persp. on Pol.* 5: 425-45.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *J. Pub. L.* 6: 279-95.
- Evans, Rowland, and Robert Novak. 1987. "The Right Fears Plot to Dump Bork for Howard Baker." *Chicago Sun-Times* (July 29): 23.
- Friedman, Richard D. 1983. "The Transformation of the Senate Response to Supreme Court Nominations: From Reconstruction to the Taft Administration and Beyond." *Cardozo L. Rev.* 5:1-95.
- Gerstenzang, James, and Sara Fritz. "Baker is Feeling the Heat." *Toronto Star* (Oct. 18): H5.
- Morgan, Robert J. 1954. *A Whig Embattled: The Presidency under John Tyler*. Lincoln: University of Nebraska Press.
- Ostrow, Ronald J., and James Gerstenzang. 1987. "A Loss for Baker, Moderates; Reagan Backs Meese in Fight over Court Nominee." *Seattle Times* (Oct. 30): A3.
- Tulis, Jeffrey K. 1997. "Constitutional Abdication: The Senate, the President, and Appointments to the Supreme Court." *Case W. Res. L. Rev.* 47: 1331-58.
- Vieira, Norman, and Leonard Gross. 1998. *Supreme Court Appointments: Judge Bork and the Politicization of Senate Confirmations*. Carbondale: Southern Illinois University Press.
- Warren, Charles. 1922. *The Supreme Court in United States History*. 3 vols. Boston: Little, Brown and Company.

Wermiel, Stephen, Gerald F. Seib, and Jeffrey H. Birnbaum. 1987. "Losing Battle; How Reagan's Forces Botched the Campaign for Approval for Bork," *Wall St. J.* (Oct. 7): 1.

Whittington, Keith E. 2007. "Presidents, Senates, and Failed Supreme Court Nominations." *2006 Sup. Ct. Rev.* 2006: 401-38.

Yalof, David A. 1999. *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees*. Chicago: University of Chicago Press.



**IMAGES FROM A
LIFE IN PUBLIC SERVICE**



HOWARD H. BAKER JR. PAPERS

*Howard H. Baker, Jr. and Joy Dirksen Baker (standing) with
Congressman Howard H. Baker Sr. and Darek Dirksen Baker (seated), ca. 1956*



U.S. SENATE PHOTOGRAPH

*Howard H. Baker, Jr. is sworn in as Tennessee's newest U.S. Senator, January 1967
(left to right) Sen. Mike Mansfield, Vice President Hubert H. Humphrey, Baker,
Sen. Everett M. Dirksen*



HOWARD H. BAKER JR. PAPERS

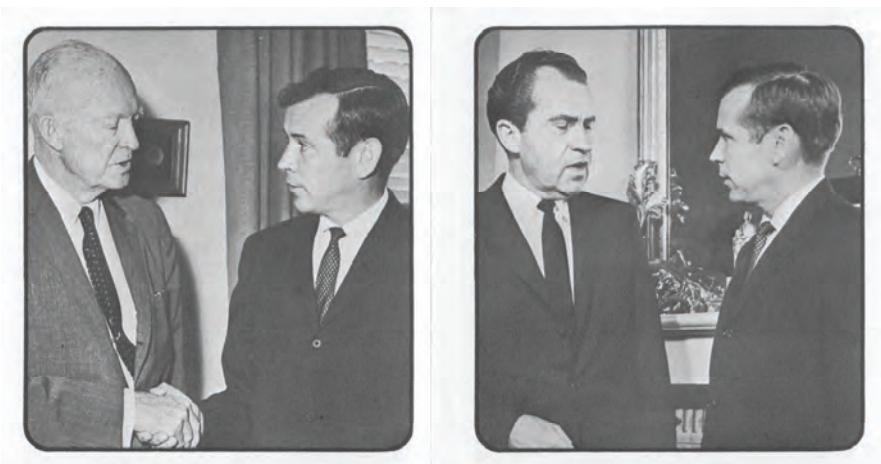
Sen. Baker with father-in-law Sen. Dirksen



HOWARD H. BAKER, JR. PAPERS

Sen. Baker and daughter Cissy (lower left) attend President Lyndon B. Johnson's State of the Union Message, 1967 or 1968

Sen. Robert Byrd stands to Cissy's right, and Sen. Everett M. Dirksen is at Baker's left. Below President Johnson are Sen. Clinton Anderson (D. N.M.), Sen. James B. Allen (D. Ala.), Sen. J. William Fulbright (D. Ark.), and Sen. Jennings Randolph (D. W. Va.), Congressman John J. Duncan (R. Tenn.) stands at right near upper corner.



HOWARD H. BAKER, JR. PAPERS

Sen. Baker with former President Dwight D. Eisenhower and former Vice President Richard M. Nixon

Freshman Sen. Baker with a copy of H.R. 2508, 1967. Baker joined Sen. Edward M. Kennedy (D. Mass.) in successfully opposing the measure, which would have undermined the Supreme Court's one-man, one vote rulings and which was supported by his father-in-law, Senate Minority Leader Everett M. Dirksen (R. Ill.). Dirksen told Baker, "Howard, if you're going to fight, try to win." He did.



U.S. SENATE PHOTOGRAPH
COURTESY OF U.S. SENATE HISTORICAL OFFICE



HOWARD H. BAKER, JR. PAPERS

Sen. Baker meeting with a group of Tennessee farmers from Crockett County



HOWARD H. BAKER, JR. PAPERS

Sen. Baker with Congressman Richard Fulton (D. Tenn.) (left) and WSM's Jud Collins (center), anchoring Tennessee's election-night coverage, 1970.



HOWARD H. BAKER, JR. PAPERS

Sen. Baker campaigning for re-election from the Baker Special, 1972



*The United States Senate, 1971
Sen. Baker is seated in the back row of the third section of desks from the
right at the second desk from the aisle*

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WHITE HOUSE PHOTOGRAPH

Sen. Baker with President Richard M. Nixon and an unidentified military aide



U.S. SENATE PHOTOGRAPH

Former U.S. Attorney General John Mitchell and Sen. Baker



HOWARD H. BAKER, JR. PAPERS

*The Senate Watergate Committee Leadership:
Sen. Baker and Sen. Sam Ervin (D. N.C.)*



HOWARD H. BAKER, JR. PAPERS

*The Senate Watergate Committee in Session
(left to right) Sen. Edward Gurney, Minority Counsel Fred Thompson, Sen. Baker,
Sen. Ervin, Majority Counsel Sam Dash, Assistant Majority Counsel James Hamilton*



(Left)
 Editorial cartoonist
 Charlie Daniel's take on
 the relationship between
 Sen. Baker and Sen.
 Ervin.

COURTESY OF CHARLIE DANIEL



(Right)
 Sen. Lowell Weicker,
 Sen. Baker, Assistant
 Chief Counsel James
 Hamilton (back to cam-
 era), Sen. Ervin, Chief
 Counsel Sam Dash

HOWARD H. BAKER, JR. PAPERS



HOWARD H. BAKER, JR. PAPERS

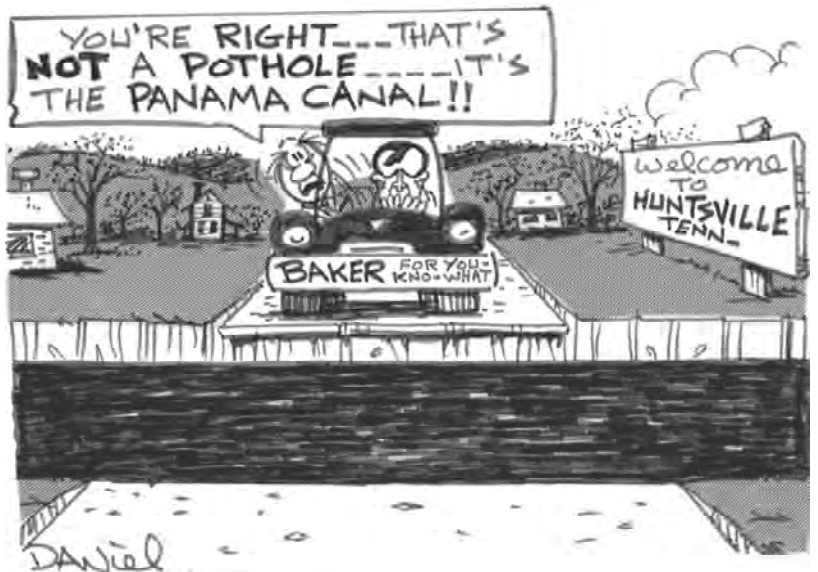
Sen. Baker: "What did the President know, and when did he know it?"



COURTESY OF THE JIMMY CARTER LIBRARY

*Senate leaders in the battle over ratification of the Panama Canal treaties, 1978
(left to right) Sen. Baker, Sen. Paul Laxalt (R. Nev.), Sen. Byrd, and Sen. Frank Church (D. Idaho)*

As indicated in this editorial cartoon by The Knoxville Journal's Charlie Daniel, Sen. Baker's support for ratification of the Panama Canal treaties, even with reservations, was not politically popular back home in Tennessee, where he was running for re-election to the Senate. He won nonetheless.



COURTESY OF CHARLIE DANIEL



U. S. SENATE PHOTOGRAPH

Senate Leaders Baker and Robert Byrd



HOWARD H. BAKER, JR. PAPERS

Newly elected Senate Majority Leader Baker meets the press, December 5, 1980



COURTESY OF U.S. SENATE HISTORICAL OFFICE

U.S. SENATE PHOTOGRAPH

*Sen. Baker with Senate Republican Colleagues
(left to right) Sen. Wallace Bennett (R. Utah), Sen. Baker, Sen. Norris Cotton (R. N.H.)*



*Sen. Baker speaks to a group of civil rights leaders and representatives of the NAACP on the twenty-fifth anniversary of the U.S. Supreme Court's decision in *Brown v. Bd. of Education* (1954). Actor Ossie Davis is at Baker's right. Sen. Claiborne Pell (D.R.I.) stands at far right.*

U.S. SENATE PHOTOGRAPH
COURTESY OF U.S. HISTORICAL OFFICE



WHITE HOUSE PHOTOGRAPH
COURTESY OF THE RONALD W. REAGAN PRESIDENTIAL LIBRARY & MUSEUM

In the Rose Garden of the White House on November 2, 1983, President Reagan signs legislation into law designating a national holiday honoring the Reverend Martin Luther King, Jr., as the Rev. King's widow, Coretta Scott King (left); Rep. Katie Beatrice Hall (D. Ind.); U.S. Secretary of Housing and Urban Development, Samuel R. Pierce, Jr.; an unidentified guest; and Sen. Baker (right) look on



U.S. SENATE PHOTOGRAPH

Sen. Baker with Presidents Ford and Carter, 1983



HOWARD H. BAKER, JR. PAPERS

Sen. Baker the Photographer



WHITE HOUSE PHOTOGRAPH

*White House Chief of Staff Baker (right) and
Deputy White House Chief of Staff Kenneth M. Duberstein (left) with President Reagan*



WHITE HOUSE PHOTOGRAPH

*White House Chief of Staff Baker (right) with President Reagan, Secretary of State George P.
Schultz, and National Security Adviser Colin L. Powell*



WHITE HOUSE PHOTOGRAPH

President Reagan selects Judge Robert Bork as his nominee to the U.S. Supreme Court, 1987. (left to right) Chief of Staff Baker, Judge Bork, Deputy Chief of Staff Kenneth M. Duberstein, White House Director of Communications Tom C. Griscom, White House Press Secretary Marlin Fitzwater, President Reagan, and White House Assistant Jim Kuhn



WHITE HOUSE PHOTOGRAPH

COURTESY OF THE RONALD W. REAGAN PRESIDENTIAL LIBRARY & MUSEUM

President Reagan, Chief of Staff Baker, and National Security Adviser Colin L. Powell



WHITE HOUSE PHOTOGRAPH

White House Chief of Staff Baker with President Ronald Reagan



WHITE HOUSE PHOTOGRAPH

COURTESY OF THE RONALD W. REAGAN PRESIDENTIAL LIBRARY & MUSEUM

The President and his Chief of Staff share a moment of levity with a familiar-looking, hand-picked guest



HOWARD H. BAKER, JR. PAPERS

Former Senators Nancy Kassebaum and Howard H. Baker, Jr., ca. 1996



WHITE HOUSE PHOTOGRAPH

*White House ceremony for the swearing in of former Sen. Baker as
U. S. Ambassador to Japan, June 25, 2001
(left to right) Former Ambassador Armin H. Meyer, former Sen. Nancy Kassebaum Baker,
Ambassador Mike Mansfield, Sen. Baker, Former Ambassador Michael H. Armacost,
President George W. Bush*

APPENDIX:

*Selected Speeches, Remarks, and Articles
by and about Senator Howard H. Baker, Jr.¹*

Selected and annotated by the Editors

¹ The documents in this Appendix have been selected from the research materials available in the Howard H. Baker Jr. Papers, which are housed in the Modern Political Archive at the Howard H. Baker Jr. Center for Public Policy in Knoxville, Tennessee.

REMARKS ON THE APPORTIONMENT OF CONGRESSIONAL DISTRICTS (1967)¹

Senator Howard H. Baker, Jr.

U. S. Senate, May 25, 1967

Mr. BAKER. Mr. President, legislation which attempts to modify the constitutional standards governing congressional districting is rushing toward the Senate floor and will probably arrive, I am told, the week after next.

The legislation, which passed the House on April 27 by a vote of 289 to 63, will be among the most important and far reaching that Congress considers in this session, because it involves the composition of the House of Representatives and the jurisdiction of the Federal judiciary.

The House-approved version of the bill, H.R. 2508, would, first, establish temporary and permanent guidelines defining what variation is permissible from the one-man, one-vote constitutional principle of equal apportionment; and second, attempt to discourage gerrymandering by requiring that districts be composed of contiguous territory in as reasonably a compact form as the State finds practicable.

Far and away the most important part of the bill as passed by the House is section (2) which would make permissible until 1972 a deviation of 30 percent between the most-populated and least-populated districts in a State. After 1972—the beginning of the 93d Congress—the permissible deviation would drop to 10 percent.

On Tuesday of this week, the Senate Judiciary Committee, by a reported vote of 11 to 4, approved the House bill with amendments which would, among other things, raise the temporary deviation standard to 35 percent.

Only four States—California, Ohio, West Virginia, and Georgia—have congressional districts so badly malapportioned that they would be exempted from constitutional redistricting requirements under the generous 35-percent standard.

Seventeen other States—which are clearly malapportioned according to the

¹ 113 CONG. REC. 14,016-18 (May 25, 1967), 31,700-02 (Nov. 8, 1967) (remarks of Sen. Baker). During the summer and fall of 1967, the Congress considered a bill, H.R. 2508, that attempted to dilute the one-man, one-vote principle enunciated by the U. S. Supreme Court in *Westberry v. Sanders*, 376 U.S. 1 (1964), by, among other things, raising the level of permissible deviation between the most-populated and least-populated congressional districts in a state to 30 percent until 1972, after which the permissible deviation would drop to 10 percent. The House of Representatives approved the measure by a vote of 289 to 63. The House-approved version of H.R. 2508 thereafter was referred to the Senate Judiciary Committee, which approved the bill with amendments that would have, among other things, raised the temporary deviation standard to 35 percent. When the version that was reported out of the Senate Judiciary Committee reached the floor of the Senate, Senator Baker joined with Senator Edward M. Kennedy (D. Mass.) to oppose the bill. The version of H.R. 2508 that the Senate eventually passed included an amendment, introduced by Senator Kennedy and strongly supported by Senator Baker, that would have permitted only a 10 percent deviation that would have gone into effect in 1968. The House disagreed with the Senate version of H.R. 2508. A subsequent conference committee bill, which would have, among other things, postponed the application of the 10-percent deviation standard until 1972, was rejected by the Senate on Nov. 8, 1967. 113 CONG. REC. 31,712. The collaboration between Baker and Kennedy to defeat H.R. 2508 put the freshman Senator from Tennessee at odds with several elders of the Senate, including his own father-in-law, Senate Minority Leader Everett M. Dirksen (R. Ill.).

stricter constitutional standards established by the Supreme Court—would not be required to redistrict until 1972 under the standards set by the legislation.

The legislation, therefore, presents a question of the greatest magnitude: whether the Congress may validly, or should desirably, modify the constitutional one-man, one-vote principle in a way that would postpone for 5 years fair congressional districting in 17 States which have 214, or about one-half the total, seats in the House of Representatives.

While a serious constitutional question exists, as I shall discuss later, the question that most concerns me is: Is it desirable, simply as a matter of policy, for Congress to interject itself at this time and in this way into the process of reapportioning congressional districts? I strongly believe that the answer is “No.”

This belief proceeds from the proposition that the House of Representatives is the keystone of our Nation’s representative form of self-government. The process of electing Congressmen is the most effective means the majority of the people have of regularly imposing their will upon the central government, the dominating government in our federal system.

The primary means of determining what set of beliefs will be imposed upon the central government is, of course, our traditional system of partisan political competition in which two national parties contend for the right to express the ambitions, desires, aspirations, and dissent of all Americans.

Our Nation comes closest to true representative government expressed through political party competition when each man’s vote counts as much as the next man’s.

If a man has only part of a vote, the candidate of his political party has only a part of a fair opportunity to compete for the right to speak for him in the House of Representatives, and his Nation has a Government which represents only a part of the people.

These abstract principles can be expressed most eloquently in practice, and can be expressed most competently by me by reference to the situation with which I have the most familiarity, my home State of Tennessee.

Tennessee has been the pioneer State in reapportionment because of the landmark decision by the Supreme Court in *Baker against Carr*. Members of the Tennessee Republican Party were the instigators of that successful litigation because the party had been locked into a minority position in our State because of unfair reapportionment. A quick glance at the congressional districting developments during the last 15 years explains that situation graphically. The 1951 Tennessee Apportionment Act had two major inequities. Shelby County, with a population of 627,019, and which includes the city of Memphis, comprised the Ninth Congressional District. The Seventh and Eighth Districts had populations, respectively, of 232,652 and 223,387, or a combined population which was less than that of the Ninth District alone.

The second major inequity was that the three easternmost districts in the State, where the voters are predominantly Republican, had an average population of 456,789, while the three districts in middle Tennessee, where the voters are predominantly Democrat, had an average population of 371,221.

A court-ordered reapportionment in 1965 corrected most of the population

disparities between the ninth district and the seventh and eighth districts. This realignment in district lines unquestionably helped make it possible for the Republican Party to elect a Representative from the ninth district and to run its strongest race in history in the seventh district. Further reapportionment, which would necessarily shift Republican strength from the three east Tennessee districts into the middle three districts, would bring our party to a position of fair competition and, for the first time, allow Tennessee to have vigorous competition between two strong parties.

I offer no apologies for saying that reapportionment of congressional districts in my State has been desirable because it has promoted the development of the Republican Party in Tennessee. In other States, fair apportionment of districts will benefit the Democratic Party. Two, or 5, or 10 years from now, fair apportionment may benefit the Democratic Party in Tennessee. And, although I intend to do all I legitimately can through the partisan political process to see that my party continues to grow strong, I will not object if fair districting helps my opposition. For I do not ask for my party, and I do not intend to permit another party, a handicap conferred by malapportioned districts. The handicap falls squarely upon the people.

One might expect that a matter of such far-reaching importance to our system of government would have had careful, public scrutiny before being presented to the House and Senate. The fact is, that there have never been hearings in the Senate on the legislation, with the exception of a 1-day hearing in 1965 at which two Congressmen testified and which has gone unreported. The most recent hearings in the House were in 1964, which was the year in which the Supreme Court signaled the beginning of fair congressional districting by its landmark decision in *Wesberry v. Sanders*, 376 U.S. 1 (1964).

Between now and the week beginning June 5, when I understand the legislation is scheduled to come to the floor of this Chamber, I hope that Members of the Senate will carefully consider these consequences and will initiate independent study of the bill which has received too little attention.

The best course for the Senate, in my opinion, would be to defeat the bill outright; this would avoid confusing and impeding the swift movement in the Nation toward assuring each person that his vote for a Congressman counts the same as his neighbor's vote. The next best course would be to recommit the legislation for extended public hearings. At least the bill should be amended to eliminate completely temporary standards of permissible deviation that in any way conflict with what the Supreme Court has said the constitutional standards are.

Because the report of the Judiciary Committee is not yet available, I do not propose at this point to make an extended analysis of the bill. However, I do think it might be helpful to outline briefly why, in my judgment, the legislation is unconstitutional.

The constitutional argument begins with the Supreme Court's 1964 decision in *Wesberry* against *Sanders*, which established that the Constitution's plain objective is that of making "equal representation for equal numbers of people the fundamental goal of the House of Representatives." 376 U.S. 1, 18.

The Court held that:

The command of Art. I, sec. 2, that Representatives be chosen “by the People of the several states” means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.

Id. at 8.

Language in the Court’s later holding in *Reynolds v. Sims*, 377 U.S. 533, 578 (1964), made clear the suggestion in *Wesberry* that there is a more exacting standard of equality required in congressional districting than in State legislative election districts:

Some distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislature bodies to be distributed within a state than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the state.

Perhaps because population is so clearly the central, and probably exclusive, factor of importance in congressional redistricting, the Supreme Court has moved more swiftly than in State legislative redistricting toward requiring near exactness of population equality among the districts. Thus, on January 9 of this year, the Supreme Court indicated that a 10-percent variation from the State average district population is too large to meet the Court’s one-man, one-vote rule. In an Indiana case, *Duddleston v. Grills*, 385 U.S. 455 (1967), Court ordered a lower court to reconsider its approval of a congressional redistricting plan which permitted deviations up to only 12.8 percent of the State average district population. The Court cited a Florida decision involving legislative reapportionment to the effect that no good reasons were presented why the State could not have come much closer to providing districts of equal population than it did. The other January 9 order of the Court affirmed a lower court ruling that Missouri’s 1965 congressional redistricting plan was unconstitutional, although it kept deviations from the average district population to within 10.4 percent, *Kirkpatrick v. Preisler*, 385 U.S. 450 (1967).

In 21 States, congressional districts vary from the average district population by 10 percent or more. In eight of these States—New York, Tennessee, Massachusetts, Indiana, Texas, Missouri, North Carolina, and New Jersey—courts already have ordered redistricting before the 1968 elections. In two others—Ohio and Florida—court challenges are underway or pending. Certainly in these 10 States, and probably in most of the others, there is time to achieve a fair apportionment of districts before the 1968 elections. But all 21 of these States—except California, Ohio, West Virginia, and Georgia—are to be protected from redistricting until 1972 by enactment of H.R. 2508.

In 1951, during the 82d Congress, when the distinguished chairman of the House Judiciary Committee, Mr. CELLER, began his efforts to enact legislation that would have required fair apportionment, Congress may have had the power to establish permissible deviation standards other than those now proclaimed by the Judiciary.

But since the Supreme Court's decision in *Wesberry* in 1964, it seems clear that Congress' power in this area is limited only to establishing standards which are not at variance with constitutional standards.

There was some lively debate in the House on April 27 when this constitutional question was discussed. Mr. CELLER suggested that the legislative standards would not be mandatory on the Court:

We could not issue a mandate to the court, as the gentleman from New Jersey said. This language is permissive. When the court would interpret the nature of the lines, it would undoubtedly take the guidelines into most serious consideration, but that would not be absolute. That would be persuasive, and I am inclined to agree that the courts would not likely disregard the admonition laid down by the Congress when it devised the guidelines, but one cannot say that the court of necessity must follow the guidelines.

But others disagreed, such as Mr. MATHIAS who said:

We are not here, let me say, to lay down guidelines for the courts in future cases, we are here, as I conceive of the bill, to eliminate the necessity of the future cases. We are not laying down guidelines, we are laying down the law. And we have the constitutional authority and the constitutional responsibility to do that. We have not discharged that constitutionality responsibility for far too long.

I hope and I trust, before the Senate acts on this proposal and the proposed legislation, that there will be extensive debate on the merits and the underlying philosophy of the proposal.

I respectfully suggest that whether the 35-percent deviation standard is permissive or mandatory is of no consequence. If Congress is setting a permissive 35-percent guideline, then the Supreme Court will ignore it. If Congress is laying down the law, then the Supreme Court will rule the law unconstitutional.

As a lawyer, I am quite aware of the vagaries and uncertainties that accompany the process of predicting the development of constitutional law. Nevertheless, I think in this case it is crystal clear that the Supreme Court, which has been moving swiftly toward requiring nearly absolute equality between populations in congressional districts, will not tolerate an attempt to force a retreat in this process.

The respected Committee on Federal Legislation of the Association of the Bar of the City of New York observed in 1964 that—

In view of the pronouncements in *Wesberry*, it would seem highly doubtful that a variation of as much as 15 percent from the average—which could mean a 30-percent variation between districts from the average—is permissible.

Dean Robert B. McKay, of New York University School of Law, probably the leading authority on reapportionment, wrote in 1965:

It must be taken as a starting point that Congress cannot now redefine the concept of election of Representatives “by the People” to mean something other than the Court when it called for equality “as nearly as is practicable.”

U. S. Senate, November 8, 1967

MR. BAKER. . . .

Mr. President, with all due deference to the conference committee, I am opposed to the report of the Senate-House conference on congressional redistricting. I will vote against acceptance of it, and I earnestly hope that a majority of the Senate also will vote to reject it.

The issue which the report presents is essentially the same issue with which this body dealt definitively and, in my judgment, properly, during the debate on congressional redistricting in May and June of this year; that is, whether the Congress may validly, or should desirably, enact a law which would in 18 States, which include 259 Congressmen, delay for 5 years the enforcement of the clear constitutional mandate that each man’s vote for his Congressman counts as much as the next man’s vote.

The American people are familiar with the nature of this mandate and with the brief history of its swift implementation by the courts and the State legislatures. The constitutional basis for fair districting begins with the U.S. Supreme Court’s 1964 decision in *Wesberry* against Sanders, which established that the Constitution’s plain objective is that of making “equal representation for equal numbers of people the fundamental goal of the House of Representatives”—376 U.S. 1. 18. The Court held that:

The command of Art. I, sec. 2, that Representatives be chosen “by the People of the several states” means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.

Id. at 8.

Language in the Court’s later holding in *Reynolds v. Sims* (377 U.S. 533, 578 (1964)) made clear the suggestion in *Wesberry* that there is a more exacting standard of equality required in congressional districting than in State legislative election districts.

Perhaps because population is so clearly the central, and probably exclusive, factor of importance in congressional redistricting, the Supreme Court has moved more swiftly than in State legislative redistricting toward requiring near exactness of population equality among the districts within a State. The Court's latest decisions indicate that a State's district lines do not conform to the requirements of the Constitution if any district's population deviates more than 10 percent above or below the State's average district population. See *Duddleston v. Grills* (385 U.S. 455 (1967)); *Kirkpatrick v. Preisler* (385 U.S. 450 (1967)).

These landmark decisions have worked extraordinary changes in the quality of the Nation's representative Government. Since the *Wesberry* decision, district lines have been reshaped in 33 States. Many States redistricted voluntarily; some only with the encouragement of a court's order; and, in a few States where the legislatures could not agree, the courts themselves redrew the lines.

The magnitude of the importance of the decision is dramatically demonstrated by the fact that between 1964 and 1966 lines in 158 congressional districts were redrawn, in response to the requirements set down in the *Wesberry* decision and others, and in response to the requirement of the Constitution for equal representation in the House of Representatives.

The conclusion one draws from these events is inescapable: the determined implementation of the principle of the *Wesberry* decision during the past 2½ years has been the backbone of the movement toward fair districting in the Nation; any weakening or avoidance of that principle or delaying of its implementation would seriously undermine pending and future efforts at fulfillment of these important constitutional rights.

And let there be no doubt that much remains to be done. There are today 18 States with congressional districts which have been declared unconstitutional by the courts—California, Indiana, and New Jersey—or in which court challenges are pending—Texas, Missouri, Ohio, New York, and Florida—or in which district lines are vulnerable to attack under constitutional standards—Colorado, Connecticut, Georgia, Iowa, Louisiana, Minnesota, Nebraska, Pennsylvania, Washington, and West Virginia.

There is also the question of gerrymandering—which will not be dealt with today—but with which the Senate did deal firmly in June. The outlawing of this shoddy practice—which has been employed to discriminate against minority parties, interests, groups, and races—is essential to a completion of the task of assuring fair representation for all Americans in the U.S. Congress.

I should like to emphasize at this point that my motives in my actions today do not spring from any narrow, local interest. The State of Tennessee has no districting problem of which I am aware; its lines were redrawn only this summer by court order, after extensive consideration of the views of all parties affected, and to the seeming satisfaction of all parties.

Neither am I motivated by partisan political interests. While it is true that in some States the Republican Party has been disadvantaged by unfair districting, it is equally true that in other States unfair drawing of district lines has worked against the Democrats.

And I have not succumbed, I hope—despite my lawyer-like inclination in that direction—to a detached entrancement with the manipulation of barren legalisms in an attempt to justify my position or prove my point.

Instead I am concerned about each individual's right in this democracy to the most perfect form of representative government possible under the Federal Constitution. This concern is based upon the proposition that the House of Representatives is the keystone of our Nation's representative form of self-government. The process of electing Congressmen is the most effective means the majority of the people have of regularly imposing their will upon the Central Government, which in our federal system is the dominant Government.

The primary means of determining what set of beliefs will be imposed upon the Central Government is, of course, our traditional system of partisan political competition in which two national parties contend for the right to express the ambitions, desires, aspirations, and dissent of all Americans.

Our Nation comes closest to true representative government expressed through political party competition when each man's vote counts as much as the next man's.

If a man has only a part of a vote, the candidate of his political party has only a part of a fair opportunity to compete for the right to speak for him in the House of Representatives, and his Nation has a Government which represents a part of the people more adequately than it does the rest.

Acting upon these principles and this belief, the Senate, on June 8, passed by a convincing margin, 55 to 28, legislation which would have set definite legislative standards implementing and fully consistent with the Federal Constitution's strict one-man, one-vote requirement. That legislation would have prohibited the gerrymandering of congressional districts and would have permitted a population variance of only 10 percent between the smallest and largest districts in a State beginning with the 1968 elections.

The Senate action came in the form of an amendment to a House-passed bill, and the debate focused upon the same issue upon which we focus today. The House version, H.R. 2508, would have permitted a population variance of 30 percent between the largest and the smallest districts in the States—a variance that clearly exceeded the limits permitted by the Constitution. The House also would have left the question of gerrymandering to the States—or, in other words, would have left the question of gerrymandering where it is today. Finally, the House bill prohibited at-large elections for House members, except in Hawaii and New Mexico, beginning with the 1968 elections.

Although the distinguished chairman of the House Judiciary Committee [Mr. CELLER] began as early as 1951 to gain enactment of sound legislative standards for redistricting, the measure that came to the Senate this year from the House had not felt the scrutiny of careful public hearings. Indeed, the first real public attention to the bill was drawn briefly during the limited House debate—largely through the efforts of the Congressman from Michigan [Mr. CONYERS]—and during a more extended discussion in this body.

Following the debate, the Senate rejected the attempt by the House to fashion legislation that would avoid the one-man, one-vote decision, amended the bill to

establish sound constitutional legislative standards for redistricting, and there was a conference.

The conference, despite diligent efforts, could not agree on the gerrymandering question and on the question of temporary and permanent standards governing population variance between districts.

Finally, on October 19, the conference filed its report with the House of Representatives. There was nothing in the report that was included in the Senate's amendment. Instead, the House reported one provision which was in the House bill as it originally came to the Senate, and one new provision which had been in neither the House nor the Senate version.

The part of the report extracted from the House version, and later agreed to by the Senate, made illegal at-large elections for House Members, except in Hawaii and New Mexico, for the 1968 and 1970 elections. This provision reflected a widespread, and justifiable, I think, concern among House Members that a Federal court faced with a recalcitrant State legislature might simply order all members of that State's delegation to run at large in the 1968 or 1970 elections.

Such a result would be an unwelcome distortion of the political process. A strength of the House is that its Members represent narrowly defined groups of people. In all but the smallest States, a Member elected from a district can pay closer attention to the needs and problems of individual constituents than can a Senator or a Representative at large who must represent many more individuals.

The desirability of Congress acting promptly and definitively to remove the possibility of at-large elections in all States with more than one district is clear. And no one doubts that Congress may properly enact such a provision pursuant to its constitutional power under article I, section 4, to alter regulations governing the times, places, and manner of holding elections for Senators and Representatives.

The problem with the at-large prohibition contained in the conference report is that the prohibition is inseparably connected to another provision regarding special Federal censuses which, I am convinced, and as I will explain in a moment, is unconstitutional.

If the courts declare the one part unconstitutional, the at-large prohibition will also fall, for there is no severability clause contained in the report.

The result will be, if this report is enacted and then found unconstitutional, to heighten the possibility of at-large elections in 1968 for the 259 Members of Congress in those 18 States which are now under court order to redistrict, or in which court challenges are pending, or in which district lines are vulnerable under constitutional standards.

This is so because, given the usual delays in the legislative and judicial process, it may be next spring before the Supreme Court provides a definitive answer on the constitutionality of this proposed legislation. Until that time, the judicial and legislative endeavors in many of these 18 States probably will grind to a halt awaiting the Court's decision. After that decision, there may not be time to convene the legislature in order to redistrict. The courts could then either draw the lines themselves—which has only happened in Arizona, Illinois, Maryland, Montana, and Tennessee—or order at-large elections.

Therefore, I think it fair to say that a vote to accept this conference report is a vote for increasing the possibility of at-large elections for House Members in 1968. From the point of view of those concerned about at-large elections, no bill is better than this bill.

The most effective way to prohibit at-large elections will be to pass separate legislation, unclouded by doubts of constitutionality, that immediately and finally bans at-large elections in all States. I have indicated my firm intention to attach to some pending business in the Senate an amendment that will do exactly this. I reiterate my intention to do so. I feel confident that both the Senate and the House will accept such an amendment.

Therefore, for those Senators concerned about at-large elections, I submit that the most effective method of prohibiting such elections is to vote against acceptance of this conference report—which heightens the possibility of at-large elections—and to vote for my amendment to ban such elections.

I am hopeful that this suggested treatment of the at-large elections issue should satisfy those with qualms about voting against a report containing an at-large election prohibition, and that the remainder of the debate might focus upon the question whether the special census provision is unconstitutional and bad policy and whether therefore the report should be rejected by the Senate.

The second sentence of the conference report provides that no State shall be required to redistrict prior to the Nineteenth Federal Decennial Census unless the results of a special Federal census conducted pursuant to the act of August 26, 1954, as amended, are available for use.

The justification for this provision, according to the House managers of the bill, is that:

Changes that have occurred in the structure of the U.S. population since 1960 are too vast in many instances to permit any reasonable degree of accuracy in establishing district lines on the basis of the 1960 census data.

The expense and effort involved in congressional redistricting should not be devoted to an enterprise that necessarily in many states must be so inaccurate as to be unreasonable when based on 1960 census data. It is preferable to wait until the 19th decennial data is available if updated special census data is not available.

I should like to respond in the following way to the arguments in favor of this new provision which was in neither the original House bill nor the original Senate amendment to the House bill, but was developed in the conference.

First, if this provision is saying to the courts, "You cannot order a State to redistrict unless that State voluntarily agrees to pay for and provide a special Federal census," then the legislation is unconstitutional because it permits a State the option of declining to redistrict by refusing to authorize and pay for a special Federal census. There is no question that Congress can act, as the Senate did in

June, to establish more defined standards within the limits set by the Constitution.

There is equally no doubt in my mind that congressional action which attempts, as this special census provision does, to limit the Supreme Court's definition of the Constitution will be ruled repugnant to the Constitution. This provision is repugnant to the Constitution because it permits the State the option to withdraw from the court's jurisdiction over implementation of the one-man, one-vote principle.

But it has been suggested by proponents of the report that because the legislation has a presumption of constitutionality, we should interpret the special census provision in a way that might be constitutional.

It has been pointed out that nothing in the bill prohibits a State from voluntarily redistricting on the basis of 1960 census figures. It has also been suggested that a Federal court could itself re-draw the State's lines on the basis of the 1960 census figures.

Finally, it is suggested that even if there is some unconstitutional aspect to the legislation, that this legislation serves only as an admonition to the courts. Such arguments certainly create confusion about the justification for the special census provision. If the purpose of the provision is to establish a congressional policy against the use of 1960 census figures, then why should the 1960 figures be bad only when Federal courts order a State legislature to draw new district lines? Why are 1960 figures also not outdated when Federal courts themselves redraw district lines, or when a State decides to redistrict, or even when a State court—as in the California situation—has ordered a legislature to redistrict? One must conclude that there must be some reason other than the inaccuracy of 1960 census figures to justify our acceptance of this special census provision.

The only other interpretation is that the Congress is either admonishing or ordering the courts not to require any State to redistrict until the 1972 elections unless it voluntarily agrees to do so.

This interpretation is suggested in the remarks of the distinguished Senator from Nebraska [Mr. HRUSKA], made on the Senate floor on October 31, RECORD, page 30635, where he says:

The language of the conference report is simple and direct. It accomplished its objective very well. In short, no state shall be forced to redistrict prior to the 1970 census; however, a state can voluntarily redistrict at any time. It also prohibits at-large elections except for the states of Hawaii and New Mexico. This and nothing more is the intent of the bill.

In short, the Senator seems to be saying that this bill is designed to delay redistricting in all States which do not voluntarily decide to redistrict until after the 1970 census is completed.

Mr. President, after the congressional redistricting bill was sent to conference and returned, first to the House of Representatives and then to the Senate, I find, upon close examination, that not one provision of the amended Senate version

of this bill was retained in conference. The House provision against running at-large was eliminated in the Senate form, but restored in conference. The provision against gerrymandering in the Senate form was eliminated in conference. The provision dealing with the permanent limitation of not more than 10 percent variation between districts was eliminated in conference; and we are presented, Mr. President, with a conference report which is, in fact and deed, a complete innovation of that committee, and which has the practical effect of doing two things, in my judgment: First, depriving the Federal judiciary of any effective right to review the inadequacies of redistricting prior to 1972; and second, heightening the possibility and advancing the probability that this Nation may be faced with at-large elections in many of our States in 1968.

The reason for that, Mr. President, in my judgment, is that a close reading of the conference version of the bill will disclose that there is no severability clause to establish the independence of the provision which defers redistricting until 1972 from the provision which prohibits at-large elections.

If the courts find, and I feel they will find, that this conference report is unconstitutional, if any part of the bill fails, the entire bill will fail, and we will have no prohibition against at-large elections.

In conclusion, it therefore seems to me that there is no way to interpret the bill in a way that is both reasonable and consistent with the Constitution. It must be read either to be unconstitutional or to mean nothing. It does not establish a congressional policy against the use of the 1960 census figures: First, because it unreasonably permits the figures to be used in all types of situations but one; and second, because it could not establish such a policy since the courts have repeatedly ruled that, whatever the inaccuracies of those figures, there will continue to be court-ordered redistricting and it will be done on the basis of 1960 figures. If the justification for the special census provision is to delay redistricting until 1972 unless a State voluntarily elects to do so, it is clearly unconstitutional. If the justification for it is to "admonish" the courts to delay redistricting until 1972, the legislation is either suggesting that the courts overrule themselves, which is not likely, or it means nothing.

So, Mr. President, as I stated earlier, I shall vote against this conference report, for I feel that in this instance, no bill is better than this bill.

REMARKS ON THE ASSASSINATIONS OF THE REV. MARTIN LUTHER KING, JR. AND SENATOR ROBERT F. KENNEDY (1968)¹

Senator Howard H. Baker, Jr.

U. S. Senate, April 5, 1968

MR. BAKER. Mr. President, I join Senators today in an expression of compassion for the widow and children of Martin Luther King. While nothing can relieve the grief that they will bear, we all hope that somehow their grief will be lessened by the resolve of our Nation to persevere in the ways of peace.

There is a grim irony and poignance in the fact that he died by the very violence that he saw threatening his country. We know from his last words and actions that he saw even his own crusade for equality among Americans menaced by the violence he deplored. For he deplored violence of every kind—violence abroad, violence at home, violence by whites, violence by blacks. At the moment of his death he was deeply troubled that his own long and arduous work might be subverted by persons and purposes and methods entirely foreign to what he sought to accomplish: the peaceful, lawful, orderly absorption of every American into the fullness of our national life.

As men and women, our reaction to the isolated deed of perverted violence must be one of sorrow for his family. As Americans, it must be one of renewed resolve that our vigorous national efforts toward full equality of opportunity and citizenship will be carried on within the flexible but peaceful framework of justice and legal order.

U. S. Senate, July 30, 1968

MR. BAKER. Mr. President, I join in these tributes to our late colleague from New York, Senator ROBERT FRANCIS KENNEDY, who, during the relatively short time he spent in this body, made his presence felt to an extent that will not be fully known for many years to come.

While I often found myself in opposition to Senator KENNEDY in the Senate, I was and am convinced that he was a man of unquestionable integrity and deep conviction who, throughout his life, waged a vigorous battle against indifference and mediocrity in our society.

It has been said that life, though tragic, is still worthwhile. Certainly this is true of the life of BOB KENNEDY, a life so often touched by tragedy and yet rich, full, and productive until its untimely end.

It is hoped that history will remember him, not so much for the utter tragedy of his death, but for what he was in life—a genuine human being of high ideals and infinite compassion who did what he could for his fellowman.

1 114 CONG. REC. 9,137 (Apr. 5, 1968), 24,127 (July 30, 1968) (remarks of Sen. Baker).

REMARKS IN SUPPORT OF A CONSTITUTIONAL AMENDMENT LOWERING THE VOTING AGE TO EIGHTEEN (1968)¹

Senator Howard H. Baker, Jr.

MR. BAKER. Mr. President, I desire to voice my support of the President's proposal to amend the Constitution to extend the right to vote to citizens 18 years of age or older in both Federal and State elections.

This proposed constitutional amendment reflects the view not only of the President, but of many Members of Congress, as well, that extending the suffrage to citizens who have reached the age of 18 would broaden the base of democracy. The 18-year-old of today is more than adequately prepared to accept the responsibility of suffrage and undertake full participation in the American political process.

At the present time, four States permit persons under the age of 21 to vote: Georgia, Kentucky, Alaska, and Hawaii. Recent nationwide public opinion polls show that public support for lowering the voting age requirement to 18 has reached an all-time high.

I urge Senators on both sides of the aisle to join with me in supporting this proposal.

1 114 CONG. REC. 19,293 (June 28, 1968) (remarks of Sen. Baker). On June 27, 1968, President Lyndon B. Johnson sent a message to the Congress, proposing an amendment to the United States Constitution that would have lowered the voting age to eighteen in both federal and state elections. LYNDON B. JOHNSON, MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A PROPOSAL TO AMEND THE U.S. CONSTITUTION TO LOWER THE VOTING AGE TO 18, 90th Cong., 2d Sess., H.R. Doc No. 334. A proposal similar to President Johnson's ultimately became the Twenty-Sixth Amendment, which had received the votes of the requisite number of states for ratification by July 1, 1971.

U.S. SENATE WATERGATE COMMITTEE OPENING STATEMENT (1973)¹

Senator Howard H. Baker, Jr.

Senator BAKER. Mr. Chairman, thank you very much. I believe there is no need for me to further emphasize the gravity of the matters that we begin to explore publicly here this morning. Suffice it to say there are most serious charges and allegations made against individuals, and against institutions. The very integrity of our political process itself has been called into question.

Commensurate with the gravity of the subject matter under review and the responsibilities of this committee and the witnesses who come before it, we have a great burden to discharge and carry. This committee is not a court, nor is it a jury. We do not sit to pass judgment on the guilt or innocence of anyone. The greatest service that this committee can perform for the Senate, the Congress, and for the people of this Nation is to achieve a full discovery of all of the facts that bear on the subject of this inquiry. This committee was created by the Senate to do exactly that. To find as many of the facts, the circumstances, and the relationships as we could, to assemble those facts into a coherent and intelligible presentation and to make recommendations to the Congress for any changes in statute law or the basic charter document of the United States that may seem indicated.

But this committee can serve another quite important function that neither a grand jury investigation nor a jury proceeding is equipped to serve, and that is to develop the facts in full view of all of the people of America. Although juries will eventually determine the guilt or the innocence of persons who have been and may be indicted for specific violations of the law, it is the American people who must be the final judge of Watergate. It is the American people who must decide, based on the evidence spread before them, what Watergate means, [and] about how we all should conduct our public business in the future.

When the resolution which created this committee was being debated on the floor of the Senate in February of this year, I and other Republican Senators expressed concern that the inquiry might become a partisan effort by one party to exploit the temporary vulnerability of another. Other congressional inquiries in the past had been conducted by committees made up of equal numbers of members from each party. I offered an amendment to the resolution which would have given the Republican members equal representation on this committee. That amendment did not pass. But any doubts that I might have had about the fairness and impartiality of this investigation have been swept away during the last few weeks. Virtually every action taken by this committee since its inception has been taken with complete unanimity of purpose and procedure. The integrity and fairness of each member of this committee and of its fine professional staff have been made

1 PRESIDENTIAL CAMPAIGN ACTIVITIES OF 1972, WATERGATE AND RELATED ACTIVITIES, PHASE I: WATERGATE INVESTIGATION, BK. I: HEARINGS BEFORE THE S. SELECT COMM. ON PRESIDENTIAL CAMPAIGN ACTIVITIES, 93rd Cong. 4-6 (1973) (opening statement of Sen. Baker, May 17, 1973).

manifest to me, and I know they will be made manifest to the American people during the course of this proceeding. This is not in any way a partisan undertaking, but, rather it is a bipartisan search for the unvarnished truth.

I would like to close, Mr. Chairman, with a few thoughts on the political process in this country. There has been a great deal of discussion across the country in recent weeks about the impact that Watergate might have on the President, the office of the Presidency, the Congress, or our ability to carry on relations with other countries, and so on. The constitutional institutions of this Republic are so strong and so resilient that I have never doubted for a moment their ability to function without interruption. On the contrary, it seems clear to me the very fact that we are now involved in the public process of cleaning our own house, before the eyes of the world, is a mark of the greatest strength. I do not believe that any other political system could endure the thoroughness and the ferocity of the various inquiries now underway within the branches of Government and in our courageous, tenacious free press.

No mention is made in our Constitution of political parties. But the two-party system, in my judgment, is as integral and as important to our form of government as the three formal branches of the central Government themselves. Millions of Americans participated actively, on one level or another, and with great enthusiasm, in the Presidential election of 1972. This involvement in the political process by citizens across the land is essential to participatory democracy. If one of the effects of Watergate is public disillusionment with partisan politics, if people are turned off and drop out of the political system, this will be the greatest Watergate casualty of all. If, on the other hand, this national catharsis in which we are now engaged should result in a new and better way of doing political business, if Watergate produces changes in laws and campaign procedures, then Watergate may prove to be a great national opportunity to revitalize the political process and to involve even more Americans in the day-to-day work of our two great political parties. I am deeply encouraged by the fact that I find no evidence at this point in time to indicate that either the Democratic National Committee or the Republican National Committee played any role in whatever may have gone wrong in 1972. The hundreds of seasoned political professionals across this country, and the millions of people who devoted their time and energies to the campaigns, should not feel implicated or let down by what has taken place.

With these thoughts in mind, I intend to pursue, as I know each member of this committee intends to pursue, an objective and evenhanded but thorough, complete, and energetic inquiry into the facts. We will inquire into every fact and follow every lead, unrestrained by any fear of where that lead might ultimately take us.

Mr. Chairman, my thanks to you for the great leadership you have brought to this committee in its preparatory phases, and my thanks to Mr. Dash, who has served with distinction as chief counsel to the committee and Mr. Thompson, who serves as minority counsel to the committee. I believe we are fully prepared to proceed with the business of discovering the facts.

EXCERPTS FROM THE SENATE WATERGATE HEARINGS (1973)

Senator Howard H. Baker, Jr.

*U. S. Senate Select Committee on Presidential Campaign Activities
Testimony of Herbert Lloyd Porter
June 7, 1973¹*

Senator BAKER. As I understand the essence of your testimony to this point, then, 75 percent of the money is unaccountable, or you cannot account for; 25 percent of the money you can; that you hired two men to do, as you put it, a Dick Tuck operation, so-called “prank” operation.

Mr. PORTER.² Yes, sir.

Senator BAKER. Is this synonymous with the “dirty tricks” operation that you referred to earlier in your testimony?

Mr. PORTER. No, sir. Mr. Magruder³ indicated to me that money had been, in fact, authorized to Mr. Liddy⁴ for dirty tricks and other special projects. Now, what he said was that they were not illegal and that what Mr. Liddy had done, apparently—what he had apparently done at that time was illegal and was not a part of that authorization.

Senator BAKER. Did you ever have any doubt in your mind about the propriety of this?

Mr. PORTER. About the what, sir?

Senator BAKER. About the propriety? Not the illegality, but the propriety of it.

1 PRESIDENTIAL CAMPAIGN ACTIVITIES OF 1972, WATERGATE AND RELATED ACTIVITIES, PHASE I: WATERGATE INVESTIGATION, BK. 2: HEARINGS BEFORE THE S. SELECT COMM. ON PRESIDENTIAL CAMPAIGN ACTIVITIES, 93rd Cong. 648-49 (1973) (testimony of Herbert Lloyd Porter).

2 Herbert L. Porter, the scheduling director of the Committee for the Re-election of the President, was subsequently convicted of lying to the Federal Bureau of Investigation about his knowledge of Donald H. Segretti, the former Treasury Department lawyer who had directed a campaign of political espionage and sabotage against the Democratic Party during the presidential campaign of 1972. WATERGATE: THE FALL OF RICHARD M. NIXON xx (Stanley I. Kutler, ed., 1996).

3 Jeb Stuart Magruder, deputy director of the Committee for the Re-election of the President. *Id.* at xix.

4 G. Gordon Liddy, former counsel to the Committee for the Re-election of the President, was convicted on counts of conspiracy, burglary, and illegal wiretapping in the Watergate case. *Id.*

Mr. PORTER. I did not know what he was referring to, and he did not tell me what he was referring to. He never explained any of the dirty tricks operation that Mr. Liddy was involved in.

Senator BAKER. I do not think that answers my question.

Mr. PORTER. I am sorry, sir.

Senator BAKER. I will put it [to you] again. Did you ever have any qualms about what you were doing, about the propriety of hiring these people for the dirty tricks or whatever it was? I am probing into your state of mind, Mr. Porter.

Mr. PORTER. I understand. I think the thought crossed my mind, Senator, in all honesty, that I really could not see what effect it had on reelecting a President of the United States. On the other hand, in all fairness, I was not the one to stand up in a meeting and say that this should be stopped, either. So I do not—I mean, there is space in between. I kind of drifted along.

Senator BAKER. Now, you have reached now precisely that point that I would like to examine and I intend to examine it with other witnesses as this hearing proceeds.

Mr. PORTER. OK.

Senator BAKER. Where does the system break down when concern for what is right as distinguished from what is legal is never asserted or never thought about and you do not stand up and say so? At any time, did you ever think of saying: I do that think this is quite right, this is not quite the way it ought to be. Did you ever think of that?

Mr. PORTER. I think most people would probably stop and think about that.

Senator BAKER. Did you?

Mr. PORTER. Yes, I did.

Senator BAKER. What did you do about it?

Mr. PORTER. I did not do anything.

Senator BAKER. Why didn't you?

Mr. PORTER. In all honesty, probably because of the fear of group pressure that would ensue, of not being a team player.

Senator BAKER. And the fear of not being a team player was strong enough to suppress your judgment on what action you should take if you considered an action improper, if not illegal?

Mr. PORTER. Well, I never considered any action up to that point illegal, No. 1. However, I was——

Senator BAKER. Do you think an organization, a political organization, should be so anonymous, so military and obedient, so careful for the concerns of peer approval that it, each and every member of that organization, at least up until a certain point and level in the organizational chart, completely abdicates his conscience and judgment?

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

Senator BAKER. What caused you to abdicate your own conscience and disapproval, if you did disapprove, of the practices or dirty tricks operation?

Mr. PORTER. Well, Senator Baker, my loyalty to this man, Richard Nixon, goes back longer than any person that you will see sitting at this table throughout any of these hearings. I first met the President——

Senator BAKER. I really very much doubt that, Mr. Porter. I have known Richard Nixon probably longer than you have been alive, and I really expect that the greatest disservice that a man could do to a President of the United States would be to abdicate his conscience.

*U. S. Senate Select Committee on Presidential Campaign Activities
Testimony of John W. Dean III⁵
June 27, 1973⁶*

Senator BAKER. Mr. Chairman,⁷ thank you very much.

Senator ERVIN. First, I want to thank you for swapping places with me so I can fulfill an engagement later. Thank you very much.

Senator BAKER. Mr. Chairman, there is no way on earth I can swap places with you. But I thank you for that and I am happy to relinquish my place in the sequence

5 John W. Dean III, counsel to President Nixon. *Id.* at xviii.

6 *Presidential Campaign Activities of 1972, Watergate and Related Activities, Phase I: Watergate Investigation, Bk. 4: Hearings Before the S. Select Comm. on Presidential Campaign Activities, 93rd Cong. 1,465-82 (1973)* (testimony of John W. Dean III).

7 Senator Sam J. Ervin (D. N. Car.) represented North Carolina in the United States Senate, 1954-1974, and served as chairman of the Senate Select Committee on Presidential Campaign Activities. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

of questioning so that you could complete your very, very thorough and very, very important line of questioning this morning.

I was about to say, Mr. Dean, that you have been a very patient witness, and very thorough. You presented us with a great mass of information, almost 250 pages in your written statement of voluminous testimony in response to the interrogation of members of this committee, and we are very grateful.

Some of the specific allegations that you make in your testimony are at least prima facie extraordinarily important. The net sum of your testimony is fairly mind-boggling. It is not my purpose in these questions that are about to follow to do what would ordinarily be the expected function of a committee member, to try to test your testimony. I think that you have been subjected to a rather rigid examination by my colleagues on the committee thus far and, of course, your testimony and its credibility, its importance and relevance, will fall into place not only in terms of its own significance but in terms of its relationship to the testimony of other witnesses. . . .

It occurs to me that at this point, the central question, and in no way in derogation of the importance of the great volume of material and the implications that flow from it, but the central question at this point is simply put. What did the President know and when did he know it?

In trying to structure your testimony I would ask that you give attention to three categories of information: That information that you can impart to the committee that you know of your own personal knowledge; that type of information that we lawyers refer to as circumstantial evidence, which would include evidence given based on your opinion or on inferences you draw from circumstances in the situation; and, third, that type of evidence that ordinarily would not be admitted in a court of law but is admitted here for whatever purpose it may serve, that is hearsay evidence or evidence about which you have only secondhand information. . . .

I am in no way criticizing your testimony, I think you really have been a very remarkable witness.

MR. DEAN. Mr. Vice Chairman, I might say this, in preparing my testimony I made a very conscious effort to not write a brief against any man but merely to state facts sequentially as close as I could. By sequentially some things it was necessary to follow forward to explain a given sequence of events to bring the matter into a time sequence but I did not by design try to write a brief or a document that focused in on any individual or any set of circumstances surrounding any individual. Rather, laid them out in the totality of their context.

SENATOR BAKER. I understand that, Mr. Dean, and I really do hope you understand that what I am saying to you is not a criticism of you nor any implication of criticism. Rather instead you have presented us with a sequential presentation, and I am trying to convert it into an organized presentation, according to categories and to the quality and scope of the information that you possess. So please believe me, I am not trying to attack your testimony but rather to organize it for our own committee purpose.

Now, there is one other thing I would like to say and it may or may not be possible to do this, and again I am not being critical of you as a witness. As I said just a moment ago I think you have been a very remarkable witness. When I used to practice law, I used to call on the trial judge from time to time to instruct the witness to first answer the question and then to explain it. So I hope I can keep my questions brief and I hope you might preface your answers with a yes or no, if that is possible, and then whatever explanation you wish.

Mr. DEAN. Certainly.

Senator BAKER. It is not meant to be an entrapment, nor a “do you still beat your wife” question, answer yes or no. But it is meant to try to advance the cause of factfinding.

Under the heading of what did the President know and when did he know it falls into several subdivisions. The first one is the break-in at the Democratic National Committee headquarters of the Watergate complex on the morning of June 17, 1972.

Do you know what the President knew of that in advance?

Mr. DEAN. I do not.

Senator BAKER. Do you have any information that he did know of it?

Mr. DEAN. I only know that I learned upon my return to the office that events had occurred that indicated that calls had come from Key Biscayne to Washington to Mr. Strachan⁸ to destroy incriminating documents in the possession of Mr. Haldeman.⁹

Senator BAKER. The question is, I hope, not impossibly narrow but your testimony touches many people. It touches Mr. Ehrlichman,¹⁰ Mr. Haldeman, Mr. Colson,¹¹ Mr. Mitchell,¹² Mr. Dean, and many others. But I am trying to focus on the President.

Mr. DEAN. I understand.

Senator BAKER. What did the President know and when did he know it?

8 Gordon C. Strachan, assistant to White House chief of staff H. R. Haldeman. *WATERGATE*, *supra* note 2, at xxi.

9 H. R. Haldeman, White House chief of staff. *Id.* at xviii.

10 John D. Erlichman, chief domestic affairs adviser to President Nixon. *Id.*

11 Charles W. Colson, special counsel to President Nixon. *Id.* at xvii.

12 John N. Mitchell, former U. S. Attorney General and director of the Committee for the Re-election of the President. *Id.* at xix.

Is it possible for you, based on direct knowledge or circumstantial information, and you have given us an indication of circumstances, or even hearsay, to tell us whether or not you can shed any further light on whether the President knew or, in the parlance of tort law, should have known of the break-in at the Watergate complex on June 17?

Mr. DEAN. You mean, could he have prior knowledge of it?

Senator BAKER. Yes.

Mr. DEAN. I cannot testify of any firsthand knowledge of that. I can only testify as to the fact that anything that came to Mr. Haldeman's attention of any importance was generally passed to the President by Mr. Haldeman, and if Mr. Haldeman had advance knowledge or had received advance indications it would be my assumption that that had been passed along but I do not know that for a fact.

Senator BAKER. So that would fall into category 2 of my organization.

Mr. DEAN. Yes, sir.

Senator BAKER. That is an inference that you do draw from the arrangements of the organization of the White House and your knowledge of the relationships, the relationship of Mr. Haldeman and the President.

Mr. DEAN. That is correct.

Senator BAKER. But it does not fall in category 1 or 3 which is to say direct knowledge or hearsay information from other parties.

Mr. DEAN. That is correct.

Senator BAKER. The coverup is the second heading and, of course, the coverup embraces and involves so many things and so many people over such a span of time that it is difficult really to place it in a single category but I would like to try.

What did the President know and when did he know it about the coverup. You have already testified about this, Mr. Dean, and I understand, I believe, the burden of your testimony, the thrust of your testimony, but for the sake of clarity, and understanding and organization of this record, tell me briefly: based on your personal knowledge, based on circumstantial evidence or based even on hearsay, what the President knew and when he first knew it.

Mr. DEAN. I would have to start back from personal knowledge and that would be when I had a meeting on September 15 when we discussed what was very clear to me in terms of coverup. We discussed in terms of delaying lawsuits, compliments to me on my efforts to that point. Discussed timing and trials, because we didn't

want them to occur before the election. That was direct conversation that I testified to.

Now, going back from September 15, back to the June 17 time, I believe that I have testified to countless occasions in which I have—I reported information to Mr. Haldeman and Mr. Ehrlichman, made recommendations to them regarding Mr. Magruder, I was aware of the fact that often Mr. Haldeman took notes, I know that Mr. Haldeman met daily with the President, I was quite aware of the fact that this was one of the most important and virtually the only issue that was really developing at all, and given the normal reporting channels I worked through it was my assumption, without questioning, that this was going in to the President.

Now, at what point in time this was that Mr. Haldeman discussed this with the President, I have no idea.

....

Senator BAKER. I am going to try now to focus entirely on the meeting of September 15.

Mr. DEAN. Right.

Senator BAKER. And I have an ambition to focus sharply on it in order to disclose as much information as possible about the September 15 meeting. What I want to do is to test, once again, not the credibility of your testimony, but the quality of the evidence, that is, is it direct evidence?

Mr. DEAN. I understand.

Senator BAKER. Hearsay evidence or any circumstantial evidence related to the September 15 meeting, so take a little time with it, if you will.

Mr. DEAN. All right. During the morning of the 15th the indictments had been handed down. I think there was a general sigh of relief at the White House. I had no idea that I was going to be called to the President's office. Mr. Haldeman was quite aware of the fact that I had spent a great deal of time; he had spent a great deal of time, that Mr. Ehrlichman had spent a great deal of time, on this matter. In the late afternoon I received a call requesting I come to the President's office. . . . When I entered the office I can recall that—you have been in the office, you know the way there are two chairs at the side of the President's desk.

Senator BAKER. You are speaking of the oval office?

Mr. DEAN. Of the oval office. As you face the President on the left-hand chair Mr. Haldeman was sitting and they had obviously been immersed in a conversation and the President asked me to come in and I stood there for a moment.

He said, "Sit down" and I sat on a chair on the other side.

Senator BAKER. You sat in the right-hand chair?

Mr. DEAN. I sat on the right-hand chair.

Senator BAKER. That is the one he usually says no to, but go ahead.

Mr. DEAN. I was unaware of that. [Laughter.]

Senator BAKER. Go ahead, Mr. Dean.

Mr. DEAN. As I tried to describe in my statement, the reception was very warm and very cordial. There was some preliminary pleasantries, and then the next thing that I recall the President very clearly saying to me is that he had been told by Mr. Haldeman that he had been kept posted or made aware of my handling of the various aspects of the Watergate case and the fact that the case, you know, the indictments had now been handed down, no one in the White House had been indicted, they had stopped at Liddy.

Senator BAKER. Stop, stop, stop just for one second. Let's examine those particular words just for a second.

That no one in the White House had been indicted. Is that as near to the exact language—I don't know so I am not laying a trap for you, I just want to know.

Mr. DEAN. Yes, there was a reference to the fact the indictments had been handed down and it was quite obvious that no one in the White House had been indicted on the indictments that had been handed down.

Senator BAKER. Did he say that, though?

Mr. DEAN. Did he say that no one in the White House had been handed down? I can't recall it. I can recall a reference to the fact that the indictments were now handed down and he was aware of that and the status of the indictments and expressed what to me was a pleasure to the fact that it had stopped at Mr. Liddy.

Senator BAKER. Tell me what he said.

Mr. DEAN. Well, as I say, he told me I had done a good job—

....

Senator BAKER. Can you give us any information, can you give us any further insight into what the President said?

MR. DEAN. Yes, I can recall he told me that he appreciated how difficult a job it had been for me.

Senator BAKER. Is that close to the exact language?

MR. DEAN. Yes, that is close to the exact language. That stuck very clearly in my mind because I recall my response to that was that I didn't feel that I could take credit. I thought that others had done much more difficult things and by that I was referring to the fact that Mr. Magruder had perjured himself. [Laughter.] There was not an extended discussion from there as to any more of my involvement. I had been complimented. I told him I couldn't take the credit, and then we moved into a discussion of the status of the case.

Senator BAKER. Stop, before you get to the status, and let's lay that aside just for a second because I do want to hear about that, too, but this really, and I don't mean to be melodramatic, but this is really a terribly important moment in history. As you know, this meeting was in the afternoon in the oval office in Washington on September 15, 1972, and you were there, the President was there, and Mr. Haldeman.

MR. DEAN. Mr. Haldeman was there.

Senator BAKER. What was the President's demeanor, what was his attitude, what was the expression on his face, the quality of his voice?

MR. DEAN. Well, as I said, when I walked in it was very warm, very cordial. They were smiling, they were happy, they were relaxed. The President, I think I said earlier this morning, was about to go somewhere and I think that actually was delaying his departure to have this conversation with me. The fact that I had not been in to see the President other than on a rather mechanical activity before that dealing with his testamentary papers, indicated so clearly that Haldeman had thought that the President should compliment me for my handling of this matter, and that that was one of the reasons I probably had been called over, and the President had done it at Mr. Haldeman's request.

Senator BAKER. All right. Now, tell us about, as you started to say before I interrupted you, the status of the case.

MR. DEAN. All right. He was interested in knowing if it was likely—well, let me before I go on to that, let me say something else that I recall. When we talked about the fact that the indictments had been handed down, at some point, and after the compliment I told him at that point that we had managed, you know, that the matter had been contained, it had not come into the White House, I didn't say that, I said it had been contained.

Senator BAKER. Did you say anything beyond that it had been contained?

Mr. DEAN. No, I did not. I used that, I recall very clearly using that expression that it had been contained.

Senator BAKER. That is an important word, it has been contained.

Mr. DEAN. That is right.

Senator BAKER. What was the President's or Mr. Haldeman's reaction to that word because that is a rather significant word, I think.

Mr. DEAN. Well, I have got to say this, I wasn't studying the President's face or Mr. Haldeman's face at this time. I had not ever had a one on one with the President before and must confess I was a little nervous in there. They were trying to make me as relaxed as possible, and make it as cordial as possible, but I was quite naturally nervous. There was a man who is the most important man in the Western World, and here I am having a conversation with him for the first time one on one, so I was not studying his reactions and it wasn't until I started meeting with him more frequently later that the tenor of our conversations changed and——

Senator BAKER. You see what I am driving at I am sure, Mr. Dean. If someone had said that the investigation has been contained it might evoke a question, that might create a startled look on one's face, it might be taken for granted, and that might be important to shed light.

Mr. DEAN. That is right.

Senator BAKER. On the state of the knowledge with the person with whom you were having the conversation.

Mr. DEAN. Everyone seemed to understand what I was talking about. It didn't evoke any questions and I was going on to say that I didn't think it could be contained indefinitely. I said that this is, you know, there are a lot of hurdles that have to be leaped down the road before it will definitely remain contained and I was trying to tell the President at that time that I was not sure the coverup even then would last indefinitely.

Senator BAKER. This, once again, is a terribly important area of inquiry, so let me interrupt you again and take you over it one more time. You told the President, I don't think it can continue to be contained?

Mr. DEAN. That is correct.

Senator BAKER. Are those close to your exact words?

Mr. DEAN. That is very close to my words, because I told him it had been contained to that point and I was not sure that it would be contained indefinitely.

Senator BAKER. What was his reaction to this?

Mr. DEAN. As I say, I don't recall any particular reaction.

Senator BAKER. Was there any statement by him or by Mr. Haldeman at that point on this statement?

Mr. DEAN. No, not to my recollection.

....

Senator BAKER. All right. It seems to me then that the extent to which the September 15 meeting would give us some guidance in our inquiry as to what the President knew and when he knew it, that you depend on a combination of things. You depend on your experience at the White House as a staffer, with the interrelationships of staff and the Presidential staff; the remarks which did not relate directly to Watergate, that is the break-in at Watergate or to the concealment of the involvements and responsibilities for it. But based on the general tenor of the conversation, you gained the impression, I believe you said, to paraphrase your testimony, that the President knew that there was an on-going counter-effort, at least, and when you couple that with your knowledge of the relationships and circumstances, that you concluded then in your own mind that he knew something I am not trying to distort the meaning of your testimony by summary, but, in effect, you drew inferences from the totality of this conversation and the circumstances and relationships as you knew it, you drew inferences from that that led you to believe that on September 15 the President knew something about at least the efforts to counter the Watergate and possibly, in fact, about Watergate itself.

Mr. DEAN. That is correct.

WATERGATE'S LANCELOT (1973)¹

*Jack Waugh*²

Mr. BAKER. Mr. Speaker, because of the televised hearings on the Watergate incident, the whole country is learning what we in Tennessee have known for a long time about the ability and character of our senior Senator, HOWARD BAKER.

The response to his incisive questioning and his fairness in handling witnesses has been nothing but favorable. One of the best stories I have seen was written by Jack Waugh in the *Christian Science Monitor*. He sees Senator BAKER emerging as the "Lancelot" of the Watergate hearings.

I am not sure that Senator BAKER seeks such a designation, but his impact upon this aspect of the political scene can not be ignored.

Under leave to extend my remarks, I direct the attention of my colleagues to this article on "Watergate's Lancelot":

WATERGATE'S LANCELOT

by Jack Waugh

WASHINGTON.—When Howard Baker was a lawyer back in the Cumberland Mountains, he used to try a case and the whole town of Huntsville (pop. 300) would turn out to hear him argue it.

Things haven't changed much. Howard Baker is now a Republican senator from Tennessee. And he's involved in another case and a lot of the country is turning out every day to hear it.

Senator Baker is the vice-chairman and the ranking Republican on the Senate select committee investigating the Watergate [matter]. And with his deep-throated Tennessee accent and his probing questions and photogenic face, he is emerging as a star of the televised hearings. And he also may be rising as the newest political comet in the Republican firmament.

WHAT HE DOES BEST

"That's just Howard," says one of his best friends, Lamar Alexander, a Nashville lawyer, "doing the two things he does best—engaging in a heads-on exchange and being on television."

One of Senator Baker's aides once said that if the Senator had a fault it was that "he doesn't do a good job of letting his light shine before men."

The aide is now eating his words, and 300 letters are piling into the Senator's office every day.

Some of them are accusing him of picking on the President, but most of them

1 119 CONG. REC. 19,297-98 (June 12, 1973) (remarks of Rep. Lamar Baker).

2 Staff correspondent and Washington Bureau Chief for *The Christian Science Monitor*, 1956-1973.

are admiring him personally. A young lady from Ohio expressed regret he is not single.

For Senator Baker, going to the Senate, which he first did six years ago, was like coming home to the family reunion.

His father once was a congressman. His mother was a congresswoman. His father-in-law was Everett McKinley Dirksen, the late Republican Senator from Illinois. His brother-in-law, William Wampler, is a congressman from Virginia. And then there is cousin John Sherman Cooper (Senator from Kentucky).

When Mr. Baker first ran for the Senate in Tennessee—in 1964—the state had so infrequently seen a Republican doing that with any conviction, that it almost elected him just because it was so novel.

Next time around, in 1966, Mr. Baker, a moderate Republican, was elected by sheer dint of his appeal and talent. He had to beat a well-known incumbent Governor, Frank Clement, to do it.

TENNESSEE FIRST

He was the first Republican ever popularly elected to the Senate from Tennessee. The only other Tennessee Republicans before him had been appointed in reconstruction times and there hadn't been any since.

The Senator turned out to be, then only 41, the father of the two-party system in Tennessee. After him since has come William Brock, another photogenic Republican, who is now the junior Senator from Tennessee. Together they sport the two most boyish faces in the cloakroom.

Mr. Baker early established himself as a master of the committee hearing. And it is in the give-and-take of the committee room that he has earned nearly everybody's respect. As it was hard to find anybody in Hollywood who didn't like Gary Cooper, it is hard to find anybody in Washington who doesn't respect Senator Baker. Or if they don't, they aren't saying so.

INSTANT GRASP

One of his aides says, "He can go into a hearing cold, with maybe 10 or 15 minutes briefing, listen for half an hour, finally speak up, and show a devastating command of the situation. It is humbling, because it makes me think he doesn't really need me."

The Senator is the ranking Republican on the Public Works Committee and sits on both the Commerce Committee and the Joint Committee on Atomic Energy. He is a recognized expert on environmental legislation.

Even those who often find themselves on the other side of the issue from the Senator circle him warily.

A Democratic staffer on one of his committees, who often finds himself across the issue from the Senator, says, "He is the kind of man, if he takes a position opposite of yours he is so persuasive you find yourself reconsidering your own. If you are still convinced then that you are right, then you can't believe he is against

you and that if he just thinks it through long enough he soon won't be because anybody that intelligent can't be."

LOOKING FOR TROUBLE

Besides being the Lancelot of the committee room, Senator Baker, as one of his aides has it, "likes to be on the Senate floor seeing what trouble he can get into."

He got into plenty of it the day the Senate decided to establish the select committee to inspect the about-to-burst Watergate situation. No sooner had the deed been done than the Republican leadership pointed to him and said, "You."

Senator Baker at first figuratively said, "Who, me?" And they said, "Yes, you." And he said, "No, not me." But the leadership, principally minority leader Hugh Scott, put it in terms of duty to the party. Senator Baker, full of misgivings, finally agreed. The day he did there was no bigger albatross to be found in Washington.

A STAR IS BORN

But now the Watergate affair has exploded with such force on the American ken that it is capable of blowing old faces completely out of the political spotlight and new ones in. And one of the new ones may well be Senator Baker's.

RETURN TO THE CITIZEN-LEGISLATOR (1977)¹

Senator Howard H. Baker, Jr.

I am pleased to have this opportunity to speak to you about the situation in Washington and the governmental affairs of our nation as I perceive and hope to understand them. I do understand that politics in general and Congress in particular have a bad name these days. Politics is considered to be something less than desirable by many Americans while some consider it to be something less than entirely honorable. But that is not so. Politics is an important occupation.

I can't tell you how convinced I am that the essence of the future of our nation and the assurance that we will make the right decisions on the major and grave issues depend upon our ability to tap the collective judgment and genius of the American people. We must address America's problems and decide the future course of our nation. That is what politics is really all about. It is the business of translating popular sentiment into useful federal, state, and local policies.

But now we have transcended many of the events that have caused a troublesome reaction and perception of politics in the public mind. The acute political distress of the recent past seems to have subsided. We have passed into a new era of politics with the advent of the Carter Administration.

Many changes have occurred in Washington other than the orderly transition of the Administration from a Republican to a Democratic one. That is certainly a celebration in which America takes great pride—the ability to hand over the reins of power in the executive department and to transfer our allegiance to a new Chief of State, *not* just a new head of government. And we celebrate that transition not only with freedom, dispatch, and ease but with a festive air and a renewal of our dedication to a single commonality of purpose.

Opinion Withheld

Some journalists find it hard to accept the idea that I do not yet know what I think of the Carter Administration. I have read all of the stories about the first 100 days of the new Administration and I honestly believe that there are not enough points on the chart yet to start drawing curves. It is not yet time to decide how the Administration has performed or may perform in the future.

We have seen a developing foreign policy that has caused consternation in some quarters and uncertainty in others. We have also observed an economic program that sounds strangely Republican to some ears as the President speaks of the need for a balanced budget, fiscal restraint, an overhaul of the welfare system, and a simplification of government in general.

How does the Republican leadership respond to that? Does that frighten me?

1 This condensed version of a speech delivered on May 31, 1977, by Senator Baker, entitled "The Republican Leadership Looks at a New Administration," before the Town Hall General Luncheon, Los Angeles Forum, was originally published in 39 TOWN HALL JOURNAL 234-36 (July 5, 1977). © Town Hall Los Angeles. Reprinted by permission of Town Hall Los Angeles.

Of course it doesn't frighten me but I must confess that I have to reexamine some of my prejudices. It does not concern me that the President appears to be singing our song. We have another tradition in America that the great decisions are made on the basis of a man's stand on the issues. If President Carter wants to stand with us, we will welcome him. We will support him when his views and attitudes coincide with the Republican perspective, just as he will have broad-based and unified Republican opposition on those occasions when our perspectives differ.

It is a truly remarkable thing that I do not yet know how the Carter Administration is going to perform. I simply cannot tell you if the President will continue to move toward fiscal conservatism. I do not yet know if he will negotiate a renewal or an extension of the SALT Agreement with the Soviet Union that will adequately provide for our defense and for the de-escalation of the nuclear threat. Furthermore, I do not know what his proposals will be in such supersensitive areas as welfare reform, tax reform, and health care.

It is truly difficult for people in public life to say "I don't know" but I rather suspect that we are all better served in some instances by that approach. For that reason, I choose to reserve my judgment until we have a clearer picture of where the President's future proposals will take us.

Republican Alternatives

I have been criticized by some of my colleagues on the Republican side of the aisle for not attempting to create a clear set of alternatives to the Administration's position on the major issues. I am aware of our responsibility but we cannot form an alternative platform until we have the full-form program of the Administration. So my advice and counsel is simply to wait and see what President Carter's proposals look like when they occur and then we shall respond accordingly.

Incidentally, Republicans haven't done too badly in Congress of late. We have 38 soldiers in our troops and so far they have performed quite well. We have won most of the big battles that we have chosen to join issue on. And we have accomplished those feats because there is unity in the Republican Party. Whether you are a Republican or a Democrat, I think that you should take some interest in that fact.

An Endangered Institution

I should also like to discuss with you a problem that has not yet fully emerged in the public consciousness. The problem has to do with the structural arrangement of the Congress itself—the nature of the institution. At this time, I believe that we are headed in the wrong direction. We have many serious problems and unless something is done about them Congress is going to be in serious trouble.

As recently as 1950, when my father was elected, Congress met for a total of 103 days and accumulated a grand total of 85 votes. As we do now, my father came to Washington in January for the convening of Congress but there the similarity ends. In the spring, he returned to Tennessee to practice law and to participate fully in the mainstream of the economic, social, and political life of his community, his District, and his State. He knew firsthand what policies of government would

benefit the people of Tennessee because *he lived there*. He was in every sense of the word *a citizen* of Tennessee, and I believe he was also a better legislator because of it.

By comparison, Congress today remains in session virtually the entire year. Last year alone we had 700 roll call votes. We pass bills of incredible length and detail that specify the functions of government and, in turn, impose ever-increasing guidance and regulation on the lives and livelihoods of an unwelcoming public. And we do this in self-imposed isolation without any true exposure to the needs of the public we serve and by whom we are elected.

I should like to see us return to a situation where legislators come to Washington as “visitors” for 6 or 7 months a year. The rest of the time they should be at home practicing law, running their businesses and farms, and staying close to the people who send them to the Capitol. Congress ought to be involved in setting policy instead of grinding out voluminous reports and complex legislation. We should help to set the nation’s direction, *not run its traffic lights*.

There is no reason why Congressional committees with oversight responsibilities cannot have their meetings around the country instead of in Washington, D.C. That is what grass roots democracy is all about. Citizens should have the opportunity to interview with the staff of those committees or even to testify. I have no notion that fundamental changes of this kind will likely occur overnight. However, I do suggest that it will not occur at all unless we examine the differences between the Congress or now and then and attempt to apply some legislative brakes.

We may have a serious shortage of energy in this country but there is certainly no shortage of laws. I don’t believe that anyone would suffer a great loss if we reduced the tempo of producing new laws and left the Administration to its job of executing the policies set by Congress with appropriate safeguards and legislative oversight.

Pay Increase Controversy

To take up another aspect of the structural arrangement of Congress itself, there is much resentment among the American people over the recent pay increase for Members of Congress. I supported that legislation because I have to live in Washington and I know what it costs. The increase in salary to \$57,500 a year was essential to the performance of our Congressional duties. Part of the reason that the American people cannot understand the need for that pay increase is that 99% of the American people do not earn \$57,500! And we are constantly reminded that the American people do not send us to Washington to grow fat and happy on their tax dollars.

The whole question of the pay scale for Congressmen would be radically different if we did have citizen-legislators. It never occurred to my father that being a Member of Congress would ever be his primary source of livelihood. Of course, the possibilities for conflict of interest are manifold and manifest but I think it will be far more attractive to the American people if we began paying Congressmen on *a per diem basis*. Pay them for the time they are actually on the job in Washington but don’t let them become professionals who are dependent upon the Treasury of

the United States to supply their livelihood, the education of their children, the mortgage on their house, and, ultimately, the campaign funds for their reelection.

If we returned to citizen-legislators, policy-setters instead of elected bureaucrats, I believe that the whole idea of conflict, distrust, and mistrust and the quarrel over Congressional pay scales would disappear.

Among the People

One of the *Federalist Papers* described the Congress as being of the people and being drawn from the people with Congressmen living *among* the people—but we don't! I think it would be a great idea if we returned to the original concept of people being drawn as citizens to serve their country in the policy-setting functions of the Congress. Representatives would visit Washington once or twice each year to ensure that the policies of the government were adequately debated, codified, and transmitted to the government for their faithful execution. Representatives would then return to the mainstream of American life and continue their primary pursuits.

The whole idea of 1,000-page statutes, of bloated bureaucracy, of distant government, of insensitive government, and of unseemly government would be less likely to occur if Members of Congress lived among the people. This may seem like an esoteric concern of mine to be troubled by the structural arrangements of government at a time when far more urgent issues require our full attention. But this country has been right on the great issues of the past 200 years simply because those structural arrangements of the government guarantee that it resonates to the collective judgment of the citizens.

The political system functions and we are what we are today because of those structural arrangements. Congress has translated your judgments, desires, and demands into useful federal policies. That is why we are a great nation and that is why we must ensure that the structural arrangements maintain their integrity, their responsiveness, and their sensitivity to your genius.

REMARKS ON SENATE RATIFICATION OF THE PANAMA CANAL TREATIES (1978)¹

Senator Howard H. Baker, Jr.

Senator Robert C. Byrd²

Senator Paul Sarbanes³

Senator Paul Laxalt⁴

Senator Frank Church⁵

U. S. Senate, February 9, 1978

MR. BAKER. . . .

Mr. President, I thank all those who have participated thus far in this debate. In these 2 days, the Senate already has demonstrated that it retains its prime purpose and principal importance to the scheme of legislative and democratic government in the United States—that is, the opportunity for the Senate to provide a useful forum for the exchange of ideas; to provide for the country a stage on which the adversary positions of men and women of good will can be tested and compared; and to illustrate to the rest of the country that out of this adversary relationship comes neither anger nor disunity, but rather, a better legislative product.

In that view, I urge my colleagues, and indeed the entire country, to understand that in this debate, over such a divisive and emotional issue, the Senate is doing precisely what the Founding Fathers intended and what it does best in terms of the relevant needs of the country. The Senate is providing an opportunity to synthesize the best ideas, to test the best judgments, and to formulate the best policy for the future national security interests of the United States.

I would be the last to claim—indeed, I never have claimed—that all the wisdom on this issue is on one side or the other. Not only is the question of advice and consent to the ratification of the Panama Canal treaties a divisive issue; it is a close issue. Men and women of good will are still on both sides of this question

1 124 CONG. REC. 3,022-25 (Feb. 9, 1978) (remarks of Sen. Baker), 10,951 (Apr. 20, 1978) (statement by Sens. Frank Church and Paul Sarbanes).

2 Senator Robert C. Byrd (D. W. Va.) represented West Virginia in the United States Senate, 1959-2010, and served as Senate Majority Leader, 1977-1980 and 1987-1988, and as Senate Minority Leader, 1981-1986. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/biosearch/biosearch1.asp>.

3 Senator Paul Sarbanes (D. Md.) represented Maryland in the United States Senate, 1977-2007. *Id.* Senator Sarbanes served with Senator Frank Church (D. Ida.) as Senate floor managers in connection with the ratification of the Panama Canal treaties.

4 Senator Paul Laxalt (R. Nev.) represented Nevada in the United States Senate, 1974-1987. *Id.*

5 Senator Frank Church (D. Ida.) represented Idaho in the United States Senate, 1957-1981. *Id.* Senator Church served with Senator Paul Sarbanes (D. Md.) as Senate floor managers in connection with the ratification of the Panama Canal treaties.

and no doubt will be on both sides of it after we conclude our determination, make our judgment as a Senate, and certify our decision to the President in terms of our consent or the withholding of that consent to the ratification of these treaties.

However, I think the country will be best served by understanding that it is the function and the responsibility of the Senate to hear, to understand, to test, and to judge the differing points of view, not only in the country but more particularly in this Chamber.

I say at the very outset that I have nothing but the most profound respect for every Member of this body and for their points of view and that I will consider each of them separately.

In my own case, I already have announced to the people of Tennessee, on Tuesday night, that it is my judgment that the new treaties, with certain amendments that have now been offered by the distinguished majority leader and me, are in the best national security interests of the United States. I will explain why I think so and even a little of how I arrived at that decision. But before I do, I should like to say a little about the remarks made by the distinguished Senator from Virginia (Mr. SCOTT)⁶ at the very beginning of the debate today.

I asked the majority leader to yield to me only long enough to say that the sensitivity of one who is a candidate for reelection is probably greater than that of anybody else who was involved in that colloquy, and I was the only candidate involved. I know firsthand the difficulty of making a decision on this issue under those circumstances.

Mr. President, without trying to assume or play the role of a moral giant, which I am not, or to lay claim to intellectual superiority and insight, which I do not, it may serve some purpose to give some insight into how one who is under the gun—that is, up for reelection in 1978—in fact judged this issue, before I turn to an analysis of the question itself.

To begin with, this is not a new issue. Other speakers, yesterday and today, have remarked on the fact that the matter of revisions of our treaty arrangement with the Republic of Panama have been the subject of conversations at various levels since the administration of President Eisenhower and, actually, before that. This matter was actively pursued in the administrations of President Johnson and each succeeding President, Republican and Democrat. It is not like the cartoon I saw in a magazine the other day that showed two men standing at a bar, and one said, “You know, I have not thought about the Panama Canal in 30 years, and suddenly I find I cannot live without it.” This is not a new issue. It has been around for a long time. It simply had not been the high-pitched, emotional issue that it has become in recent years.

I think that the intensity of the emotion and the extent of the public campaign in support of or in opposition to the treaties, does not relate to their importance in terms of our perception of national issues but rather to another factor—and that is that in this age of instantaneous communications and almost instantaneous

6 Senator William L. Scott (R. Va.) represented Virginia in the United States Senate, 1973-1979. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=S000189>.

transportation and at a time when the population is better educated and more aware than at any other time in the history of the country, there is a more active concern for the major issues that confront the country. Therefore, I judge the importance of this event in terms of the public's participation in it.

I do not resent that there have been extraordinary letter-writing campaigns, newspaper advertisements, and, in fact, the utilization of all the modern media to try to bring to bear the point of view of one party or the other. I am speaking now of people, not political parties. I think it is a good thing, because it verifies the fact that America, even now, is still maturing into its full role as a self-governing republic. It is uncomfortable for those of us who are running for reelection to have 40,000 letters pour into the mail room, with less than 30 staff members trying to handle them. I say again, to anyone who has not received an answer, just bear with me. It takes a while.

....

It always causes a concern to pick up a paper in Nashville, Tenn., and see a full page ad in a Sunday edition that says "Only HOWARD BAKER can save the Panama Canal." It never dawned on me that only HOWARD BAKER could save the Panama Canal. Moreover, the ad said, "Write, call, or visit." My wife asked: "Which one do you think they will do?" I said: "Probably all three." And they have.

But I welcome that as well because it is an extension of the public participation in a great national debate. It, likewise, caused a bit of consternation to go to a University of Tennessee football game in that magnificent stadium in my hometown of Knoxville that seats 102,000 people, which is almost as big as the city, and to see an airplane fly over at halftime saying: "Contact Senator BAKER. Save the Panama Canal."

So when my friend from Virginia (Mr. SCOTT) suggested that this was a matter of particular interest to the people who might stand for reelection in 1978, all I can tell him is that he "ain't seen nothing yet." I have been there and I know what it is about. I have visited with the American Legionnaires who talk in earnest about this matter and who listen patiently to my attempt to analyze the issue carefully and dispassionately for them.

Mr. President, even with that experience and with the sensitivity that I have to my own political fortunes, I would not presume to tell you or any of my colleagues what the country thinks about this issue. I rather suspect that the country wants us to help them decide what to think about this issue. I suspect that the polls recently taken indicate that most people instinctively oppose new treaties with the Republic of Panama, but with certain amendments and additional guarantees a majority probably support new treaties with the Republic of Panama. I would not presume to stand here on this floor and tell you that the American people think so and so. I can tell you what my judgment is, and I have done so.

I believe that the judgment of the sovereign, the people of this country, is still to be made and that this debate may have a significant part to play in that judgment.

Parenthetically, Mr. President, I commend the majority leader for agreeing to broadcasts from the floor of the Senate. I had rather hoped that this debate might

be televised as well, because I think electronic access to the Senate itself is a logical next extension of the public galleries. If the people of this country are to participate fully and meaningfully in the deliberations of their Government and if we are, in fact, to march together with the collective judgment of the sovereign, electronic communications from this Chamber will be very helpful and a good first step.

Mr. President, I have spoken of the sensitivity I feel for this issue. It is sort of like being, if my friend from Nevada will pardon the expression, a Las Vegas gambler. I feel sometimes you are betting every chip you have on this because this issue is a killer issue politically. It may devour you, or you may survive it, but you cannot profit from it politically. No way.

Mr. President, all that does is make the issue more difficult. It does not shed any light on our determination. It makes it more uncomfortable. It does not facilitate the decision. It makes it more unpleasant, but it does not alter the facts.

Against that background of acute political distress, let me tell you how one Senator arrived at his decision. First, I know the majority leader will forgive me if I say that while we arrived at the same judgment on the desirability of amending these treaties by Senate action, and ratifying them as amended, I believe we arrived at that judgment, in part at least, by different routes. For instance, I do not think the 1903 treaty was a bad treaty. I think it was good for Panama and good for the United States, and I am proud of the canal that came as a result of it. I believe the pride that it has brought to the United States is well justified.

But that is not the point.

The point is—I did not negotiate that treaty, and I refuse to accept a burden of guilt for someone else who did. I must take the facts as I find them. And I judge them on the basis of what will best serve the national security interests of this country in the future, not by what happened in the past. Some may say, “Oh, the insensitivity of that.”

I am not insensitive, and I have a compassionate concern for the plight of the Panamanian people, then and now. But my official sworn responsibility as a U.S. Senator is to look to the future of the United States. My judgment must be made not on whether it was a good treaty then, but whether it is a good treaty now; and, whether that treaty agreement should be changed.

Mr. President, as far as I am concerned, this political odyssey began in August 1977, when I was in Tennessee during the period that the Senate was not in legislative session. I was enjoying an opportunity to travel about my State, even to visit with my family a little, and as I recall it was early one afternoon when I picked up the telephone and the operator said, “Senator BAKER, the President wants to speak to you.”

The President came on the line to tell me that negotiations with Panama were about complete and that he wanted me to know of this in advance. The President also said that he hoped that the treaty could be submitted to the Senate immediately and that we could have early action on that treaty in 1977.

I am sure the President will not be offended if I repeat now my reply in substance. I try to make it a policy not to repeat conversations in which only Presidents and I are present, but I think this is important and I believe the President would not

judge it a mistake to deviate from that personal policy.

I thought for a minute and replied:

Mr. President, I am sure you know as certainly I know that this is an issue that will generate strong emotions, that will divide my State, the country, and indeed divide my party and your party, too. One only has to recall that extraordinary contest in the Republican Presidential primary in 1976 when this was certainly one of the principal issues in the campaign between President Ford and Governor Reagan, to know that it is going to be divisive. It is going to be difficult. And I must say, Mr. President, that I want you to know that I will consciously make the decision not to decide how I will vote during this year, and that I will wait until after the first of January to make that determination because I want to make certain that I fulfill my responsibilities as a Senator to my State and as minority leader to my party in the Senate.

I believe the President understood my point of view. When I returned to Washington, I discussed the matter with the distinguished majority leader, and as a result he and I cosigned a letter to the Senate Committee on Foreign Relations, chaired by Senator SPARKMAN, of Alabama, and on which the senior Republican, the ranking minority member, is Senator CASE of New Jersey. The essence of the letter was: We want the Foreign Relations Committee to hold the most extensive hearings. We want you to take your time. We want you to provide a forum for everyone on every side of the issue to be heard. We will cooperate with you as majority leader and minority leader in seeing that you have all the time you need to meet, and would encourage you to meet even after the Congress adjourns sine die so that the Senate will be in a position after the Congress reconvenes in January to proceed to consideration of these treaties.

The Foreign Relations Committee did hold extensive hearings, and did hear a wide variety of testimony on every conceivable side of the issue. The report of the Foreign Relations Committee is voluminous and extensive indeed.

Following the hearings, Mr. President, if I may take just a little more of the time of my colleagues to describe how I arrived at my decision, the Congress adjourned sine die in December. There was an opportunity to return to Tennessee once more, to spend Christmas there, and to ponder on what had gone before, to try to understand this avalanche of information and contradictory testimony, to consider the views represented in the briefs and position papers submitted by two expert consultants that I had employed in my office as minority leader—one for the treaties and one opposed—and decide whether I had done all I needed to do to make a wise and reasoned judgment that would fully respond to my duties as a Senator and to my party in the Senate.

In December, I decided that the treaties did not meet the requirement that the future interests of the United States be fully protected, and that there was ambiguity in the neutrality treaty that I felt had to be dealt with. I had previously the privilege

of visiting at the White House with President Carter. President Carter indicated then that he hoped to have a memorandum of understanding with General Torrijos to clarify articles IV and VI of the neutrality treaty.

I told the President that I would encourage him to do that—at that time the proposed memorandum of understanding was in the form of a letter—and I urged him to try to get General Torrijos to sign the letter. However, I also told him then that I did not think that a memorandum of understanding between President Carter and General Torrijos would suffice, that I thought that the matter had now moved to the Senate, that the Senate had an obligation under article II of the Constitution, and that, while a memorandum of understanding was desirable, I thought it did not meet the need for mandatory action by the Senate.

That was my final judgment. I decided there needed to be further amendments to the neutrality treaty before we turned to the consideration of the canal treaty itself, keeping in mind, of course, that unlike the 1903 arrangement, where there was one treaty—there are two in this case—the canal treaty and the neutrality treaty.

The question arose, what would the President of the United States say about the submission of such amendments? What would the Republic of Panama say? Would they reject the amendments? This was important because amendments require the formal concurrence of the other government. Was it or was it not worthwhile to try? What would the other countries of Latin America think? Mexico, for instance, or Colombia, or Venezuela? In two or three of those countries, there is at least the possibility that a sea-level canal might be built. There is a provision in these treaties that the United States will not build a future canal anywhere except in Panama. What would these other Latin American countries think about amendments with respect to the sea-level canal?

Shortly after the first week of the new year, it was my privilege to travel, in the company of two other Senators, pursuant to an authorizing resolution of this Senate, to Panama and to other countries, to ascertain their views. The distinguished Senator from Utah (Mr. GARN) and the distinguished Senator from Rhode Island (Mr. CHAFFEE) accompanied me on that trip.

Mr. President, to abbreviate this chronology, I would like to say that on meeting with General Torrijos in Panama, I told him that I felt that our best interests, his and mine, would be served by absolute candor and frankness, and that I wanted him to know that the treaties in their present form, unamended, in my judgment had absolutely no chance of passing the United States Senate. If he was amenable to amending the treaties, I would like to know that before I decided whether it was worthwhile to ask the Senate to work its will, in the amendatory process, to change them.

Our delegation, Mr. President, met twice with General Torrijos and a number of other government officials, both military and civilian, and the net result was that in my judgment General Torrijos indicated that the Government of Panama was ready to consider certain amendments, that they would not object to them, and that a satisfactory package of amendments on additional guarantees might be put together that would have some chance of passing the Senate, as contrasted to the

treaties unadorned, which, in my view, had no chance of prevailing.

Having reached that decision, I made an announcement in Panama that I would return to Washington and try to put together such a package of amendments; and, I did. The result of that, Mr. President, was the joint initiative of the distinguished majority leader and 77 other Senators, including me: a joint leadership effort and a bipartisan effort to put these treaties in shape so that they were consistent with the requirement that they serve the undoubted national security interests of this country, and so that they would have some reasonable chance of passing this Senate.

It is still uncertain whether the treaties, as amended, can pass this Senate. That is what this debate is all about. This is one of the few cases where the Senate will decide the issue on the basis of the debate. It is not a charade. What is going on here will probably determine the outcome.

But I was pleased that we were able to get that number of cosponsors. I think it augurs well, not only for the future of the treaties but also the spirit of this body, because it showed that although Members disagreed on the final outcome, many of them wanted to work together to try to improve the submission before the Senate.

I look around the Chamber and see the distinguished Senator from Utah, the distinguished Senator from Nevada, the distinguished Senator from Indiana—and there are others here—who cosponsored that amendment. I am certain that some of those I have named may not be entirely convinced that they should vote for the treaties, but I think the fact that they cosponsored the amendment signifies a healthy and wholesome attitude in the Senate, that is, that the Senate will work its will to improve the documents, and then make final judgment on what the outcome should be.

Mr. ROBERT C. BYRD. Will the distinguished minority leader yield for one observation at that point?

Mr. BAKER. Yes, I will.

Mr. ROBERT C. BYRD. I had the experience, and I am sure the distinguished minority leader had the same experience, in talking with some Senators about those amendments, that some Senators told me they would support the amendments, but for various reasons they did not want to cosponsor them. So actually the support of the amendments will be greater than is reflected by the 78 sponsors and cosponsors thereon.

Mr. BAKER. I thank the majority leader. I had, indeed, the same experience, and I was doubly grateful for the cooperation and indeed the assistance of Senators who do not favor the treaties at this point, in trying to improve them according to the suggestions contained in those amendments.

Mr. President, I do not want to state this next set of facts without great care. I want my colleagues to fully understand that while the Panamanian Government indicated to my satisfaction that they would support such amendments and would

not object to them, it is still, as far as I know, the position of the U.S. administration that they do not favor amendments. I cannot say that the administration will favor them. I can only say that it is my best judgment that if the Senate works its will and does, in fact, amend the treaties, they will not be objected to by the administration. I want that carefully understood. I do not have that representation at present, but I have a strong view that the administration will not object if the Senate decides to work its will and, in fact, to amend these treaties.

Following that point, Mr. President, the distinguished majority leader (Mr. ROBERT C. BYRD) appeared before the Committee on Foreign Relations to express his point of view as that committee began proceedings which would lead to the reporting of the treaties to this body for its consideration. At his request, and at mine, the Foreign Relations Committee did not amend the treaties, but rather, made only recommendations for amendments. That was not to short circuit the Committee on Foreign Relations, but because we believed that every Member of the Senate should have an opportunity equal to that of members of the Foreign Relations Committee to participate in deliberations. After all, the Senate now in a special procedure, sitting as the Committee of the Whole, is the functional equivalent of the Foreign Relations Committee and has general jurisdiction of the subject matter as a committee. Therefore, I was particularly pleased that the committee accepted the judgment of the majority leader, in which I concurred, that the maximum opportunity for those for and against the treaties would be afforded by reporting the treaties to the floor without amendments, but, rather, with suggestions.

I think that was borne out by the fact that 76 people did participate in co-sponsoring the amendments Senator BYRD and I suggested, whereas in the Foreign Relations Committee no one but the members could have participated. The amendments would have appeared here as committee amendments rather than Senate amendments. I pay special tribute to the Foreign Relations Committee for doing that because, while it did not diminish their stature, it did accommodate the greater need of a greater number of Senators in this Chamber.

Mr. SARBANES. Will the Senator yield?

Mr. BAKER. I yield.

Mr. SARBANES. As a member of the Foreign Relations Committee, I want to say that I believe the procedure suggested by the majority leader and supported by the minority leader was an extremely constructive procedure to follow in this instance. The minority leader is correct that the committee did not actually amend the treaties, but it did adopt positive recommendation with respect to amendments which should be offered and which the majority and minority leaders had presented.

It was my view, shared obviously by the committee, that this was a constructive way in which to proceed, and that it would give maximum opportunity to the Members of the Senate to work their will in respect to this very important matter.

MR. BAKER. Mr. President, I thank the distinguished Senator from Maryland for his comments, and for his help in the committee in dealing with the issue there, and in supporting this method of bringing it to the floor for the consideration of this body as a Committee of the Whole. I appreciate his remarks.

Mr. President, I would like now to turn to the reasons why I believe the amended treaties best serve the national security interests of the United States.

I followed with great interest the colloquy just held between the distinguished majority leader, Senator BYRD, and the equally distinguished Senator from Nevada (Mr. LAXALT), about whether we were bending our knee as a nation to the threat of terrorists. I would like to state my views without any association with either point of view. I simply want to state my views on this subject.

I believe the United States of America can operate that canal come what may.

I think every Member of this body, and the President of the United States, would do whatever was necessary to see that that canal stayed open and available for shipping and military purposes, whether these treaties are amended or not. I just happen to think it is going to be a lot easier to try to keep the Panamanians as our friends and allies than it is to convoy ships through the canal.

I just happen to think it is going to be better to try to accommodate the purposes of 1978 instead of clinging to the status quo.

I believe, Mr. President, that the 1903 treaty was a good treaty then but I do not think it is a good treaty now.

I do not think the United States should approve these treaties out of fear of another Vietnam, because I do not believe there will be another Vietnam in Panama.

In traveling to Mexico, Venezuela, Brazil, and Colombia, I asked in each case what would happen if these treaties were rejected. Would there be assistance and aid from adjoining countries? Would there be a supply line to Panama as there was into Vietnam? The answer was, "Of course not."

I do not believe for one instant that terrorist activities or student activities in Panama could keep the United States from using and enjoying that great waterway. It might be necessary to reinforce our garrisons there, but if it is we will just do it.

However, I think there is a better way, Mr. President. The better way is with revised treaties, extending in perpetuity our right to defend that canal in its utilization and neutrality, and our right to use it in time of war against anyone else, even including Panamanians, forever.

Some say, Mr. President, that by doing this we are giving away the canal. On the contrary, Mr. President, if these treaties are ratified, as amended, we will have more rights to defend the Panama Canal after the year 2000 than we have at any other defense establishment anywhere else in the world—more than in Spain, in Greece, in Turkey, in England, or anywhere. We will have more permanent rights, more extensively held, in relation to the defense of the canal than anyplace else in the world.

MR. LAXALT. Will the Senator yield for a question?

MR. BAKER. Yes.

Mr. LAXALT. While it may be admitted that that may be the case in relation to our bases elsewhere, the Senator is not contending for a moment that we will have more rights after we give up this canal in its protection and operation.

Mr. BAKER. The Senator from Nevada is entirely right. That is one of the factors we have to take account of in making the balancing judgment. Certainly, we will have less rights after the year 2000 than we have now, but we will have more rights after the year 2000 than at any other military establishment anywhere else in the world, except those in the United States.

This points up, Mr. President, this very pertinent inquiry by the Senator from Nevada, the nature of the difficulty in arriving at these decisions. There is no clear-cut answer to this. Do we need greater rights than I have described? Do we need the rights we have now or even more rights than we have now in case of a world challenge in the future? I do not know.

All I can do is bring forth my very best judgment and decide, on balance, what is best for the country. Men can honestly differ on that point. It is a good point. Mr. President, that brings me to the last point I would like to make. There is a section of the report on my trip to Latin American entitled "What Will the Neighbors Think?"

To summarize briefly, Mexicans think if a sea-level canal is built they may want to build it. In fact, I suspect that they are more interested in natural gas problems right now than they are in the Panama Canal.

The Colombians, on the other hand, have every right to be a little resentful. We may have, indeed, facilitated the loss of the Panama province. But I found no recrimination or bitterness in their attitude. I found instead that they are greatly concerned about the perpetuation of their rights to free passage of Colombian ships through the canal.

I found in Venezuela that there was a great concern for the unrest, the distress, and the political difficulty that might occur if the treaties were not ratified, particularly in terms of future encroachments by unfriendly powers such as Castro's Cuba.

I heard in Brazil a statement that America is a great power but it will not solve all of its problems in Latin America with the Panama Canal treaties. I would urge my colleagues to understand that. We are not going to solve every problem in Latin America with these treaties whether we approve them or do not approve them.

We have big problems with Brazil and I urge the administration to face them because they are problems of major consequence. Brazil has an economy that is growing so fast that in a few years its GNP, its population, and certainly its national pride may rival that of the United States. We have to put our house in order with Brazil.

Their general view is, "You ought to have the treaties but that does not solve all your problems. That is just an installment along the way."

I suspect this is probably right.

Mr. President, the President of Venezuela, who is an articulate, ebullient,

capable politician, a great administrator, and magnificent host—we stopped at Caracas for 6 hours on the way back and spent a productive 4 hours with him in nonstop conversation—is most persuasive.

I asked this question, and I think it has a telling impact: What would happen if some years in the future another head of government in Panama decided that Torrijos had done such a good job and made so much political hay out of new treaties with the United States [that he asked], “Why don’t I do it one better and negotiate that treaty again? Why don’t I try to accelerate the day of the Panamanian take-over from 2000 to the year 1990, for instance?” It is a pretty good political issue in Panama.

The President of Venezuela said, and I am grateful to him for saying it, that if the United States does, in fact, negotiate satisfactory new treaties with the Republic of Panama, he will insist, as will, in his view, all Latin American countries, and even support the United States in the insistence that the treaties be fully performed according to their terms.

Mr. President, I close by saying, once again, that this is a close issue and a close call. I have indicated to my friends on this side of the aisle, on both sides of the question, that I wish to be of service to them in seeing that we have a meaningful and thorough debate. And I will do that.

Not only will future unity in this country be served by that, but significant debate on a close and important issue in the Senate go a long way toward the growth of our ability to govern ourselves intelligently at a time when we are better suited to it than ever before; at a time when the American Congress is more relevant to this era than ever before; at a time when our population is better educated and more aware than ever before; and at a time when our greatness has just begun.⁷

U. S. Senate, April 20, 1978

Mr. CHURCH. Mr. President, now that the Panama Canal treaties have been approved by the Senate, for both Senator SARBANES and myself, I wish to say a few words about the work of the majority and minority leaders on the Panama Canal treaties.

Both played an essential role in shaping the final form of the treaties, in creating the political consensus necessary to obtain the approval of two-thirds of the Senate, and in providing masterful leadership during floor debate. These treaties would not have received the Senate’s advice and consent without the active and courageous support of Senator ROBERT C. BYRD and Senator BAKER.

There is a long history behind what came to be called the leadership amendments that dealt with problems that, from the beginning of the hearings, concerned so many members of the Foreign Relations Committee. Their sponsorship of these two amendments was the crucial factor in reassuring many Senators with similar concerns. Later, when questions of interpretation about Senator DECONCINI’S provision threatened the fragile consensus behind the treaties, both in the Senate

⁷ By a margin of one vote, 68 to 32, the constitutional requisite of two-thirds of the Senate ratified the Panama Canal treaties, as amended, on April 18, 1978. 124 CONG. REC. 10,540-41.

and in Panama, the leadership worked with all parties to find the key to the problem.

As floor managers of the treaties, Senator *SARBANES* and I had the fullest cooperation from the majority and the minority leader throughout the 38 days the Senate debated the treaties. It has been a pleasure and an honor to work with them so closely.

Both have demonstrated the highest qualities of true political leadership. They deserve the thanks of all Members of this body. Their role in this controversial issue was crucial. It will not go unnoticed in history.

PROUD OF BEING A POLITICIAN (1979)¹

*Hugh Sidey*²

The de Havilland Sky Hawker is all fueled up. The Hasselblad camera is packed away in its tan case with the Senator's favorite 120-mm lens nestled in leather. He has a clutch of Arthur Adler's summer suits ready for rumpling. Tab, Fresca and coffee by the gallon are in the hold. The ghost of Everett McKinley Dirksen has been signed on. About this time Howard Henry Baker Jr. (5 ft. 7'2 in.; 160 lbs.) is ready to roll through 26 states, thumping and sweating and striving to be President of the U.S.

There is something bright and burning about this Republican camera nut and son-in-law of the late Dirksen. It is Baker's season. In six months he has come up ten to twelve points in the opinion polls. In the Kentucky hills and along the clear streams of Utah, when they take time to think about politics, there are unusual numbers of queries now about Howard Baker.

Teddy Kennedy this week will be camping in the cool Berkshires, Ronald Reagan is taking off the entire month of August. Jimmy Carter hopes for an interlude soon on an ocean island, savoring a fisherman's solitude. Not Baker.

He will inspect beef cattle and beauty queens and shout to everyone that "I am proud of being a politician!" He will tell his audiences that he is sick and tired of hearing that professional politicians are not worthy of trust, that he is fed up with amateurism.

The Senate minority leader has a remarkable record on the issues. He is responsible, often original and almost always ahead. He dived in to help the President win the Panama Canal Treaty and the arms package for Israel, Egypt and Saudi Arabia. Down at the G.O.P.'s Tidewater Conference he seized the moment and focused on SALT as an occasion for a broad re-examination of the "total military and foreign policy relationship between the Soviet Union and the U.S." It was, in Baker's eyes, time to dispel the tattered remnants of Arthur Vandenberg's bipartisan tradition, something that was right a generation ago, just after World War II, but is not fully applicable in today's psychological struggles.

Baker articulated the dark thoughts that crossed the mind of many a citizen stuck in a gas line. If the big oil companies were gouging the American people, Baker declared, they risked nationalization. Baker was wildly against even the thought of such a measure, but as a professional pol he sensed an ugly mood. His warning nearly cracked the picture windows in Houston's Petroleum Club. Baker's mail showed it.

He went to Moscow and warned Leonid Brezhnev about the doubts the Senate had over SALT. He raised his questions back home, and his state of mind is crucial as the debate rumbles along. When Jimmy Carter came down from the mountaintop in his new leadership robes, Baker, who was not invited to the seminars, swallowed

1 125 CONG. REC. 22,979 (remarks of Sen. Lugar) (Sept. 5, 1979); originally appeared in *TIME*, Aug. 13, 1979.

2 Hugh Sidey (1927-2005) was a journalist for *Life*, 1955-1957, and *TIME*, 1957-1966.

hard, but once again supported his political rival.

“Deep down I’d like to tell him to go to hell,” Baker muttered to friends. But he did not. Instead, he said he was “willing to lay aside animosities . . . He is President, we are in a tough time, he’s got a big problem, the country has a big problem. And I’m going to give him his day.”

Therein is the legacy of Dirksen, who used to reside in Baker’s Capitol office, doing Baker’s leadership job. “I saw it close up,” says Baker. “Right here Dirksen and Lyndon Johnson worked out their differences for the good of the country. They were adversaries but not enemies.”

So Howard Baker insists that judgment should be first but politics a close second. That means some solid whacks, as well as support in critical times. Baker was the one who labeled Carter “a yellow-pad President” and suggested that while the President “was saying the right things, I’m not sure he can make them happen.” Politics, Baker believes, is results, though even he sometimes pauses to make a few notes. They are always brief enough to go on the backs of envelopes.

THE FOUNDING FATHERS, THE FEDERAL REGISTER, AND “STAYING HOME FROM POLITICS” (1980)¹

Senator Howard H. Baker, Jr.

In 1970 there were 203 million people living in the United States. If the experts are right, there will be 20 million more when the results of the 1980 census are in. That's almost a quarter of a billion people living in a prosperous and self-governing republic. It's a staggering conception when you think that there were only 4 million Americans when George Washington took the oath of office as the country's first President. After 150 years of European settlement and struggle, the United States was still a strip of sparsely settled farms and cities along the eastern seaboard of a largely unexplored and threatening continent. But a political miracle of sorts had already occurred (and we've had plenty since).

Four million people, still fairly clinging to the edges of the new world, created a climate in which its citizenry weighed, accepted, and gave life to the Constitution of the United States.

The few hundred political leaders of the thirteen colonies who actually determined the direction of the new republic, and the few dozen who wrote the declaration of its independence and its governing document, were almost unique in human history. Scholars tell us that the richness of their intellects, the quality of their vision, and the restraints they placed on their individual self-interest hadn't been equaled since democracy took its first steps in ancient Athens. But their most remarkable accomplishment was not the nobility of their expression or even the quality of the government they instituted among themselves. The most important political act of that or any generation before or since was their creation of a nuts-and-bolts blueprint for government that has survived as a working document for 191 years.

The Constitution is so often invoked as a kind of semi-religious object that we forget the miracle of what it really is. The men who wrote that Constitution for a small and homogeneous population (all rooted in Western Europe, and most from the British Isles), on a continent comfortably distant from much of the turmoil of their ancestral homes, made a document that still serves as an umbrella of governing principles for the world's most rapidly changing and growing civilization.

These were men who couldn't know about the internal combustion machine, or the power of the atom, or the civil and global wars to come, or the flooding of a thriving empire with immigrants from eastern and southern Europe and Africa and Asia and Central and South America. They had no knowledge of the automobiles and the airplanes and the great railroads that were to forge a continental republic from the thirteen colonies in which they lived.

Somehow, without that knowledge, with no record that implies anything

1 © Howard H. Baker, Jr. Reprinted from HOWARD H. BAKER, JR., NO MARGIN FOR ERROR: AMERICA IN THE EIGHTIES 13-33 (1980).

but the vaguest prescience of what was to come, they made a set of governing principles that are central to the life of twentieth-century Americans. If anything, the Constitution has a significance to citizens living today that goes far beyond the impact any political covenant could have had on the rural people who first lived under its rubric.

From the beginning, the Constitution has been read by different eyes in many different ways. Its most enduring quality is the opportunity it has given succeeding generations to interpret it in accord with the needs of their own times. Perhaps the secret is that the Constitution is a short document. There are only 7,500 words, and that includes all twenty-six amendments that have been adopted since 1789. Any young lawyer worth his or her degree can write a brief on one constitutional clause that's longer than the entire text. A number of policy-makers have come to feel that a document subject to such detailed exegesis and differences of interpretation needs a stringent overhauling. But I believe that we have a more than serviceable document for our own time; and we certainly have had enough practice in amending it when that has been necessary to accommodate to new attitudes and the changing will of the people.

That is the central strength in the Constitution. It has, historically, been adapted to the will of the people; not the whim, but the overwhelming will, as articulated in the detailed and frequently emotional dialogue that always precedes the passage of a constitutional amendment. We may not all agree as to whether one or the other of the amendments that is now part of the Constitution should have been adopted. But only the willfully blind would contend that those amendments have failed to reflect the strong beliefs of the majority of the political constituency.

The Constitution has thus provided a frame for democratic government in keeping with an egalitarianism that grew with American expansion in territory, power, and a surging and heterogeneous population. In 1980 it is hard to remember that a distinguished American historian, Charles Beard, once wrote a major work that analyzed the Constitution as a document produced by a small oligarchy of landowners determined to protect their own economic interests against the mob!

But if the Constitution is a document to satisfy all of the social orders that have been implanted in America, it offers no easy answers to the problems that inevitably arise in the day-to-day business of government.

It would have been beyond the most nightmarish visions of any of the founding fathers that in 1980 there would be any such thing as the *Federal Register*.

You should know about the *Federal Register* because it influences almost every aspect of your life. Each and every year the *Federal Register* publishes 60,000 legally binding regulations. It might just as well be called "your guide to everyday living" because it publishes rules that have to do with the coffee you drink, the toothpaste you choose, how much interest your bank can pay you, as well as where and how your children go to school.

The rules promulgated in the *Federal Register* are not laws passed by Congress. But they have every bit of the force of law and too frequently they use the law as a pretext to impose the beliefs of civil servants who may sometimes disagree with the intent of the law as written.

The *Federal Register* has become a kind of daily addition to the Constitution of the United States. It is the surface expression of much of the work done by the executive branch of the government and the regulatory agencies (most of them are ostensibly independent) that grind out millions of pages of paper work for ordinary citizens to do. As a matter of fact, the President of the United States recently thought it necessary to appoint still another commission. This one is supposed to study whether or not there's a way to reduce the federal paper logjam. So far the commission has succeeded only in adding more pulp to the already choking stream. No wonder the shortage of newsprint threatens to drive a good many smaller newspapers out of business.

But the important question is whether or not the staggering range of subject and content in the *Register* is an incursion of bureaucratic power that is at odds with the spirit of the Constitution and with the fundamental principles of self-government.

In 1936, the first year of the *Federal Register's* regular publication, some 2,619 pages of bureaucratic rulemaking were printed. Let's not forget that in 1936 the United States was in the trough of the Great Depression. For the first time in American history the federal government was involved in massive across-the-board intervention in American life. Once that kind of intervention begins, the law of inertia takes over. By 1970 the *Federal Register* was publishing over 20,000 pages annually. In 1976, 57,000 pages of federal regulation were bound in the *Federal Register*. And in 1980—only four years later—it is estimated that 100,000 pages of *Federal Register* material will have been published since the year began. The level of the paper machine's output is hardly the most significant measure of government interference in the minutiae of our everyday lives. But it is certainly a symbolic expression of the aggravation to which we have become accustomed. Brood with me on this IRS regulation as embodied in one of those 100,000 pages put out in 1980:

Bread crumbs treated so as to simulate salmon eggs and pork rind, cut and dyed to resemble frogs, eels, or tad poles are considered to be "artificial fishing lures."

That means, under IRS rules, that these particular bread crumbs are subject to an excise tax. But, ever alert, the IRS took great care to evaluate a fishing bait made of chicken blood that's processed into patties. It is, according to the *Federal Register*, "still identifiable as chicken blood." Inasmuch as it hasn't been made to "resemble another article more attractive to fish," the bait is exempt from the tax.

Thus the *Federal Register*! Who's baiting whom?

According to the text of a workbook issued by the people who give you the *Federal Register*, "Congress delegates the authority to agencies to implement the law of Congress. In this respect *regulations can be considered delegated legislation.*" Inasmuch as Congress cannot constitutionally delegate its legislative authority, such an observation is peculiarly revealing of a bureaucratic mind set at odds with the principles of self-government. But it would be most unfair to lay the blame for

that mind set on the men and women who operate the bureaucracy. The sad fact is that Congress has, to all intents and purposes, abdicated a substantial portion of its obligation to make the substantive law of the United States. Vacuums in authority are apparently subject to the laws of physics. No matter how, they will be filled. But it does raise a serious question as to what has happened to our representative democracy.

The growth of regulation has had another, wholly unexpected effect. The federal court system has intruded itself into the day-to-day business of government.

In this generation we have seen a change in the way the courts view their roles and a reluctance on the part of Congress to draw the line. It is no great feat of the imagination to see a constitutional crisis down the road.

I remember a story about the Supreme Court that made the rounds when I was in law school. It seems a young lawyer who was arguing his first case was going on about some proposition when the Chief Justice interrupted him and said, "Young man, that's not the law." The young fellow said, "Well, it was the law until Your Honor spoke." That tale illustrates the absolute power of the Supreme Court in judicial matters. Whatever they interpret the law to be, it is the law. That lends itself, then, to the law being different things at different times.

Baker v. Carr is a good example of the process. The Supreme Court had consistently held that reapportionment and redistricting were political matters and could not be intruded on by the federal government. Then the Warren Court, in *Baker v. Carr*, held that it was an infringement of equal protection of the laws to hold elections that give more electoral weight to a vote in one part of a state than another. From that day on the law meant something totally new. That may or may not have been implicit in the first decisions that created the authority of the Court to review legislative and executive action. But it has become a part of constitutional tradition and it means in effect that the Court can act in a quasi-legislative manner.

The Warren Court was the most activist in recent years, certainly in civil rights and social policy. I knew Earl Warren² over a period of time. He seemed to be a very unlikely personality to lead such an activist Court. He was jovial and almost jolly. He gave the impression of avoiding controversy rather than mediating it. On the bench he was courtly. I remember when Estes Kefauver³ and my father stood by me as I was introduced to the Supreme Court that Warren made almost a social occasion out of it.

If you read his decisions you'll find that they were complex, sometimes wandered, almost never were they scholarly, but they were extraordinary. They plowed new ground.

I had the same impression of Earl Warren as I have of almost every other Supreme Court member. They're hungry for companionship. They feel removed,

2 Earl Warren served as Chief Justice of the Supreme Court of the United States, 1953-1969. BIOGRAPHICAL DIRECTORY OF FEDERAL JUDGES, available at <http://www.fjc.gov/servlet/nGetInfo?jid=2506&cid=999&ctype=na&instate=na>.

3 Senator Estes Kefauver (D. Tenn.) represented Tennessee in the United States Senate, 1949-1963, and Tennessee's Third Congressional District in the House of Representatives, 1939-1949. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

or at least insulated, from the political process. Every time I see one of them I get the impression that they long for social chatter. They like to hear the little stories and I'm always tempted to ask them over for lunch. They should show themselves and get out into the world. I think it was a mistake that we let them move out of the Capitol, where they held court for many, many years. It would be good for them if they did come up and have lunch. It would have a great humanizing effect.

I know Potter Stewart⁴ as well as any of the justices. We got acquainted when he was on the Sixth Circuit Court of Appeals. I argued a few cases before him and won some, lost some. He's what I call a Cincinnati lawyer.

Cincinnati lawyers are a special breed. They're gentlemanly, midwestern, nonpontifical, and very, very skillful. Potter is in that mold, although I disagree with some of his judicial views as expressed in court decisions.

The abortion issue was, I believe, the least appropriate of subjects for the Supreme Court's consideration. It is so sensitive an issue, and so peculiar to the social mores of particular areas and beliefs, that, at the very most, the states should establish the guidelines for abortion. Since the Court opened the question to federal guidance that view is no longer viable because Congress is continually involved with that thorny problem of federal funds for abortion.

The most obvious and widely noted intrusion of the courts into government administration is closely linked to school busing. When school districts have not conformed to court-dictated administrative remedies with sufficient alacrity, courts have simply taken over the schools. That means the judges run them without reference to the wishes of the people and their elected representatives. It is a practice that has produced the symptoms of increased racial tension at a time when there is every reason for it to disappear.

But the school-busing situation is only the tip of the iceberg of the increasing practice of government by judge.

The courts have also taken it on themselves to assume jurisdiction over prisons, hospitals, and other institutions whenever the practices or the standards of the authorities in charge have failed to meet some arbitrarily and subjectively determined constitutional precept. There has been much anger but little legislative response to this new judicial activism. But, in my view, government by judiciary is diametrically opposed to the principles of the separation of powers. It is only a matter of time before justified limits are placed on the practice of judicial interference. When and if the battle comes it will be a contest of enormous significance because we, as a people, have historically deferred to the judicial power as an instrument of arbitration. It is for the future to decide whether we can continue to do so if it breaks the spirit of the Constitution it must uphold. I'm convinced of one thing. Judges, as a rule, are too far removed from the give-and-take of everyday life to make good executives and legislators, even if they had the *right* to do those jobs.

I've given considerable thought to the Court and its role. I had to because I

4 Potter Stewart served as Associate Justice of the Supreme Court of the United States, 1958-1985, and as Judge, U. S. Court of Appeals for the Sixth Circuit, 1954-1958. BIOGRAPHICAL DIRECTORY OF FEDERAL JUDGES, *supra*, note 2.

almost became a Supreme Court justice myself. Bill Rehnquist⁵ has the seat that I might have had. When John Mitchell was attorney general he called me one day and I went down to see him at the Justice Department. I'd known John as a lawyer for some time, long before he got into government. He asked what I would do if President Nixon offered me a seat on the Supreme Court, and I said, "I think I wish he wouldn't do that." He asked why. I told him that it would pose a real dilemma for me because I enjoyed what I was doing. Mitchell asked me to think about it. After that, I went over to see Potter Stewart. That was the first and only time I've ever been in the Court's private chambers. I talked to Potter about what their life was like, what they did when the Court wasn't in session, and how many clerks they had. I looked around, and talked with him about the Court's life. It reminded me so much of law school, and I never was really fond of law school, that I had to say my appetite was not whetted. Finally, I told Mitchell that if the President insisted that I do it I would feel I must, but I really would prefer to stay where I was. He said, "Since you feel that way, I think we'd all be better off if we went with Rehnquist."

I never for a moment regretted that decision not to accept a seat on the Court, because for me the heart of representative government is elective politics.

Yet, we have to ask whether free elections alone provide adequate assurance that the American people are running their own country. I think a pretty good case can be made that free election is only a step toward self-government and that many Americans feel excluded from the decisions that affect the quality of their lives.

Only 36 percent of eligible voters went to the polls on election day in 1978. Compare that with the figures in other places where people are allowed to make up their own minds as to whether or not they vote. In England, 70 percent recently chose the people who are going to lead them. In France it's 80 percent; in Austria it's 90 percent. Even in Italy, where government is generally thought to be at a standstill most of the time, 85 percent of the voters go to the polls at every election. In Japan, a country which has had a democratic government only since 1945, the number is 68 percent, and in West Germany it's 85 percent.

That suggests a profound alienation or indifference on the part of a majority of Americans to the processes of the very government that affects their lives more and more as each day passes.

The numbers send us an even more distressing signal. The younger the prospective voter, the less likely he or she is to show up at the polls on election day; this in a country that passed a constitutional amendment to permit eighteen-year olds to vote.

The theme of the campaign for the eighteen-year-old vote, for those readers too young to remember, was "If you're old enough to fight for your country, you're old enough to vote for its leaders." Fair enough. But where are the beneficiaries of the amendment? Why don't they come out?

I think I understand in my bones the reason the indifferents stay at home. They don't think *they* count. They don't believe that who they vote for, what party they vote for, will mean a solitary thing to them in their individual lives.

5 William H. Rehnquist served as Associate Justice of the Supreme Court of the United States, 1971-1986, and as Chief Justice of the Supreme Court of the United States, 1986-2005. *Id.*

There's a real paradox at work in party politics right now. The old city machines are well on the way out; and good riddance. I remember the way old Ed Crump⁶ had a lock on Shelby County and the city of Memphis for almost too many years to count.

He ran a good city, he ran a clean city, he ran an efficient organization. As far as I could tell in the daily affairs of the city, its fiscal affairs, it was an honest city. But it was corrupt politics. It was just the kind of politics that turns people off.

I recall when my father ran for governor in 1938. He was a young man, thirty-seven years old. He got 1,179 votes in Shelby County at the same time as his running mate for the U.S. Senate received only 100 votes fewer in that same county. That was clearly impossible. There'd be more mistakes than that in a total vote of 200,000 or whatever Shelby County had at the time.

They tell a great story about the bivalence of Mr. Crump's honesty in administration and his shady political operations. Mr. Crump and his close associate Will Gerber walked into the graveyard one night taking names to vote the dead people on the tombstones the next day. And they were writing them down and writing them down, and it was sort of dark and dim, and they came to one tombstone and Will held up the flashlight and rubbed against the name and the date and couldn't quite make it out, and Gerber said, "Mr. Ed, I can't quite make this one out. Shall we just put down another name?" Crump said, "No, Will, you got remember we run a clean election."

Most of the Crump people weren't venal. But it was such an authoritarian politics that I simply cannot believe that it had any redeeming grace whatever. Even though the machine was too high a price to pay for orderliness, we have to recognize that a different and legitimate party structure has to replace it if voters are going to feel that they have a stake in the system, that the parties are genuinely responsive to people.

What we need at this point in history are strong, highly effective, well-organized state political organizations and the changing presidential nominating system is beginning to accomplish just that. The only purpose and justification that a political party has in the American scheme is to compete for the opportunity to represent the multiple interests and views of a majority of the people. The party's philosophy will evolve based on its membership and its points of view at a particular time and place. This kind of political apparatus must be strengthened by much closer contact with the grassroots. It should be armed with the full array of patron age opportunities, of the power of appointment, of protection of citizens from a predatory government. And it should encourage a political President who understands that politics is a legitimate and sustaining enterprise.

Something dangerous has happened when mainstream Americans have

6 Edward H. Crump (1874-1954), the legendary political boss of Memphis, Shelby County, and Tennessee, served as mayor of Memphis, 1910-1915, 1916, 1940, and represented Tennessee's Tenth Congressional District in the U.S. House of Representatives, 1931-1933. The nomination and election of Estes Kefauver to the United States Senate in 1948 effectively ended Crump's plenary control of Tennessee politics. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, *supra*, note 3; David Tucker, *Edward Hull "Boss" Crump*, TENNESSEE ENCYCLOPEDIA OF HISTORY AND CULTURE, available at [http://www.tennesseencyclopedia.net/entry.php?rec=334](http://tennesseencyclopedia.net/entry.php?rec=334); <http://www.memphishistory.org/Politics/TheMayorsofMemphis/MemphisMayors/tabid/209/Default.aspx>; http://www.enotes.com/topic/Tennessee%27s_10th_congressional_district.

decided to stay home from politics. A kind of disease has spread through the system and it's time that we cure it. It's a disease that first manifested itself among the American blacks and Hispanics who were forced by circumstance to live on the economic and social margins of society. As these groups move into the social and economic action they increasingly need to participate in the political process. But even as late as 1978 too many blacks and Puerto Ricans and Chicanos missed the opportunity to make themselves felt at the polls. Only 37 percent of the black voters participated in the congressional elections of 1978, and 23.5 percent of the Hispanic population voted. That's an improvement over past performance, but it tells us that, like increasing numbers of younger people and older Americans who have broken the voting habit, there is a tendency to regard politics as a futile game for someone else to play.

Let's do something about it. Let's register voters automatically so that every American can vote in federal elections at age eighteen. The history of the United States has been a history of the extension of the voting franchise. Yet, even today, a significant number of our people are effectively prevented from participating in elections by complex, and often archaic, registration and residency requirements.

Several Western nations have already successfully implemented a form of automatic voter registration. In the Scandinavian countries and in Switzerland every eligible citizen is registered *ex officio* in a voting register. A list of voters is published by the elections authorities in advance of the election date. Any citizen whose name has not been included in the list then has until approximately a week before the election to correct the situation. In the United States, however, citizens still must contend with what amounts to a perpetual registration process. Serious difficulties would doubtless crop up in translating automatic registration to the realities of the American experience and attempting to reconcile it with state registration procedures. Social Security numbers might be utilized to standardize the procedure. More than 95 percent of eligible voters are already registered with Social Security. We ought to consider any device that will encourage an end to stay-at-home politicking.

We must also add still more genuine significance to the presidential primaries. One possibility would require all the primary states to hold them on four or five specific dates at two- or three-week intervals. Other alternatives might be a single national primary for each party with a subsequent runoff unless one candidate polls more than 40 percent, or a system of regional primaries also held at specific intervals, but encompassing all of the country.

I'm inclined to support a system of regional primaries in which every eligible voter who desires to participate in the selection of a party nominee can do so by voting in the regional primary that includes his state. This would permit the millions of Americans who support candidates who will not receive the party nomination to express that support in a meaningful way. It would also give them a personal stake in the election and increase the likelihood of their participation in the subsequent general election campaign.

Specifically, I would propose dividing the country into four geographic regions, largely along the lines of time zones so as to avoid holding a "southern" or a "New

England” primary with a distinct ideological slant. I would make those regions of roughly equal population and would hold the four primaries at three-week intervals beginning in early June and ending in early August. Each would compete for state delegates who would be won according to the proportion of vote received in each state rather than on a winner-take-all basis. Although I am aware of the high cost involved in running in regional primaries, the basic idea is to vastly expand the public participation in the nominating process and to *significantly reduce the official length of presidential campaigns*.

As it is now, the first presidential primary or caucus takes place in late January, with the general election ten months later in November. But, as I see it, there is absolutely no reason why that process must take that long. It costs exorbitant sums of money, and bores a great many people. I think that eventually all primaries for federal office should be held no earlier than the first of June and no later than the fifteenth of August. This would significantly shorten the official length of campaigns for federal office and permit the Congress to work at relatively full strength for four months before most members are forced to return to their states or districts to campaign full time for the nomination.

We should also open and close polls all across the country at a uniform time and keep them open a full twenty-four hours. That’s the best way I know of to prevent the harmful effects of broadcast networks projecting the outcome of elections, based on very early returns, when polls in the western states are still open. Moreover, twenty-four hours would maximize the individual’s opportunity to vote before, after, or during work.

The presidential electoral system should also be made more responsive and representative by the abolition of the electoral college, an eighteenth-century vestigial remnant of constitutional compromise. I favor and have always supported the direct election of the President by popular vote, but having unsuccessfully urged that move, I am willing to settle for an improvement if not a cure for this situation. Congress and the states should fully debate the merits of popular vote, congressional district vote, proportional allocation of electoral votes by states according to the popular vote, or any other electoral process calculated to eliminate what I view as the two undemocratic elements of the present system. The first is the winner-take-all process, which created and perpetuated the one-party South for a century after the Civil War; and the second is the possibility of the selection of the President by the House of Representatives. That is simply no way to elect a President in a democracy. The sensitivity of the electoral system, the coherence of the selection process, and the vitality of the two-party system are essential to the political prosperity of the country and are paramount in their importance to every other consideration.

But no mechanism we can devise will combat that part of what the pollsters call “voter apathy” that is an outgrowth of about thirty years of increasingly arbitrary and unresponsive government action.

Anonymous government officials issue confusing and frequently conflicting instructions on a daily and sometimes hourly basis. They can range in importance from the likely direction of radioactive fallout in a nuclear accident to the mandatory

size and shape of a safety helmet that must be worn by California motorcyclists under the threat of a federal cutoff of that state's highway safety funds.

Potomac Survey and Lou Harris and Dan Yankelovich and George Gallup and dozens of others who specialize in one aspect or another of public opinion and behavior have all come to the conclusion that there is significantly less confidence in the President and in Congress than ever before. If an individual member of Congress thought that his constituents felt he was as ineffectual as they feel about Congress as a whole, he would be tempted to throw up the job and go home. But the fact is that people don't blame individual members of Congress; they blame the institution itself for being inadequate to the job it is elected to do. President Carter, who has taken the most dramatic roller-coaster ride in the history of public-opinion polling, is also increasingly regarded as a good man in the wrong job. Some of the polls that probe more deeply into why people think and feel the way they do indicate that there is a more than casual belief that the fulfillment of the presidency is now beyond the capacity of anyone in a way that will give positive direction to the country's economic and social life. I disagree. Our institutions are viable in themselves, as they have been for two hundred years. The trouble is that they have been misused and abused.

Political scientists and specialists in government don't take into sufficient account the play of human passion that infuses the process with life. When I hear discussions about the significance of what happened at a particular hearing or the "meaning" of the way a debate was handled on the Senate floor I sometimes shake my head in wonderment. It's like reading about a game between the Washington Redskins and the Dallas Cowboys as though it were played by those little X's and O's that coaches like to put on their blackboards. Who would want to watch anything like that on a Sunday afternoon? Big men are hitting each other hard and that's what the yelling is all about. In those pile-ups on the field some pretty violent things happen and that, unfortunately, is a piece of what life is all about. Constitutions and statutes provide a framework for human action. But the emphasis is on the word "human."

Bob Byrd⁷ is the most skillful Senate parliamentarian I have seen, by far. He has made a study of the rules and precedents of the Senate that I hope someday he will record for the legislators of the future. He is as close to being a true creature of the procedural Senate as any man could be. He has a second skill that is less often observed, and that is to weld together that disparate group on the Democratic side of the Senate. In a lot of ways he has a tougher job than I do in trying to keep the Republicans together simply because there are more of them, and they probably do have a broader spectrum of differences of view on their side. He does it very well. It takes a lot of bending and twisting sometimes, and I frequently suspect that Bob Byrd has to abdicate some points of view that he holds himself in order to accomplish his leadership goals. That's sometimes a necessary part of the process. Byrd incurs a lot of enmity, on both sides of the aisle, as a hard driver; that is, he has

7 Senator Robert C. Byrd (D. W. Va.) represented West Virginia in the United States Senate, 1959-2010, and served as Senate Majority Leader, 1977-1980 and 1987-1988, as Senate Minority Leader, 1981-1986, and as President *pro tempore* of the United States Senate, 1989-1995. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, *supra*, note 3.

no compunction about running the Senate late and bringing it in early. He's fiercely partisan, a quality I am certainly not one to criticize. Each of us was elected to lead our parties in the Senate, and though we frequently differ on issues, we cooperate to keep the Senate moving.

I meet with ranking Republican members of all Senate committees at least once a week to try to get a fix on what's coming up for decision. Byrd and I trade visits several times every day to deal with the legislative calendar. An interesting aspect of Senate life is the custom that requires the majority and minority leaders to work out mutually satisfactory arrangements as to what, how, and when the Senate will consider a bill or a presidential appointment. If comity breaks down the Senate will grind to a halt. That's how Black Monday came about in October of 1978.

It all started when the Senate found itself tied up in a wrangle over whether or not to deregulate natural gas prices. The votes were there to do it, but a minority of senators, led by Howard Metzenbaum of Ohio and Jim Abourezk of South Dakota, refused to let it come to a vote. They led a filibuster by amendment. Abourezk, a Senate maverick who had a reputation for going his own way, offered hundreds of amendments to the bipartisan Pearson-Bentsen bill designed to phase out regulation that inhibited additional fuel production. The Senate stayed in session eighteen to twenty hours a day in an attempt to break the filibuster. Cots were brought into my office, to the caucus room, and to the cloakrooms. The lights burned all night long. But the two senators were in great physical condition and stood their ground on the right, hallowed by long custom, to offer and debate amendment after amendment.

Finally, on Sunday afternoon, Bob Byrd and I met in the majority leader's office, just a few feet off the Senate chamber, to see if we could settle this thing. Bill Hildenbrand, the Senate minority secretary, is in many ways my strong right arm. He was with me. Scoop Jackson,⁸ Russell Long,⁹ and Murray Zweben, the Senate parliamentarian, also participated.

The difficulty was that people always find different ways to get around the anti-filibuster rule. Jim Allen, the late senator from Alabama, was a past master at using the intricacies of the Senate rules to delay debate. Metzenbaum and Abourezk used a variation on the Jim Allen theorem, and that is filibuster by amendment. They put in four or five hundred amendments, and even if there were no time for debate, the rules permitted them to have the amendments voted on. So they'd call up an amendment; somebody would suggest the absence of a quorum, which is a constitutional right and can't be abrogated; the chair would read the amendment, which might be hundreds of pages long; then there was a quorum call. It would take thirty minutes or an hour to assemble a quorum. You could go on for months like that. They had perfected a new filibuster art form and Byrd became more and more incensed. It was clear that we weren't going to be able to break this thing unless we plowed some new ground at our meeting.

Byrd wanted to propose some rules changes. But I wouldn't do that because the minority party can be seriously damaged once we begin changing the rules to

8 Senator Henry M. ("Scoop") Jackson (D. Wash.) represented the state of Washington in the United States Senate, 1953-1983. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, *supra*, note 3.

9 Senator Russell B. Long (D. La.) represented Louisiana in the United States Senate, 1948-1987. *Id.*

accommodate to a particular circumstance. Byrd knew that he couldn't steamroll us, that we could hold all the Republicans together on something like changes in the rules. So we began exploring other possibilities. We agreed on the objective: that we had to get this thing shut down and pass that bill. In the course of the conversation Byrd or the parliamentarian pointed out that Rule 22¹⁰ prohibits dilatory motions. Why not establish a precedent that if you had already had a quorum call since the last vote, then another such call was dilatory? The premise was that if you've got five hundred amendments, you know full well they're dilatory. The sticky question was what to do about the right of any senator to appeal the ruling of the chair. That was the toughest decision for me to make because it was an exercise in raw power.

One of the few real powers that a majority or a minority leader has is for preferential recognition. If there are twenty people standing up or eighty people standing up seeking recognition, the chair by precedent must recognize the majority leader first and then the minority leader. That's a powerful legislative weapon. We decided that Byrd and I would use the power of prior recognition to prevent further filibustering. He'd call up one amendment after the other and get it ruled out of order. We went through hundreds of amendments that way, with everybody screaming, beating on the desks, and carrying on. That's the only time in my career I've ever used pure raw power.

But I first said, "Look, if we're going to do this deed, if we're going to do these things, boys, you have that Vice-President in the chair. The White House is going to share the responsibility for this."

On Monday at noon Fritz Mondale¹¹ took the chair. The majority leader and I stood at our aisle desks. The Vice President recognized me so that I could make a point of order that would set the stage for what followed. I said that it was my view that an amendment that had been offered, and ruled out of order, was no longer pending business before the Senate. That meant that a quorum call was not in order either. The filibustering Senators were thus deprived of their principal delaying tactic. Mondale accepted the point and Byrd addressed him in one of the Senate's most dramatic moments.

"Mr. President, I call up unprinted Metzenbaum Amendment Number Forty-two to Calendar Item Number Sixty-seven." Mondale replied, "The amendment is dilatory and out of order." "Mr. President, I call up unprinted Abourezk Amendment Number Forty-three . . ." Again Mondale repeated, "The amendment is dilatory and out of order." Byrd and I looked straight ahead, ignoring the murmur of disapproval that began to swell around us. We called up amendment after amendment. There were shouts for recognition from around the chamber, but the Vice-President kept his eyes riveted on Byrd and Baker. He wasn't about to recognize anyone on a point of order or for anything else until he had ruled almost all of the filibuster amendments out of order. I have never heard the chamber in such disorder as on

10 Senate Rule 22 provides, in pertinent part, "No dilatory motion, or dilatory amendment, or amendment not germane shall be in order." U.S. Senate Rule 22, available at <http://www.rules.senate.gov/public/index.cfm?p=RuleXXII>.

11 Walter F. ("Fritz") Mondale served as Vice President of the United States, 1977-1981, and represented Minnesota in the United States Senate, 1964-1976. He was the Democratic Party's presidential nominee in 1984. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, *supra*, note 3.

that Black Monday.

When the last amendment had been ruled out of order, the Vice-President recognized an angered and shaken Javits of New York. Javits spoke for the majority of the senators when he told the chair that the Senate rules had been bent if not broken, and that it was a classic case of using the ends to justify the means.

Senators call that day Black Monday because we can never be sure of what it bodes for the future. The rules are designed to keep things moving. But both the rules and custom provide a strong bulwark against tyranny of the majority. Every time we bend those rules out of shape, every time we break custom rooted in time, we walk along a dangerous precipice.

What we did was perfectly legal. We didn't change any rules and we didn't prejudice any Republican rights; but we really did treat the filibuster senators shabbily because we flat cut them out with the power of the leadership. I sympathized with the Javits position, but it had to be done.

Too many people in positions of influence and power have passed a kind of Parkinson's law that more red tape is better red tape. They insist that excessive legislation, over regulation, and constant executive tampering with the minutiae of everyday life is the kind of government that we must have to satisfy our economic and social needs. That kind of government failed us in the 1970's. We will insist in the 1980's on a government that sees to it that the United States maintains the military and the economic strength necessary to survive as a democracy (a government that sharply revises federal statutes that interfere with individual liberties at the expense of economic stability, growth, and productivity) and a government that hacks away at the accretion of tens of thousands of regulations that choke our enterprise.

We have the materials at hand to build the kind of country most Americans want to live in at the end of the 1980's. What kind of country can it be?

MUSINGS OF THE MAJORITY LEADER ON A BEAUTIFUL DAY IN WASHINGTON (1983)¹

Senator Howard H. Baker, Jr.

Mr. BAKER. Mr. President, I am presently the only occupant of this Chamber except for the distinguished Presiding Officer, and under those circumstances, I feel compelled to take certain liberties. There is a long list of bills here that I am now willing to pass by unanimous consent, and we will see how fast that brings Senators to the floor.

Seriously, Mr. President, I do not plan to ask the Senate to turn to the bankruptcy bills until those who are principal to the debate and the management of those measures and the minority leader have an opportunity to come to the floor.

While I am doing that, Mr. President, I cannot help but share my musings with the Senate. I just walked from the Dirksen Office Building across the east ellipse of the Capitol grounds to the Senate steps. I would estimate the temperature is about 85 degrees, the grass is freshly mowed, the air is soft and sweet, the sunshine is penetrating, and it confirms what I have always believed and that is winter should be a place that you visit and not a season of the year. I have waited months for this day when we could shed the last remnants of winter and engage once more in the natural festivities that mankind enjoys so much in the spring and summer.

I am tempted, Mr. President, to ask that the Senate adjourn itself to the front lawn of the Capitol and conduct our business there. But on further thought it struck me that if I get 100 Senators out there under those salubrious circumstances, it would be impossible to keep a quorum.

I even had the opportunity to do a little historical research to see when, if at all, the Senate last met out of doors, and I can find no such record. The closest I found was when the Capitol was burned in August 1814 by errant British troops. Incidentally, that fire began in my office, and I have been tempted ever since to start another one. [Laughter.]

Mr. President, after that, surely the Senate did not meet in its accustomed Chambers because they had been incinerated, but there is no clear historic record that the Senate met on the lawn or anyplace else outside. The closest we can come is to an undocumented report that the Congress, both the House and the Senate, met in a tavern across the street from the Capitol in the space now occupied by the Supreme Court Building. Perhaps there is significance to be attached to the fact that the House of Representatives met on the ground floor and the Senate met on the second floor thereby giving rise no doubt to the term of the Senate as the upper Chamber.

Mr. President, I have said all I know how to say and still there are no Senators here, and therefore I suggest the absence of a quorum.

1 129 CONG. REC. S5,292 (daily ed. Apr. 27, 1983) (remarks of Sen. Baker).

THE WOMEN'S HOUR (1983)¹

Howard H. Baker, Jr.

Mr. BAKER. Mr. President, for those narrow-minded and misguided individuals who continue to think of the U.S. Senate as an all-male, vested-suited, Gucci-loafered, silver-haired private club—submitted for your consideration, the scene which took place at approximately 10:50 a.m. this morning on the Senate floor:

The distinguished Senator from Florida (Mrs. HAWKINS) was delivering a persuasive speech on our Nation's drug problems; the distinguished Senator from Kansas (Mrs. KASSEBAUM) was presiding over the Senate; Mrs. Marilyn Courtot, the Assistant Secretary of the Senate was at the desk and subsequently called the roll during a quorum; Mrs. E. Frances Garro, the Official Reporter of Debates, reported verbatim the remarks of Senator HAWKINS; Miss Jennifer Smith, the second assistant bill clerk, was on duty in the well of the Senate acting as the staff assistant for the official reporters; Miss Elizabeth Baldwin, floor assistant for the secretary for the majority, was on duty in the Chamber; and, the operations on the floor were being serviced by half a dozen female pages.

Frankly, Mr. President, I do not know if I am more proud or more frightened by a total takeover by the female population here in the Capitol. It is obvious that we mere mortal men are not required anymore, and I just want to plead with my biological counterparts not to forget about us guys out here. I also hope that the press will not dwell on the reports that the Senate was a fixture of decisiveness and harmony, in an unprecedented fashion, during this time, which will no doubt come to be known as "The Women's Hour."

1 129 CONG. REC. S11,147 (daily ed. July 29, 1983) (remarks of Sen. Baker).

**REMARKS ON THE DESIGNATION OF A
NATIONAL HOLIDAY HONORING
THE REV. MARTIN LUTHER KING, JR. (1983)¹**

Senator Howard H. Baker, Jr.

U. S. Senate, October 19, 1983

The VICE PRESIDENT. The majority leader.

Mr. BAKER. Will the manager yield to me?

Mr. DOLE. I am happy to yield.

Mr. KENNEDY. Whatever time the leader desires.

Mr. BAKER. I am most grateful to both Senators. Mr. President, we are approaching a momentous time as only the Senate can approach such important events. I have witnessed a few. I participated in many great debates that have surged through this Chamber, and divided our membership. I have seen, Mr. President, issues debated here, determined, and resolved here which have far-reaching implications on the foreign and domestic policies of this Nation.

But I have seldom approached a moment in this Chamber when I thought that the action we are about to take has greater potential for good and a greater symbolism for unity than the vote that is about to occur in 8 minutes.

That event, Mr. President, which is about to happen, makes my mind go back fully 20 years to a time when I was in this city, not as a Senator but as a young Tennessee lawyer traveling from a place where I had transacted my client's business in the direction of National Airport.

But, Mr. President, it was not an easy journey because as I made my way, I was impeded by a sea of humanity and by what seemed like a million Greyhound buses. For this was the day of the great civil rights march on Washington and there was no escaping it.

Mr. President, the taxi driver had his radio on and it was tuned to those proceedings that were going on on the Mall and at the Lincoln Memorial. It seemed as I listened and waited and sat in that crowded traffic jam that an endless procession of speakers took their turn at the microphone and all of them presenting with great emotion and great energy their appreciation for justice, all of them demanding equality before the law and each of them proclaiming the same insistent message

¹ 129 CONG. REC. 28,379-80 (Oct. 19, 1983) (remarks of Sen. Baker). Shortly after the conclusion of Senator Baker's remarks, the Senate voted, 78 to 22, in favor of legislation designating a national holiday in honor of Dr. King. *Id.* at 28,380. President Reagan signed the legislation into law at a ceremony in the Rose Garden of the White House on Nov. 2, 1983, attended by, among others, Dr. King's widow, Coretta Scott King, and Senator Baker (see insert of photographs in this issue).

that their emancipation was incomplete.

But, Mr. President, as I sat there listening I also heard a 34-year-old minister who was the head of the Southern Christian Leadership Conference, a dynamic young man who had spent part of that year in a Birmingham jail, and I left that taxi to try to work my way toward the focus of that dynamism and to hear this man first hand and unfiltered.

As he spoke through the murmuring noise of that crowd I could sense the special impact that he was having on that group and I was sure on the Nation and the world.

As he reached the climax of his speech no one in this country could doubt that that special attention was well-deserved. The speaker, Mr. President, was Martin Luther King, Jr. and the speech was "I Have a Dream."

More than 20 years separate that day from this and in those 20 years we have seen changes in this country and in this society which are nothing short of revolutionary, and we have the opportunity to memorialize the extraordinary progress we have made in race and social relations in America and to renew our commitment to improving those relations and now to expanding the horizon of human freedom still more.

Black Americans have suffered too much for too long in this country. They have been bound in the chains of slavery and barred from the free exercise of political expression and, as Martin Luther King once wrote, "Smothered in the airtight cage of poverty."

But, Mr. President, for all of this, black Americans have made extraordinary contributions to this country and in every aspect of our national and personal lives. They have fought and died for this Nation; they have defended, they have expanded, and extended, the blessings of freedom and opportunity in this country. Mr. President, they have served this country much better than this country has always served them.

So it is only right that we set aside a day of national commemoration of that role black Americans have played in American's life, its work and social progress, and only fitting and proper that that day should be designated in memory of and in celebration of the accomplishments of Dr. Martin Luther King who in so many ways is the embodiment and the ennoblement of the aspirations and ambitions of so many millions from every walk of life.

So, Mr. President, the vote we are about to cast will perhaps not settle great issues between nations or change the statute law and the institutional arrangements of Government. The vote we are about to cast may not balance the budget but it is proof positive, Mr. President, that the country and the Senate have a soul and that we intend to acknowledge and to celebrate the nobility of all of our citizens in the opportunity which they must have to participate in the fullness of America's future.

We can do that, Mr. President, by the establishment of this national holiday for this purpose at this time.²

2 Shortly after the conclusion of Senator Baker's remarks, the Senate passed legislation designating a national holiday in honor of the Rev. Martin Luther King, Jr., by a vote of 78 to 22. *Id.*

COMMENTS ON PRESIDENT RONALD REAGAN'S AWARD OF THE MEDAL OF FREEDOM TO SENATOR HOWARD H. BAKER, JR. (1984)¹

*Senator Theodore (Ted) F. Stevens*²

*Senator Robert C. Byrd*³

*Senator J. Strom Thurmond*⁴

Mr. STEVENS. Mr. President, the majority leader is not present this morning. He is at the White House with the President where he is being presented the U.S. Medal of Freedom for his distinguished service and contributions in the field of Government.

This award is the highest civilian medal and is presented in the most unique and special of circumstances.

Mr. President, it is my opinion that the Senate, Republicans and Democrats alike, is proud of the Senate majority leader, HOWARD BAKER. Time and time again he has found the legislative common denominator where none seemed possible. Patience, courtesy, and accommodation have been the foundation of his approach as the majority leader. Preparedness and foresight that he has exhibited as majority leader have provided a model for all Senators to emulate.

Having had the privilege of serving in the leadership with the Senator from Tennessee since 1977, I have become aware of his real leadership capability. At the time that he and I became the leader and assistant leader, we were in the minority. Senator BAKER was the minority leader. In 1981 he began his service as majority leader, and the experience he had as minority leader has served him well.

Senator BAKER has been the vocal conscience of the Senate Republican majority, yet never has Senator BAKER forgotten what it means to serve in the minority and the importance of the minority views here U.S. in the U. S. Senate.

I applaud President Reagan for having selected our majority leader, HOWARD BAKER, for this Medal of Freedom, and I hope that I speak for the Senate as a whole in extending our congratulations to the majority leader for his historical contribution to the Senate and to the U.S. Government as a whole.

Mr. BYRD. Mr. President, will the acting majority leader yield?

1 130 CONG. REC. S,3,131 (daily ed. Mar. 26, 1984) (remarks of Sens. Stevens, Byrd, and Thurmond).

2 Senator Theodore F. Stevens (R. Alas.) represented Alaska in the United States Senate, 1968-2009, and served as Senate Republican Whip, 1977-1985. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

3 Senator Robert C. Byrd (D. W. Va.) represented West Virginia in the United States Senate, 1959-2010, and served as Senate Majority Leader, 1977-1980 and 1987-1988, and as Senate Minority Leader, 1981-1986. *Id.*

4 Senator J. Strom Thurmond (D., R. S. Car.) represented South Carolina in the United States Senate, 1954-2003, served as President *pro tempore* of the Senate, 1981-1987 and 1995-2001, and served as President *pro tempore emeritus* of the Senate, 2001-2003. *Id.*

Mr. STEVENS. Yes, I yield.

....

Mr. BYRD. Mr. President, I want to add my support for what my friend the able majority whip, Senator STEVENS has already said. Our mutual friend, the distinguished majority leader, Senator HOWARD BAKER, is receiving the U.S. Medal of Freedom this morning in a ceremony at the White House. I want to commend the President for choosing to award this highest recognition of civilian achievement to Senator BAKER.

The Medal of Freedom was established by President Truman in 1945 to salute meritorious service in the military or in advancing our national security. President Kennedy expanded the criteria in 1963 to recognize those who have made a meritorious contribution to world peace or cultural or other significant public or private endeavors. Senator BAKER is just such a man.

As majority leader for the past 3½ years and leader of the Republican Senators for the past 7½ years, Senator BAKER has proved himself to be fair, cognizant of the needs and important role of the minority party in this great institution, and a congenial colleague to us all. He has been remarkably capable in synthesizing vastly differing viewpoints on a variety of difficult issues facing our Nation and in facilitating the Senate's working its will.

I know I speak for all my colleagues on this side of the aisle in repeating what I have said so many times before—HOWARD BAKER is my close friend and I applaud him for this recognition of his distinguished service.

Mr. THURMOND. Mr. President, will the distinguished acting majority leader yield?

Mr. STEVENS. Yes.

Mr. THURMOND. Mr. President, I wish to associate myself with the remarks of the acting majority leader concerning Mr. BAKER receiving the Medal of Freedom. I do not know of any man who has served in the Senate who deserves this medal more. He is a man of integrity, a man of ability, a man of dedication.

Those are his hallmarks.

Senator BAKER works long hours, and he works strenuously. He has been very patient in dealing with Senators. He has performed his task in a very skillful and wonderful manner.

I am very pleased to speak these few words in his behalf, as I feel that he is one of the most worthy Senators with whom I have served in my 30 years in the Senate.

REMARKS AT THE PRESENTATION CEREMONY FOR THE PRESIDENTIAL MEDAL OF FREEDOM: THE BAKER CITATION (1984)¹

President Ronald Reagan

Thank you very much. We're delighted to welcome you to the White House. Over its history this room has been the site of many occasions honoring America's heroes, and today we carry on in that tradition.

During my inaugural address, I noted that those who say that we're in a time when there are no heroes, they just don't know where to look. . . .

The Medal of Freedom is designed not to honor individuals for single acts of bravery, but instead, to acknowledge lifetime accomplishments that have changed the face and the soul of our country. The people we honor today are people who refused to take the easy way out, and the rest of us are better off for it. They're people who knew the risks and the overwhelming effort that could be required, but were undeterred from their goals. They are people who set standards for themselves and refused to compromise. And they're people who were not afraid to travel in unexplored territory.

By honoring them today, we, as a free people, are thanking them. Choices they made have enriched the lives of free men and women everywhere, and we're grateful.

Now, let me read the citations and present the medals to each recipient. And the first is Senator Howard H. Baker, Jr.

The citation:

As a Member of the United States Senate, one of the country's most powerful and influential citizens, and an individual whose character shines brightly as an example to others, Howard Baker has been a force for responsibility and civility on a generation of Americans. In his almost 20 years of service, he has earned the respect and admiration of his fellow citizens regardless of their political persuasion. As Majority Leader of the Senate, his quiet, cooperative style and keen legislative skills have honored America's finest traditions of enlightened political leadership and statesmanship.

. . . .

¹ Ronald Reagan, Remarks at the Presentation Ceremony for the Presidential Medal of Freedom, Mar. 26, 1984, the Ronald Reagan Presidential Library, available at <http://www.reagan.utexas.edu/archives/speeches/1984/32684a.htm>.

FAREWELL ADDRESS TO THE SENATE (1984)¹

Senator Howard H. Baker, Jr.

A TRIBUTE TO SENATOR ROBERT C. BYRD

MR. BAKER. Mr. President, this may be the last time I ever get the last word. But before I move the Senate adjourn, I would like to take this opportunity to tell the Senate how extraordinarily fortunate they are to have ROBERT C. BYRD as an officer of this body, as a colleague, as minority leader and, in the past, the majority leader.

I have said to BOB BYRD on previous occasions, and I will repeat now, there are not many people in life who work so closely together, so intimately over a period of time, that they know each other as well as the minority and majority leaders of the Senate. There are not many situations in life where it is so necessary to understand the needs and requirements each of the other, and the responsibilities that each have to our fellow Members on our sides of the aisle.

The leadership of the Senate is little understood as an institution. The joint leadership of the Senate is almost never understood. But the joint leadership of the Senate, the Republican and Democratic leaders of the Senate, who have an understanding of their responsibility to the entire Senate, is the glue that holds this place together. And ROBERT C. BYRD of West Virginia, both as minority and majority leader, has provided the perfect example of how that should be conducted in both roles.

On occasion after occasion, when we have confronted each other on issues, in controversy after controversy, where it has been necessary for us to compete for victory or suffer defeat, there has been an unspoken but a clear understanding of our responsibilities, not only to the Senate but to each other, to make sure that this place functions.

Someone in the press asked me the other day, "What do you think your greatest achievement has been in your leadership?" And my answer came quickly, and I will repeat it now. It is that this place works—and it has worked.

But it would not have worked without ROBERT C. BYRD. I wish to express to him my gratitude, my admiration, and my appreciation.

MR. BYRD. Mr. President, I do not seek the last word. I want HOWARD BAKER to have the last word, and he should have.

I just want to do something that I do not say often on this floor, and that is, to address another Senator in the second person—thank you, HOWARD.

THE 98TH CONGRESS

MR. BAKER. Mr. President, impossible as it may seem, we have come to the end of the 98th Congress.

The experience of recent days reminds me, as it may remind my learned and literate colleagues, of the words of William Faulkner on accepting the Nobel Prize

1 130 CONG. REC. 32,509-11 (daily ed. Oct. 12, 1984) (remarks of Sen. Baker).

for Literature more than 30 years ago.

It is easy enough to say that man is immortal, simply because he will endure, that when the last dingdong of doom has clanged and faded in the red and dying evening, even then there will be one more sound: that of his inexhaustible voice still talking.

But, like Faulkner, I refuse to accept this. I believe man is immortal not because he has an inexhaustible voice but because he has “a soul, a spirit capable of passion and sacrifice and endurance.”

In the waning days of this Congress, we have endured quite a lot. But we have not only survived; we have prevailed.

We have shown once again that in the clamorous, cumbersome, chaotic way we do business here, we do it in the people’s name and with the people’s consent and in a manner that reflects with astonishing clarity the passion and conviction and ultimate commonsense of the American people themselves.

It’s not always a glamorous job, but somebody’s got to do it, and I believe we have an extraordinary assembly of talented and conscientious men and women who do this job very well.

In this session of Congress alone, the Senate has made some enormously useful contributions to the law and life of the American people.

We have reformed the Federal Criminal Code. We have made a \$140 billion down payment on the Federal deficit. We have reformed our farm programs and our banking, insurance, and bankruptcy laws. We’ve stepped up the fight against organized crime with the Labor Management Racketeering Act. And we’ve added more than 7.5 million acres of national lands and forests to the wilderness system.

These achievements and others, together with those of the first session of the 98th Congress—the extension of the Voting Rights Act, the preservation of the Social Security System, the passage of the Caribbean Basin initiative, and the creation of a national holiday honoring the Reverend Martin Luther King, Jr., among many other important legislative measures—constitute a record of performance that speaks well of us even if we may speak ill of the tortuous process which leads us to these legislative goals.

Clearly there is room for improvement. Clearly there is no need—and no real excuse—for us to routinely run the risk of shutting down the Government of the United States for lack of appropriated funds.

Surely there may be better ways to organize ourselves and our legislative responsibilities so that the months we pass at leisure in the beginning of a congressional session need not be redeemed in long hours of agony and turmoil at the end.

We say these things near the adjournment of every Congress now. The words are almost as familiar and frequently intoned as the farewells we bid each other. But we never act to remedy these conditions by reforming our procedures, and I fear we are becoming accustomed to this accursed system when that is the last thing we should do.

The subjects of congressional reform and congressional responsibility have weighed heavily on my mind for some time now. I have spoken often and written much on these subjects in the past, and I daresay I will speak and write still more in the future, because I love this Senate and I want to see its special role in the Nation’s

leadership preserved and enhanced with time.

Perhaps the greatest reform involves not a change of rules but a change of heart in this Chamber. We are in danger of losing the spirit of civility that can sustain us in times of political stress and legislative logjams.

The vigorous competition of ideas is essential to the Senate's success, and we have some of the ablest and keenest competitors today that we've had in my experience.

But the time must ultimately come when we say of an issue, "This matter is decided."

The Senate cannot fight a guerrilla war over every issue all the time. We cannot be sniping at one another and talking issues to death while the essential work of Government goes undone.

That is not what the American people expect of us, and it is not what they will accept from us. If we cannot resurrect the spirit of chivalry that once reigned here, at least we must restore some semblance of civility and commonality of purpose in this time of challenge at home and danger abroad.

My time in the Senate has come now to an end. This has been my home and harbor for 18 years, and this year's farewell will be my last.

It is impossible, at times like these, not to look back on the road one has traveled, to survey the familiar landmarks with an appreciation that is both old and new, to summon up memories of friends and colleagues and experiences and achievements that have made these 18 years the best of my life.

I feel a little as General MacArthur must have felt when, near the end of his life, he told the corps of cadets at West Point, "Today marks my final roll call with you."

MacArthur spoke of lengthening shadows and vanished days, of faint bugles and far drums and the strange mournful mutter of the battlefield.

These were the images and senses of an old soldier at the twilight, and I can appreciate and share both the pride and the pain of such reflections.

I think of my first days in the Senate when the doorkeepers would not let me in the Chamber, certain I was too young to be a Senator. The doorkeepers now are not so kind.

I think of the great issues in which I've been engaged—fair housing, clean air, clean water, revenue sharing, Watergate, the Panama Canal, budget cuts and tax cuts, and dozens of other battles.

I think of the friends I've made here: the 99 friends who are my fellow Senators today; the absent friends who were my colleagues in days gone by; the remarkable staff, known but to God and us, who serve this institution and this country so well.

But grateful as I am for all these treasures, I have resolved not to dwell on them to the exclusion of all else.

I believe, with Jesse Jackson, that "God is not finished with me yet."

I believe there is life after the Senate, and I intend to live that life to the full.

As my colleagues know, I will be resuming the practice of law next January. I will be engaged in a number of private enterprises and public enterprises, as well.

As I have said on occasions beyond counting, I believe it is possible, and preferable, to be a public servant and a private citizen simultaneously, and I intend to show my abidingly skeptical colleagues by my own example how to be a useful "public citizen."

But however the fates may play in the future, I have already had an opportunity for service which has been entirely satisfying.

I shall forever be in the debt of the good people of Tennessee for giving me that opportunity. They are the best people on Earth, and it has been the highest honor of my life to represent them here.

I am indebted to my Republican colleagues for choosing me as their floor leader these past 8 years, and for their constant healthy and humbling reminders of the Biblical teaching that “the first shall be last.”

I am especially grateful to my colleagues in the Republican leadership: TED STEVENS, the assistant leader; JIM McCLURE, the conference chairman; JAKE GARN, secretary of the conference; JOHN TOWER, the policy chairman; DICK LUGAR, the senatorial committee chairman; and STROM THURMOND, the distinguished president pro tem of the Senate.

These gentlemen perform their important roles with great talent, dedication and skill, and whatever success I have had in this position is due in large measure to the work they have done in theirs.

I am particularly grateful, also, to the chairmen of the standing committees of the Senate, who have proven beyond doubt these last 4 years that a quarter-century in the minority did not diminish the Republican capacity to govern the legislative as well as the executive branch.

These chairmen have done more, both individually and collectively, for this institution and this country than they will ever be properly credited for, and I wish to pay them special tribute today.

I am grateful to my worthy adversary and good friend, BOB BYRD, with whom I have waged near-constant battle these past 8 years and for whom I have the highest professional respect and personal admiration.

I am grateful to each of my colleagues on both sides of the aisle for making my experience in the Senate so rich and rewarding.

I believe the quality of the membership of this body has grown steadily over the last 18 years, and I am confident I leave the Senate in eminently good hands.

I wish to salute the Presidents with whom I’ve been privileged to serve—Presidents Johnson, Nixon, Ford, Carter, and Reagan—for the many contributions that each of them has made to the Nation we serve together.

Since my service as majority leader has been coterminous with President Reagan’s service in the White House, I feel a special bond with him, and I should like to state for the record my belief that Ronald Reagan will go down in history as one of the very best Presidents who ever served in that office.

In this moment of magnanimity, I shall even toss a small bouquet in the direction of the press gallery, though I am certain they will bat it down one way or another. I cherish my friends in the fourth estate as I once cherished a dog that nobody liked but me, a dog that had the single bad habit of biting people in the nose.

Finally, I would thank my wife Joy and our family for their long-suffering patience with the rigors of public life.

Our children, who were small when we came here, are grown now with careers and children of their own. I’m very proud of them, and I’m especially proud of my wife, who has been a quiet profile in courage and a source of inspiration and insight for me beyond value.

Senator Norris Cotton of New Hampshire told me early in my service here that once I smelled the marble in these halls I would be hooked for life. As usual, he was right, and the intoxicating scent of history in the making will remain with

me to my last days.

Today marks my final roll call with you. As I take my leave, I pray for the blessing of Him who, as Lincoln said, can go with me and abide with you and be everywhere for good.

In His care, I am confident the Senate and the Nation it serves will not only endure but prevail in the great challenges that define our modern world.

In the spirit of friendship and respect and love, I bid you farewell.

ADDRESS TO THE 78TH ANNUAL CONVENTION OF THE NAACP (1987)¹

White House Chief of Staff
Howard H. Baker, Jr.

My good friend, Ben Hooks, Chairman of the Board, Dr. William F. Gibson, President McMillan, Chairman of the Special Contribution Fund Board, Mr. Colley, my fellow Tennesseans, Sarah Greene, Jesse Turner, and Maxine Smith, members and friends of the Nation's oldest civil rights organization:

I am honored to join you today as you conclude your 78th annual convention.

Let me pay my respects, first of all, to the distinguished executive director of this organization, Ben Hooks, whom I've been proud to call my friend for more than 20 years.

Ben Hooks has probably done more good for more people—individually and collectively—than anyone else that I know, and I believe his union with this venerable and vital organization is a marriage made in heaven.

Let me hasten to add I feel the same way about his marriage to the remarkable Frances Hooks, in whose debt I shall always be for her leadership in advancing my political career in our home State of Tennessee.

And let me pay special tribute, as well, to the First Lady of the civil rights movement, Coretta Scott King.

Mrs. King and I have known each other a long time, and I recall with special fondness her frequent visits to my office in the United States Senate a few years ago when we were engaged in a joint venture of some consequence to this gathering.

I count it as one of the highlights of my legislative career to have worked with this gracious and tenacious lady to establish a national holiday honoring the Reverend Dr. Martin Luther King.

Over the past 78 years, the NAACP has been in the vanguard of the changes in civil rights that have occurred in this Nation.

Through your persistence in the courts, you have brilliantly made the point that a society cannot exist with dual citizenships: one privileged and one second-class. Through your Washington Bureau, headed by the legendary Clarence Mitchell, (now headed by the indefatigable Althea Simmons), this organization led the way in securing bi-partisan support for the civil rights actions of 1957, 1964, and 1965. Because of your tenacity and persistence, segregation is outlawed in this Nation.

We are all the beneficiaries, black and white, Republicans and Democrats, of a legacy of a society that has in large measure opened its doors to those who have been systematically excluded.

It goes without saying that much still remains to be done, that the civil rights agenda is incomplete. I hasten to add that the problems that we face are not Republican or Democrat problems. Not black or white problems, but American problems. No political party can have hung around its neck the albatross of responsibility for that which is still not right in this great land today.

By the same token, no party should be expected to accept the blame for

1 133 CONG. REC. 19,296-97 (July 10, 1987).

conditions that have grown out of years of denial, abuse, and systematic exclusion. I am proud of the role that my party has played in bringing about change in this Nation. We need to analyze the current situation we face and, together, with mutual respect, go about the business of opening up doors to all Americans.

I came to Washington 20 years ago last January, and, to the extent that I was known at all then, I was known either as my father's son (my father having served seven terms in the House of Representatives) or as the son-in-law of the Senate Republican Leader, Everett McKinley Dirksen.

I was and I am a politician, and proud to be one, because I think politics is a noble profession. Indeed, it is the mechanism by which citizens of this country express the full range of their desire[s], demands, and dissent to the structures of government. And I am proud to be a politician who believes that this country's time of greatness is still before it—a country whose passion for fairness and enthusiasm for progress is unrivaled in this troubled world. I am proud to have served in a government whose social conscience and whose concern for equal justice are so apparent. The machinery of government of this Nation was a marvelously inspired product of young founding fathers who could not have possibly understood all the challenges of the 20th and 21st centuries, but whose fundamental understanding of liberty, equality, and the blessings of freedom dedicated a republic that resonates to the will of the people. And it is in this context that we are all privileged to address our agreements and disagreements on great public issues.

Let me tell you something about my beliefs. Since I first came to public life, I have believed, and I still believe, that to be compassionate and caring and concerned the government need not be large, anonymous, and unresponsive. Indeed, a little government goes a long way, and we ought not to have any more government involvement in our national life than we absolutely need.

I believed, and I still believe, that a fundamental obligation of this government and any government is to provide ultimately for the protection of our citizens against the elements of discrimination, injustice, and threats from abroad. But I also believe that the government is the keeper of the public purse; that government sought not to spend more money than it receives in taxes; and taxes ought to be as low as possible. I believed when I came to Washington, and I still believe, that the best insurance of peace in this dangerous world is the strongest defense for our country. I believed, and I still believe, that the United States should not be a diplomatic doormat for the rest of the world and that it should stand firmly for its rights and interests.

I believe that these obligations and opportunities to the citizens of this great land are best served by an understanding of the adversarial nature of politics and its essential contribution to the formulation of public policy. And yet to be a public servant in this system means being a part of a system of ideas and beliefs that swirl and rush and sometimes threaten to overwhelm—about the most one can hope for is the approval of the majority of the people in the resolution of these conflicting ideas. So in my public career I have tried to understand the point of view of those who disagree with me, to assist those things that I believe are best for the Nation, and to face difficult and unpopular issues with the courage to believe that the country will understand.

And it is in this belief that one of the most important votes I gave in the United States Senate was a vote in favor of the Fair Housing Act that granted the government extraordinary powers to impose national standards of fairness

throughout the land. I did it because I thought it was the right thing to do, and I did it proudly. As I began my second term in the Senate in 1973, I was called upon to investigate the scandal we know today as Watergate, to follow the facts of that tragic case wherever they led, to ask the central troubling question that ultimately removed a man I respected from an office I revered.

And then as I was campaigning for a third time in the Senate, the issue arose as to whether or not the United States should re-negotiate the treaty governing its rights and responsibilities with respect to the Panama Canal.

I weighed both sides of this contentious issue for a very long time, and finally decided that the right thing to do was to re-negotiate those treaties and ensure that our rights were protected by something more substantial than a 75-year-old document signed under duress.

All of these were the right thing to do.

Such was the act of a great Senate leader, Everett Dirksen, when he helped Lyndon Johnson secure passage of the Civil Rights Act of 1964.

Such was the act of Strom Thurmond, who in 1984 led the fight to extend the Voting Rights Act.

And such were the acts of Justice Hugo Black, whose forceful championship of civil rights and civil liberties were scarcely foretold by his youthful membership in the Ku Klux Klan.

Comes now the case of Robert Bork, whom the President has nominated to serve as a Justice of the Supreme Court.

I have come today because I believe that the NAACP, with its long commitment to fairness and the give-and-take of honest, conscientious differences of opinion, is willing to hear arguments on the other side.

I am well aware of the fact that most members of this organization are opposed to the confirmation of Judge Robert Bork to the U. S. Supreme Court. Your opposition is based upon information that has been presented by the media and by speakers at this Convention.

One of the strengths of a democratic society is the right of the people to hold different views and to have them expressed. I understand that as an advocacy organization with a deep concern for the Supreme Court (an institution which has been of tantamount importance to you over the years), you are troubled by changes in the institution.

I ask you today not to judge Robert Bork upon a fragmented record, reflected in news clippings.

I ask you to consider the full record and Judge Bork's views as they emerge during the confirmation process.

As an organization that prides itself on fairness, as individuals who have been the victims of prejudice based upon race, I am sure that you understand the importance of allowing all the facts to be put forward and in a non-heated or emotional fashion, particularly as the Senate, the body of deliberation, affords Justice Bork an opportunity to be heard, examined, and confirmed.

So I ask you today not to precipitously oppose this man but rather to wait and let the confirmation hearings paint a portrait worthy of the man and worthy of your serious consideration.

I ask you not to commit the power and prestige of this organization to defeating the nomination of an honorable man who has demonstrated so clearly in his own life the power of redemption.

Now, beyond the Court we must together find ways to eliminate all forms of discrimination against persons regardless of race, creed, color, or gender.

Let me pay special tribute to the NAACP that, since 1909 when you were founded here in New York, has kept watch on the ramparts of freedom for all Americans.

We must together find ways to end the vicious cycle of poverty that plagues too many of our citizens. We must together work to build a society where our senior citizens are secure in retirement and where our young people's mental skies are not clouded by stunted growth and the denial of hope.

My friends, the agenda before us is one that requires every able-bodied man, woman, and child to labor assiduously for a new day and "the bright sunlit uplands" of an America without racism or discrimination. I am optimistic that both conservatives and liberals will benefit by the creation of a society where opportunity is our creed and justice is an obtainable goal.

I want you to know—as Ben and Frances Hooks have known for a long time—that I am a soldier with you in the struggle that gives this convention its theme and this movement its life.

I hope the time will come when this power is manifest more fully in our Nation.

I hope the time will come when the divisiveness and discord and discrimination of our time will yield to greater understanding in a more perfect union.

That is easier than it sounds in a country like ours, for by our very nature we can never expect—and should never even hope—to be all one thing or all another.

People of every color, every religion, every nationality, every point of view have found a home and a haven here, and it is the glory of our Nation that this is so.

But for all our differences, there are strong ties that bind us together as Americans, and none is stronger than our fundamental national belief in liberty and justice for all.

That is a promise we have not yet fully kept, but it is a struggle worthy of a great people.

I am proud to be a soldier with you in this struggle.

And I share with you the confidence and the commitment that we shall someday overcome.

**REMARKS ON THE DEPARTURE OF
HOWARD H. BAKER, JR.
AS CHIEF OF STAFF TO THE
PRESIDENT OF THE UNITED STATES (1988)¹**

*Senator Robert J. Dole*²

*Senator Robert C. Byrd*³

*Senator Daniel Patrick Moynihan*⁴

Mr. DOLE. Mr. President, it has just been called to my attention—in fact it was on the wire when I came back from the White House—that the good friend of all of us, Howard Baker, will be leaving the White House as chief of staff on July 1.

I called Senator Baker and indicated had I known that while I was at the White House I would have certainly thanked him publicly in every way, and I am doing so now, for his efforts not just on behalf of the President but for all of us in the Senate, for all those in Government and those outside Government. He certainly has done a superb job as chief of staff for the President of the United States.

As a former colleague and a colleague that we all loved and respected, Howard Baker leaves with our best wishes.

I understand that he is going to rejoin his law firm.

I do know that his wife, Joy, has not been well. I think that is another reason.

But he indicated before his leaving, and he had indicated to the President some months ago, that following the summit he thought most things were in pretty good order and he would be going back to the private sector.

So I would just say to my good friend, Howard Baker, Godspeed, best wishes, and good luck.

Mr. BYRD. Mr. President, will the distinguished Republican leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Mr. President, I wish to associate myself with the remarks that have just been made by the distinguished Republican leader.

We all have not only a very fine relationship with Howard Baker and have had for many years when he was a Member of the Senate—our relationships during those years when we shared the leadership of the Senate were very warm—but

1 134 CONG. REC. 14,408-09 (June 14, 1988) (remarks of Sens. Dole, Byrd, and Moynihan).

2 Senator Robert J. Dole (R. Kan.) represented Kansas in the United States Senate, 1969-1996, and served as Senate Majority Leader, 1985-1987 and 1995-1996, and as Senate Minority Leader, 1987-1995. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

3 Senator Robert C. Byrd (D. W. Va.) represented West Virginia in the United States Senate, 1959-2010, and served as Senate Majority Leader, 1977-1980 and 1987-1988, as Senate Minority Leader, 1981-1986, and as President *pro tempore* of the United States Senate, 1989-1995. *Id.*

4 Senator Daniel Patrick Moynihan (D. N.Y.) represented New York in the United States Senate, 1977-2001. *Id.*

we also have a deep understanding and appreciation for the good work that he has done for the President during Mr. Baker's somewhat brief tenure at the White House.

He came to the White House when things were stormy and there were rough seas. I think he did much to help to calm, quiet, and make things more serene there. He has performed a great service not only for the President but also for his country.

I join with the distinguished Republican leader in wishing Howard well as he returns to his former work. I also want to share my concerns and, I am sure, my wife Erma's with respect to Joy, the wife of Senator Baker. We wish her well. We will remember her in our meditations, thoughts, and prayers.

Mr. DOLE. I thank the distinguished majority leader.

I know that when Howard leaves he will be replaced by Ken Duberstein who had a lot of experience not as a Member of Congress but working with the House and Senate and I have just conveyed my congratulations to Mr. Duberstein whom we look forward to working with, not for him, with him, and I express the sentiments of everyone, and he will do a good job.

Mr. MOYNIHAN. Mr. President, I associate myself with the remarks and I think it would not be inappropriate to say the sentiments of the Republican leader and our distinguished majority leader.

I learned just a moment ago on this floor that Howard Baker will be leaving his position as Chief of Staff, a newly created position only in this administration, and he surely has filled it to the extraordinary debt owed him now.

What he has done is he took a shattered institution and he restored stability to that most precious of democratic institutions. Only perhaps a man as sensitive to the prospects of instability could be as effective in restoring it in a moment of genuine crisis. The Presidency was tottering when he took hold, and it is sufficiently restored that he feels able to leave. If he is prepared to leave, it is in that sense, in my view, to be taken as a good sign. His sense of duty and his realistic understanding of what is involved is such that he would never leave were it not possible to continue without him and that, in a sense, is a measure of his success.

We wish Howard Baker and his wife Joy, who is our friend, enormous good fortune.

**LETTER FROM PRESIDENT RONALD REAGAN
ACCEPTING THE RESIGNATION OF
WHITE HOUSE CHIEF OF STAFF
HOWARD H. BAKER, JR. (1988)¹**

President Ronald Reagan

THE WHITE HOUSE
WASHINGTON

June 28, 1988

Dear Howard:

It is with especially deep regret that I accept your resignation as Chief of Staff, effective June 30.

You and I have known each other for many years as public servants, partisan allies, and good friends. You came to the United States Senate the same year I went to the Statehouse in California; and, as I'm sure you would agree, things haven't been the same for either of us since. Our paths brought us together in those early years and helped determine the future direction of our Party and our country. And let me add: Our Nation has rarely seen a more dedicated and capable leader in its capital than Howard Baker.

Your dedication to public service was renowned during your 18 years in the Senate, but it became even more so when you set aside your personal and political interests to answer my call to service in the Executive branch. For that, I am particularly appreciative. You accepted the position of Chief of Staff and quickly assembled a top-flight team of senior aides to move my agenda forward. A tone of cooperation and conciliation in those difficult early months of 1987 was communicated to the public and to those in the Congress. At the same time, the White House functioned efficiently and effectively in setting out and pursuing my policy goals.

I clearly appreciate the challenges you faced. Your tireless efforts on my behalf with your former colleagues to forge a sense of cooperation last October to reach a budget agreement; your counsel on many issues that enabled me to make the best decisions on behalf of all the people; your significant contributions to bring about the first reduction in United States and Soviet nuclear arms; and also your gentle Tennessee wit that can relax a tense moment—these are attributes that come from

¹ Ronald Reagan to Howard H. Baker, Jr., June 28, 1988, Howard H. Baker, Jr. Papers (unprocessed), Modern Political Archives, Howard H. Baker Jr. Center for Public Policy.

the heart and that have made our relationship not a job but a friendship that will last forever.

No one understands better than Nancy and I the personal reasons that lead you to relinquish your responsibilities at this time. That, too, is a tribute to your character and your integrity. With all the years you and I have been associated, this truly is no farewell, but rather a note of enduring and heartfelt thanks for a job well done.

Our best wishes for happiness and good health to you, Joy, and your entire family now and for the future. God bless you.

Sincerely,

Ron

The Honorable Howard H. Baker, Jr.
Chief of Staff
The White House
Washington, D.C. 20500

THE ROLE OF THE SENATE (1989)

*Howard H. Baker, Jr.*¹

MR. BAKER. Mr. President, my former colleagues and friends, it is a delight to be here, to be chosen, along with Senator Eagleton, to make these remarks on this momentous occasion.

I also knew if I lived long enough, sooner or later I would be on television in the Senate.

Mr. President, I spent 18 years in the Senate and I loved every day of it, though I will confess, as I have to many of you, I loved some days more than others. I am reminded today that when I first came to the Senate in 1967, I went for a walk down one of these majestic Capitol corridors with our late colleague, Senator Norris Cotton, of New Hampshire. And after we had walked a ways Norris Cotton said to me, "Howard, do you smell the white marble?" I said, "No, Norris, I don't believe you can smell marble." And he said, "One day you'll smell the marble, and you'll never get over it."

Unless you have been a Senator for a while, that counsel may mystify you as much as it did me on that day so long ago. But after serving in this body for a few years, I really discovered that you can smell white marble, you can sense and understand and appreciate the surroundings that make this place so great and house so many great men and women as the nesting place for the future hopes and aspirations of this Nation in so many ways.

I discovered at roughly the same time that once one is so thoroughly acclimatized to the special atmosphere of the Senate, the air in any other place is pretty thin.

This is a special place, my friends. It is not, as Mark Russell of an earlier day said, "a body of elderly gentlemen charged with high duties and misdemeanors."

It is, instead, the institution which has nurtured the Websters, the Clays, and Calhouns of America, the Lodges, the Lafollettes, the Russells, the Longs, the Johnsons, the Mansfields, the Tafts, the Dirksens, three Kennedys, three Byrds, a Thurmond, an Eagleton, a Stennis, a Javits, a Dole, occasionally a Margaret Chase Smith, and all too infrequently an Ed Brooke.

These men and women of distinction—and others like them—have been drawn to the Senate by the special role which this institution and its Members play and have played in the mainstream of the life of this Nation.

Mr. President, that role has been steadily evolving since the earliest days of the Republic, and indeed since the Constitution first spoke with such exquisite imprecision about the role of the Senate. Those of us who have occupied this and the other Chamber have attempted to define it.

The charter document says, for example, that anyone who is 30 years old, a 9-year resident in the United States, residing in the State that he or she will represent, is qualified to be a Senator, and it sets the term of a Senator at 6 years, which, as you know, is the longest elective term in our national political system.

1 35 CONG. REC. S3,402-03 (daily ed. Apr. 6, 1989) (remarks by former Sen. Baker).

For the institution itself, the Constitution requires that the Senate give equal representation to the several States, that it try impeachments, and that it give advice and consent to the President on treaties and nominations, and beyond that the Constitution requires very little.

But 200 years of experience and precedents have given the Senate much richer definition. Powers implicitly granted by the Constitution have been more explicitly acknowledged and more aggressively exercised with every new Congress.

I believe, Mr. President, that the danger we face in modern times, that we faced in my time in this Chamber, in this Senate, and that these men and women face today, is not that the Senate will do too much but that the Senate will do too little.

Ever since 1913, when the Constitution was amended to provide for the direct popular election of Senators—rather than election by the several State legislatures—it seems to me that some unfortunate law of political physics has tended to merge the missions of the Senate with that of the House of Representatives. While I have unlimited respect for the other body, as we say—and, indeed, both my father and my mother served in the House of Representatives—I believe that conceiving of and exercising the powers of the Senate as the mirror image of the powers of the House of Representatives is a temptation and a tendency which must be resisted because if we do not, we will lose the specialty of the Senate itself as a particular constitutional body.

These remarks and this comparison are not meant to diminish the House of Representatives in any way. Indeed, the House in so many ways is the front line of American democracy. Its 2-year terms are intentionally short, its local constituencies relatively small, so as to keep its Members close to the people and highly responsible to the public will.

But the Senate is different, and we all know that. We feel that without being told, certainly by me. Thomas Jefferson spoke it well when he said that the Senate is the saucer in which the passions of the Nation should be poured to cool.

We might speak of it today as a kind of national board of directors to set broad general policy, for I believe that the Senate was never intended to manage the day-to-day affairs of our Government, but, rather, to work in its special constitutional way, its unique and special way with the Chief Executive of our Republic in the formulation of public policy and its execution.

A Senator has more insulation from his electors than any other officer in the Government, including the President and Vice President of the United States.

The constituency a Senator serves is not only the people of his State but the State itself, the embodiment of the theoretical sovereignty of our Union, and in the Senate alone does the term “United States” have a literal, political, and parliamentary meaning.

Similarly, the 6-year term, the longest in elective politics, encourages the historic view, and I may say the heroic judgment, by the Members of this body, and while “government by public opinion” is sacred to the Members of the House of Representatives, it is subject to proof in the Senate of the United States.

As we all know with varying degrees of approval or disapproval, the rules and the precedent of the Senate encourage extended debate among men and women

who need no such encouragement. In the Senate a determined minority, sometimes even a minority of one, may make the Senate stop and consider carefully the consequences of its action. I look about this room and I can see individual Members with whom I have served, who aroused the index and quotient of frustration in my leadership role to the point where I could hardly stand it and on both sides of the aisle. But in retrospect, my friends, I wish to pay them a compliment because you who stood on principle, you who slowed the forward progress of the Senate's deliberations, far more often than not represented the very essence of the greatness of this body and required us to be that institution in which the passions of the Nation were allowed to cool.

My friends, I have had the privilege not only of serving in this body but also, and unexpectedly, to serve at the right hand of the President of the United States, and perhaps that gives me uniqueness of view and perspective that I might share with you in the concluding part of these remarks.

As you know, the President of the United States has many powers, inherent and explicit. He is the embodiment of our nationhood in so many ways; he is one of two officials that are elected by the entire Nation, but he has specified powers as well. And those specified powers in relation to the responsibility of the U.S. Senate are the matters on which I would like to speak.

The President of the United States may negotiate treaties with foreign powers, but he may ratify them only by and with the advice and consent of the Senate. The President may nominate whom he or she chooses for the principal officers of the executive branch, but the Senate must agree. Whatever partisan differences may separate the President of the United States and the Senate of the United States, the Constitution requires that a partnership be formed between the President and the Senate in these specified matters, and whether we like it or not that partnership begins on Inauguration Day and moves forward with varying degrees of tranquility throughout the Presidential and senatorial terms and sessions. The quality of that partnership, in my view, is for each President and each Senate to determine, but in those unhappy times when the partnership has suffered, the Nation has inevitably suffered, and when that partnership has prospered, I believe so have we all.

For 8 years before I came to Washington and for almost 3 years thereafter, my father-in-law, Senator Everett McKinley Dirksen, of Illinois, was the Republican leader of the U.S. Senate and for the first 2 years of his tenure in that office his counterpart on the Democratic side was Senator Lyndon Baines Johnson, of Texas. I believe I am betraying no great confidence when I say that from time to time at the end of a legislative day, Senator Dirksen and Senator Johnson would repair to a private quarter to discuss the issues and personalities of the day as only a couple of unrepentant politicians can do. There was magic in those moments, and they continued long after Senator Johnson became President Johnson. Those meetings did not save the country the sorrow of Vietnam, but they did help win the battle for civil rights. They did not solve every problem in Lyndon Johnson's or Everett Dirksen's "in" box, but, my friends, they solved their share. There was a bond of fundamental trust and personal goodwill about those meetings and those men, and it is well understood that if a national crisis should suddenly arise, the President of

the United States and the Republican leader of the Senate could counsel frankly and deal effectively with one another.

That is the nature of the partnership implied by the constitutional responsibilities. I think we need those relationships throughout our history; we have always needed them. We need them today maybe more than ever. It is my hope that the Senate looks to its past today and will rediscover the real meaning, the essence of this institutional greatness, but among the elements that I hope it ascertains and redefines is the nature of friendship and civility and understanding and partnership between this body and the executive authority of the Government of the United States.

My friends, these remarks were too long perhaps, but I could not avoid the temptation to share these thoughts with you that have occurred to me over that day in January of 1985 when, as I recall, only the Presiding Officer, the distinguished occupant of this chair and I were on the floor at the moment of adjournment, that moment of my term ending, and I said something which now must join that long and growing list of issues on which I was wrong when I said these are the last words I will speak on the floor of the Senate of the United States.

THE VIEW FROM BOTH ENDS OF THE AVENUE (1990)¹

Howard H. Baker, Jr.

As one who has served on both ends of Pennsylvania Avenue—as Majority Leader of the Senate and as White House chief of staff—I'd like to talk with you this evening about making that famous stretch of road more of a two-way street politically as well as physically, and why the need to do that is so great.

When I first came to the Senate in 1967, my father-in-law Everett Dirksen was Republican Leader of the Senate and Lyndon Johnson was President of the United States. Johnson and Dirksen had served in the Senate leadership together, and they had developed a personal bond that held them together through all manner of political strains.

I believe I am betraying no great confidence when I say that from time to time at the end of a legislative day Senator Dirksen and Senator Johnson—later President Johnson—would join each other in some kind of liquid refreshment and discuss the issues and personalities of the day as only a couple of unrepentant politicians can do.

There was magic in those meetings, and in that special relationship between two highly partisan men. Those meetings didn't save America the sorrow of Vietnam, but they did help win the battle for civil rights. They didn't solve every problem in the government's "in box," but they solved their share.

There was a bond of fundamental trust and personal good will about those meetings and those men, and it was well understood that if a national crisis should suddenly arise, the President of the United States and the Republican Leader of the Senate could counsel frankly and deal effectively with one another.

That kind of relationship simply doesn't exist much in Washington anymore. One need only look at the level of discourse between the Majority Leader of the House of Representatives and the Assistant Majority Leader of the United States Senate in recent days to understand how far we have come from those earlier, more congenial days of intimate friendship and professional respect.

In place of all that have come statutory barricades and elaborate staff structures which make candid and confidential conversations between the White House and Congress all but impossible.

We have found, among other things, that it's pretty hard to keep a secret under these circumstances, and what is worse, we have put a serious strain on the ability of the executive and legislative branches to do anything important together.

This is habitually true of efforts to reduce the federal budget deficit, and it is maddeningly true of efforts to exercise military or diplomatic power in the world.

1 © 1990 Center for the Study of the Presidency. Originally published in 20 *PRESIDENTIAL STUD.* Q. 489-92 (1990), based upon Senator Baker's keynote address on Mar. 16, 1990, in Washington, D. C., at the 21st Annual Student Symposium of the Center for the Study of the Presidency. Reproduced with the express permission of the Center for the Study of the Presidency.

A chorus of congressional second-guessing seems to attend every presidential initiative in foreign affairs, and Presidents never seem to learn that if they want these initiatives to succeed, Congress has to be in on the take-off as well as the landing.

I believe it is possible to work out better practical arrangements, more realistic institutional roles, and better personal relationships between the President and the Congress.

I believe, for example, it's only common sense that before a President undertakes any kind of military campaign, he should take the leadership of the Congress into his confidence and solicit their views on the matter.

In cases of a surgical strike, as in Libya four years ago or Panama more recently, the element of surprise must be protected, and so the number of people who know the secret must be limited. I believe most people in Congress understand that.

In cases where sustained engagement is likely to be necessary, as in our convoy operations in the Persian Gulf or certainly as in the case of Vietnam, the mission simply cannot succeed unless it has broad political and public support, which consultation and communication alone can win. I believe most Presidents understand that.

The question in each case is, who exactly should be consulted? It is the tendency of congressmen in such situations to prefer lots of company. It is the tendency of Presidents to prefer as few political "generals" as possible.

I believe a reasonable compromise would involve automatic, timely presidential consultation with the Speaker and Minority Leader of the House, and the Majority and Minority Leaders of the Senate, at the absolute minimum.

Depending on the nature of the engagement of forces, other members of Congress should be involved by the mutual agreement of the President and the congressional leadership.

Ultimately, of course, even though the Constitution vests the powers of commander-in-chief with the President, it is the power of the purse—vested in the Congress—that decides what any President can do and not do.

If the Congress wants to end an American military engagement abroad, it needs only cut funds for that engagement. Congress cut off funds for our forces in Vietnam in April of 1975, and the last helicopter left the roof of the Saigon embassy in April of 1975.

Precisely because the Congress has this ultimate power—in matters of war and peace, taxing and spending, soup to nuts—I believe the Congress seriously misunderstands, indeed underestimates, its role in modern government.

I believe the modern Congress spends far too much time engaged in bureaucratic warfare with the executive branch and far too little time functioning as the national board of directors the Constitution intended it to be.

It hasn't been so long ago that members of Congress were real people with real jobs in real communities throughout the country. They were truly representative of the people who elected them—and had the moral and political authority of true representatives—because they played an active, integral part in the civil and economic and social affairs of their constituencies. They went to Washington

temporarily, and they came home.

For all practical purposes, today's members of Congress consider Washington home, and they're tourists in their own constituencies.

They're committed full-time to the legislative undertaking, and they're expected to be free of any conflict of interest by abdicating any interest except political power.

In this self-imposed isolation, they grow more and more susceptible to the loudest voice or the largest mailing—or the biggest check—and they surrender the power of independent, practical judgment.

And because they are virtual captives of the capital city, they think up more and more government programs, hold more and more hearings, propose more and more legislation, because that's what they think they're paid for.

They pass thousand-page legislative bills that read more like bureaucratic jargon than public law. They stopped seeing the forest for the trees a long time ago, and now they label the leaves.

Yet for all this endless activity, there is precious little action of a constructive nature. Twice in recent years, the federal government has literally run out of money, because the Congress of the United States—with nothing to do but govern—has failed to approve funds in a timely way to meet the payrolls of executive departments and agencies.

Little wonder, then, that people—and Presidents—tend to hold Congress as an institution in what former Speaker of the House John McCormack used to call “minimum high regard.”

I think Congress can do better than that, not by doing more but by doing less. I believe the Congress could do everything it really needs to do in about six months: a few months early in the year to decide what to spend money on, and a few months near the end of the year to decide how much to spend.

I would propose that the rest of the year be spent not in Washington but in America, seeing first-hand the practical effects of federal laws on private lives and enterprise, staying in personal touch with the people they're elected to represent, experiencing life as the rest of us know it—and drawing the authority from such close encounters with real people to tell a President he's full of beans when he proposes something out of kilter with the real world.

I will stipulate here that many of my former colleagues in the Congress consider my perennial call for a “citizen legislature” quaint at best, and dangerous at worst.

They maintain that a part-time Congress would cede too much power to a full-time President, or be insufficiently versed in the complex issues of our time to render sound policy judgments, or both.

But I would remind my friends on Capitol Hill that the Supreme Court sits in formal session only six months a year, deals with devilishly complicated and controversial issues (with a much smaller staff than Congress has), and has wielded co-equal power with every President and every Congress since the earliest days of the Republic.

The truth is that as long as the Congress keeps the power of the purse, it will be first among equals in the federal government whether it meets three days a year or 365.

A member of Congress doesn't have to be in Washington every day to be a conscientious and skillful legislator, and he or she can't be in Washington every day and remain truly representative of the people back home.

The President, for his part, could do with a little less remoteness from the Congress itself. Presidents used to have a working office in the Capitol building, and I think we should open that office again. The symbolism of a President and a Congress physically working together is as obvious as it is important. But the practical implications are a great deal more important.

As things stand now, the President comes to Capitol Hill only a few times a year. And even these rare appearances have been reduced to formalities, with Presidents using the Congress as so much scenery for a speech, and Congress responding with a cacophony of criticism for nearly everything the President has to say.

I think a little greater proximity between the President and the Congress, as between the Congress and its constituents, would do wonders for our politics. I think, among other things, it's harder to say nasty things about somebody you're apt to see in the hallway every day.

We live in a political atmosphere now in which common civility seems about to join chivalry in extinction, an atmosphere in which we argue for the sake of argument and accuse for the sake of advantage, an environment in which the adversarial process has become not a means to an end but an end in itself.

In this atmosphere, the adversarial system leads not to accomplishment but to entropy, not to policy but to paralysis. Surely this is not the example of democracy we wish to demonstrate to the newly free countries of eastern Europe, nor can it be the system of government we would consciously choose for ourselves.

I believe we have to start thinking about things a little differently in this country. While holding fast to our own principles, we must have a decent respect for differing points of view.

We must understand that after the time of testing comes the time for uniting. We must recognize that it is the resolution of conflict—rather than the perpetuation of conflict—that makes the difference between successful self-government and civil warfare.

I've been saying most of these things for about twenty years now, on both ends of Pennsylvania Avenue, and I'm under no illusion that anyone will pay any more attention now than when I stood at the center of power.

But all of my experience tells me I'm right, and as you continue your study of the presidency, I hope you agree that my simple plea for greater accountability, proximity and civility in our politics is an idea whose time has come at last, and none too soon.

REMARKS AT THE U. S. CAPITOL HISTORICAL SOCIETY'S CAPITOL CORNERSTONE DINNER (1993)¹

Howard H. Baker, Jr.

Brian Lamb,² thank you so very much—and ladies and gentlemen, what a pleasure to be here—and Brian what a marvelous way to say that you did not like my picture. Congressman Brown, Senator Byrd, distinguished ladies and gentlemen, Members of Congress, and good friends:

It is an awesome thing to be here tonight and have this opportunity to speak to you on the occasion of the 200th anniversary of the laying of the cornerstone of the Capitol. But it is equally awesome to do so in the presence of George White, the Architect of the Capitol, and Bob Byrd, who is the absolute master not only of the history of the Senate but of this institution, the Congress, and no doubt of this building, as well. But, my friends, I will do my very best.

When I first arrived in Washington as a Member of the United States Senate in January of 1967 and as a very junior Senator from Tennessee, and when anybody paid attention to me, as Brian said, usually did so as Ev Dirksen's son-in-law, rather than as a Senator, I remember distinctly traveling from what is now the Russell Building to the Capitol through the subway, up the elevators, and approached the Senate Chamber, and was promptly stopped by a Doorkeeper who thought I had no right to enter. Well, two things come to mind. First, I was then a young man, a condition from which I have now recovered. And second, to recall vividly that I said to the Doorkeeper: "Son, if you had any idea how hard I worked to get here, you'd have no notion that you could stop me now."

So, I took my place, received the Oath of Office from the Vice President of the United States, and began eighteen years of service in the United States Senate. I will always treasure that experience. It was, indeed, the high point of my public career. As Brian pointed out in his little vignette of my life, I have also had the opportunity to do other things, including being Chief of Staff to the President of the United States. But, my friends, nothing—nothing ever comes close to the opportunity to serve in the Congress of the United States. It is the highest estate that a public servant can attain and the greatest service that a private citizen can give to this republic. And I am awed with the opportunity to stand here and help

1 139 CONG. REC. 30,273-74. These remarks were delivered by former Senator Baker at the Capitol Cornerstone Dinner, sponsored by the U. S. Capitol Historical Society, in Washington, D. C., on Sept. 17, 1993.

2 Brian Lamb was the founder of the Cable Satellite Public Affairs Network(C-SPAN), the primary purpose of which was to broadcast the proceedings of the Congress, an innovation long supported by Senator Baker. C-SPAN televised the first live coverage of the debates on the floor of the U. S. House of Representatives in March 1979. Lamb subsequently hosted a variety of C-SPAN programs, including *Washington Journal* and *Booknotes*. See Paul Bedard, *Brian Lamb: C-SPAN Now Reaches 100 Million Homes*, U.S. NEWS & WORLD REP., June 22, 2010; Thomas Heath, *Value Added: A 46-Year Career Built on Letting Viewers Make Up Their Own Minds*, WASH. POST, Sept. 18, 2011.

you celebrate not only that tradition, but this building which has housed so much history and which is the home of that tradition, as well.

I remember, if you will let me wander for a few minutes, and then I will get on to the few remarks about the history of the Capitol—I remember once when I was Majority Leader of the United States Senate and my good friend Bob Byrd was then Minority Leader, that he and I agreed that I would keep the offices that the Republican Leader had occupied for so long, which were occupied by my late father-in-law and looked down the Mall toward the Washington Monument and beyond that to the Lincoln Memorial and so beyond that to the rows of crosses at the Lee Mansion in Arlington Cemetery. And it happened on that particular occasion that President Reagan was in my office awaiting some sort of official function (I've long since forgotten what it was), but the sun was setting gently behind this majestic scene, and I looked out the window with Reagan by my side and I said: "Mr. President, this is the best view in Washington." He said, "No, Howard, this is the second best view in Washington."

But you see, my friends, Ronald Reagan was wrong. This is the seat of the republic. This is the people's branch. And this is the locale of the strength and the wisdom of self-governance in this nation—this building which houses the people's branch. And what a magnificent opportunity for all of us to celebrate the beginnings of this structure—not the beginnings of the republic, and certainly not the beginnings of the concept of representative government—but this place where the American brand was put on that. Where we demonstrated our unique talent as Americans for self-government. Where we created an image that is now the envy of the entire world in terms of the elaboration and extension of individual rights. Where we created a nation from this place that is without peer in the annals of all the history of civilization. Where we suffered the divisive issues. Where we withstood the challenges of war. Where we extended the blessings of liberty and opportunity to the downtrodden. Where we provided for the freedom of every individual. Where we breathed life into the charter documents of the republic. That is what this place is. It is the home of America. It is the center of the nation, it is the height of the ambition of humanity, thus far in the history of civilization.

My friends, I stand here in the presence of these secular saints, and others who line the corridors to the Senate Chamber and to the Chamber of the House of Representatives, and luxuriate in the contributions that they made to this evolutionary dream, and acknowledge fully and freely that we are the fortunate legatees of their wisdom and of their dedication and sacrifice. That, too, is what this building is all about.

So, when I had an opportunity to visit with George White, the distinguished Architect of the Capitol, and ask him, as I did a little while ago, "George, have you really found the cornerstone of the Capitol?" and he gave me a long answer, as you would expect a thoroughly professional and distinguished architect to do—which I will not, now repeat, except to say I declare that we found the cornerstone of the Capitol. And it may not be a piece of sandstone, therein partially buried under the earth. The cornerstone of this building, my friends, is the institution that it houses. And that truly is what we celebrate now on this 200th anniversary occasion.

Now let me tell you a few other reminiscences about this place as I knew it. First of all, forgive the immodesty, if it is immodest that I exhibit in saying that I feel a personal kinship to this place not only because of my service here, but because my father before me served in this place, in the House of Representatives, as did my mother. My wife's father served here for many years and became before me the Republican Leader of the Senate. So, in many ways, I am a product of this place, and from earliest childhood I was imbued with the spirit of the Congress, the spirit of the republic, and the importance of this place.

So, it was a special, a very special time in my life, when I had the opportunity to serve, and a very special time when I was elected Minority Leader of the United States Senate and first occupied S-230 in the Senate Wing of the Capitol. Some of you know perhaps, and I am fond of saying, and it is true that S-230 served many purposes. It is, I believe, the first space that was occupied when this building was under construction, when the Congress came down from Philadelphia. It was then briefly the Library of Congress. By the way, there were only three-thousand volumes in the Library of Congress, and the bookcases were designed by Latrobe, and the original water color drawings still exist of those bookcases. S-230 is the room to which the British repaired in August of 1814 to set fire to this structure. They took those books off the wall and made a bonfire and destroyed the building. Bob Byrd will be sympathetic when I say that when I was Leader, there were occasions when I was tempted to do the same.

I also like to tell the story, which is not true, in my moments of frustration (that this one is not true, the other one was true, but that's not bad on average for a politician)—but I like to tell the story in moments of frustration that when I was cleaning out my little private corner of the office—S-230 that historic place—behind a baseboard, I found a letter from Thomas Jefferson to one of his brothers. And it said: "Dear George, I've stood about all this democracy stuff that I can handle." And I'll bet he felt that way sometimes because you see, my friends, this is the place where we thrash out the controversy, where we attenuate the gross instincts of humanity. This is the place where we formulate the public policy of the greatest nation on earth. But it is not easy. And don't let anybody ever tell you that people here are a people of privilege. Don't let anybody tell you that Congressmen and women are not hard working. They are the hardest working people I ever knew in my life. Don't anybody ever let 'em tell you that Members of Congress are without honor. They are, by and large, the greatest, finest people I ever knew.

Will Rogers is represented, if not in this room, someplace in this building; and as you remember, he was a great philosopher from Oklahoma and also a reporter for the Claremore paper. And they tell the story on Will, that after he'd been there awhile, he went back to Ardmore, Oklahoma, and he was walking down the street, and somebody said: "Will, I want to know, is it true, since you've been there awhile, is Congress really made up of thieves and rascals?" Said Will, "Of course, it's true, but it's a good cross section of its constituency."

But, my friends, it is not true. The Congress of the United States is the essence of this nation. The Congress of the United States is, indeed, the people's branch. The Congress of the United States is the place from which the grandeur

of this nation has emanated for more than 200 years. So, it's altogether fitting and appropriate, my friends, that we acknowledge this place as the symbolic center of the union. We acknowledge those who have gone before us; we celebrate the grandeur of this building; we revel and delight in 200 years of our history so far; and we look forward with calm assurance to a time of even greater accomplishment and achievement for this nation in the centuries ahead.

ON HERDING CATS (1998)¹

Howard H. Baker, Jr.

INTRODUCTION OF SENATOR BAKER BY SENATOR TRENT LOTT²

My colleagues, thank you all for being here this afternoon. Welcome, Senator Baker and Senator Kassebaum.³

Though we come together this evening in this stately and formal Old Senate Chamber, our convocation has the light spirit of a family reunion. It was a thrill for me to see the way our colleagues reacted to Senator Baker on both sides of the aisle. Even some that could not be here tonight made a special point of coming by to speak with Senator Baker.

Tonight we welcome, as the second speaker in our Leader's Lecture series, a greatly esteemed member of our Senate family. We are hoping this will be something that we can continue throughout this year and into next year, with Senator Byrd⁴ being our invited speaker in September.

I am delighted that the American public has joined us this evening through television. They will hear this outstanding gentleman who will give us, I am sure, a great deal of his usual wisdom—and much wit. I hope they will also sense the enormous affection for our speaker tonight, which is almost palpable in this room.

I wish they could also see the display of photographs in the corridor outside this Chamber, for our speaker is, as we here all know, an accomplished shutterbug. His skill in capturing with his camera the historic occasions of which he was a participant makes clear that he did not have to pursue politics as a profession. The man actually had talent.

But public service was in his blood. It was the legacy of his parents, both of whom served in the House of Representatives. It was, as well, the legacy of his father-in-law, Everett McKinley Dirksen of Illinois, the Republican Leader in this body from 1959 to 1969.

1 Delivered as the second address in the United States Senate's Leader's Lecture Series, 1998-2002, in the Old Senate Chamber of the United States Capitol on July 14, 1998. The texts are those that appear on the Web site for the United States Senate, http://www.senate.gov/artandhistory/history/common/generic/Leaders_Lecture_Series_Baker.htm, and are reproduced through the courtesy of the United States Senate, the Senate Historical Office, and the current Historian of the Senate, Dr. Donald A. Ritchie. Additional information concerning the Leader's Lecture Series, including video versions and transcripts of each of the speakers in the series, is available at http://www.senate.gov/pagelayout/history/f_two_sections_with_teasers/leader_lecture_series.htm.

2 Senator Trent Lott (R. Miss.) represented Mississippi in the United States Senate, 1989-2007, and served as Senate Majority Leader, 1996-2001, and as Senate Minority Leader, 2001-2003. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

3 Senator Nancy Kassebaum (R. Kan.) represented Kansas in the United States Senate, 1978-1997. She is the wife of Senator Howard H. Baker, Jr. *Id.*

4 Senator Robert C. Byrd (D. W. Va.) represented West Virginia in the United States Senate, 1959-2010, and served as Senate Majority Leader, 1977-1980 and 1987-1988, as Senate Minority Leader, 1981-1986, and as President *pro tempore* of the United States Senate, 1989-1995. *Id.*

We were just visiting across the hall in the Republican Leader suite of offices talking about the history of that room and how the British started the fire that burned the Capitol in that very room, and the fact that Senator Dirksen had his desk right there where I have a staff desk right now. There is a lot of history in that suite of rooms where Senator Baker served.

His official biography lists honors and accolades, positions won and positions awarded. But those details do not really reveal the most important aspects of his career.

How, for example, he became the first popularly elected Republican Senator from Tennessee with bipartisan support, a pattern that continued throughout his years in Congress. I was a student at the time at the University of Mississippi Law School. I had seen Republicans before in my life, but it was the first one I had ever seen win an election. Obviously, it had an impact on me. Or how he handled the constitutional crisis of 1974, and putting the Nation's good above all else, nudged it toward a resolution. I should add that my own freshman service on the House Judiciary Committee at that time was one of the most difficult times I have ever experienced, at least in my political life, and I can appreciate, therefore, all the more how really difficult that task was for Senator Baker at the time.

There is nothing in any political science textbook that explains the unique way that he led the Senate, but those who were part of it at the time remember. I have had occasion to talk with my senior colleague from Mississippi, Senator Cochran,⁵ about some of the unique ways Senator Baker led the Senate. They remember his cool and his patience, even under personal attack.

They remember how, seemingly nonchalant, he would let a policy battle rage for days on the Senate floor, with each Senator exercising fully their right to debate. And then, when the voices calmed and the tempers died down, there would be an informal gathering in his office. After a while, I am told, the anxious staffers outside would hear laughter, probably the result of an anecdote aptly timed to break the ice and bring about a civil consensus.

I can relate to that process. In fact, one day last year, when some of my best friends were faulting a vote of mine, they referred to me as having acquired "Bakeritis." The man after whom that condition was named called to ask me how I was feeling with my new affliction. I had just one question for him: Is "Bakeritis" fatal?

He assured me it was not, and apparently it is not. Indeed, some of the speaker's most remarkable accomplishments came after he ended his congressional career. Two in particular come to mind tonight.

The first was his extraordinary service as Chief of Staff to President Reagan. Let us be candid. Most Senators would view that position as a tremendous step down, to put it mildly, from the office of Senate majority leader. But our speaker saw things in a different light. His President needed him. And to be blunt, his country needed him in that position at that particular time. Some things were coming apart, and he was the right person, and perhaps the only person, to pull them back together again.

5 Senator Thad Cochran (R. Miss) has represented Mississippi in the United States Senate since 1978. *Id.*

His second remarkable accomplishment after leaving the Senate was to win the heart and take the hand of someone who had long since won all our hearts, Senator Nancy Kassebaum Baker.

Now, cynics may think that there is no real romance at all in official Washington. There is, indeed, but you have to know where to find it. Few would fault that it would be in the Senate of the United States.

You have to know where to find real leadership, too, the kind that subordinates ambition to achievement, and ego to the greater good. In 1980, our speaker ran for the Presidency, supported by almost all of his Republican colleagues. But it was not meant to be. A lesser individual might have nursed resentment against the man who defeated him. Instead, this man carried the banner of his triumphal rival, led his forces here in the Senate, and pulled off the Reagan Revolution of 1981.

That took more than skill. It took class. It took a lifetime of dedication to something more important than party or personal advancement. It took Howard Baker, and I am honored to present him to you tonight.

ADDRESS BY SENATOR BAKER

Thank you so much. I am grateful. What a welcome. What a pleasure it is for me to be back here in this historic place and to be among you, my friends, and in many cases former colleagues. I am overwhelmed with the absolutely outrageous introduction Senator Lott has produced for me. It was wonderful to have a chance to visit with him and with most of you before these remarks began. I would like to do more of that, and perhaps we can after this is finished. But first, I would like to make these remarks in response to the leadership's request.

I will express my thoughts on Senate leadership. Perhaps I should start by telling you that the first time I walked into the gallery of the United States Senate, it was almost sixty years ago. My great aunt Mattie Keene was then the personal secretary to the late Senator K. D. McKellar of Tennessee,⁶ and I came here to visit her in July of 1939 as a 13-year-old boy. And being the secretary to Senator McKellar, she was able to procure gallery passes, and I visited the hall of the House of Representatives and the Senate.

The Senate had only the most primitive air conditioning in those days. As a matter of fact, it was principally cooled by a system of louvers, vents and skylights that dated back to 1859, when the Senate vacated this Chamber and moved down the hall to its present home.

But in all fairness, the system didn't work very well against Washington's heat and humidity. As a consequence, Congress was not a year-round institution in those days.

Many of you who know me are now tempted to think that I am going to devote the balance of these remarks to a dissertation on the citizen legislature—a Congress that did its work and went home, rather than a perpetual Congress hermetically sealed in the capital city. But I assure you that will not be my lecture tonight. Besides, I have heard it myself so many times, I am tired of it. In that summer of

6 Senator Kenneth D. McKellar (D. Tenn.) represented Tennessee in the U.S. Senate, 1917-1953. *Id.*

1939, in any event, nature and technology offered little choice.

On that same trip in 1939, I traveled even further north—to New York, in the company of the same Aunt Mattie—to attend the New York World's Fair. And there I had my first encounter with a novel technology that would have more profound consequences than air conditioning, and it was television. It was the same K. D. McKellar, my Aunt Mattie's boss who, a mere 3 years later, would help President [Franklin D.] Roosevelt launch the Manhattan Project that would shortly usher in the nuclear age.

By the way, Senator McKellar was then chairman of the Senate Appropriations Committee, and when President Roosevelt summoned him to the White House to ask him if he could hide a billion dollars for his super top-secret national defense project, Senator McKellar said, "Well, Mr. President, of course, I can—and where in Tennessee are we going to build this plant?"

Perhaps things don't change as much as we think.

I recite all of this personal history not to remind you how old I am, but to remark on how young our country is, how true it is in America that, as William Faulkner wrote, "The past isn't dead. It isn't even the past."

The same ventilation system that Senator Jefferson Davis of Mississippi presided over the installation of in the Senate Chamber in 1859—which, by the way, was just before he left the Senate to become President of the Confederacy—was still in use when I first came here as a boy, when television and nuclear power were in their infancy.

My friends, we enter rooms that Clay and Webster and Calhoun seem only recently to have departed. We can almost smell the smoke of the fire the British kindled in what is now Senator Lott's office, burning down this building in August of 1814. Incidentally, if you smell any smoke now, I must confess that when my late father-in-law, Everett Dirksen, was in office, he told me that the fireplaces in the leader's offices didn't work because they were sealed when the air conditioning was put in. So when I was elected Republican leader, I asked the Architect of the Capitol what it would take to make these fireplaces work, and the architect said, "Well, a match, perhaps"—which was one of the few occasions when I found Senator Dirksen to be entirely wrong.

My dear friend, Jennings Randolph of West Virginia,⁷ and my good friend Ed Muskie of Maine,⁸ with whom I helped write so much of the environmental and public works legislation of the 1970s, have both passed away recently. Jennings Randolph came to Washington with Franklin Roosevelt, taking his oath of office in 1933. And he was still here when Ronald Reagan arrived in 1981. He was a walking history lesson who embodied—and gladly imparted—a half century of American history.

7 Senator Jennings Randolph (D. W. Va.) served in the United States House of Representatives, 1933-1947, and in the United States Senate, 1958-1985. *Id.*

8 Senator Edmund S. Muskie (D. Me.) represented Maine in the United States Senate, 1959-1980). *Id.*

What Makes the Senate Work

You may be wondering by now what all these ruminations have to do with the subject of Senate leadership. The answer is this: What makes the Senate work today is the same thing that made it work in the days of Clay, Webster, and Calhoun, in whose temple we gather this evening.

It isn't just the principled courage, creative compromise, and persuasive eloquence that these men brought to the leadership of the Senate—important as these qualities were in restoring the political prestige and Constitutional importance of the Senate itself in the first half of the 19th century. By the way, it is interesting to me that, at that time, an alarming number of our predecessors in the office of the Senate found the House of Representatives more attractive and more promising and left the Senate to find their careers over there.

It isn't simply an understanding of the unique role and rules of the Senate, important as that understanding is. It isn't even a devotion to the good of the country, which has inspired every Senator since 1789.

What really makes the Senate work—as our heroes knew profoundly—is an understanding of human nature, an appreciation of the hearts as well as the minds, the frailties as well as the strengths, of one's colleagues and one's constituents.

My friends, listen to Calhoun himself, speaking of his great rival Clay. He said, "I don't like Henry Clay. He is a bad man, an imposter, a creator of wicked schemes. I wouldn't speak to him. But by God, I love him."

It is almost impossible to explain that statement to most people, but most Senators understand it instinctively and perfectly.

Here, in those twenty-eight words, is the secret of leading the United States Senate. Here, in the jangle of insults redeemed at the end by the most profound appreciation and respect, is the genius and the glory of this institution.

Very often in the course of my eighteen years in the Senate, and especially in the last eight years as Republican Leader and then Majority Leader, I found myself engaged in fire-breathing, passionate debate with my fellow Senators over the great issues of the times: civil rights, Vietnam, environmental protection, Watergate, the Panama Canal, tax cuts, defense spending, the Middle East, relations with the Soviet Union, and dozens more.

But no sooner had the final word been spoken and the last vote taken than I would usually walk to the desk of my most recent antagonist, extend a hand of friendship, and solicit his [support] on the next issue for the following day.

People may think we're crazy when we do that. Or perhaps they think our debates are fraudulent to begin with, if we can put our passion aside so quickly and embrace our adversaries so readily. But we aren't crazy and we aren't frauds. This ritual is as natural as breathing here in the Senate, and it is as important as anything that happens in Washington or in the country we serve, for that matter.

It signifies that, as Lincoln said, "We are not enemies but friends. We must not be enemies." It pulls us back from the brink of rhetorical, intellectual, and even physical violence that, thank God, has only rarely disturbed the peace of the Senate.

It is what makes us America and not Bosnia. It is what makes us the most stable government on Earth, and not another civil war waiting to happen.

We are doing the business of the American people. We do it every day. We have to do it with the same people every day. And if we cannot be civil to one another, and if we stop dealing with those with whom we disagree, or that we don't like, we would soon stop functioning altogether.

Sometimes we have stopped functioning, and once we did, indeed, have a civil war. By the way, once, Representative Preston Brooks of South Carolina, who was born in Strom Thurmond's hometown of Edgefield, came into this Chamber and attacked Senator Charles Sumner of Massachusetts with a cane. It is at those times we have learned the hard way how important it is to work together, to see beyond the human frailties, the petty jealousies, even the occasionally craven motive, the fall from grace that every mortal experiences in life.

Calhoun didn't like Clay. He didn't share his politics. He didn't approve of his methods. But he loved Clay because Clay was like him, an accomplished politician, a man in the arena, a master of his trade, serving his convictions and his constituency just as Calhoun was doing.

Calhoun and Clay worked together because they knew they had to. The business of their young nation was too important—and their roles in that business was too central—to allow them the luxury of petulance.

I read recently that our late friend and colleague Barry Goldwater⁹ had proposed to his good friend, then Senator John Kennedy, that the two of them make joint campaign appearances in the 1964 Presidential campaign, debating issues one-on-one, without intervention from the press, their handlers, or anyone else.

Barry Goldwater and John Kennedy would have had trouble agreeing on the weather, but they did agree that Presidential campaigns were important, that the issues were important, and that the public's understanding of their respective positions on those issues was important.

That common commitment to the importance of public life was enough to bridge an ideological and partisan chasm that was both deep and wide. And that friendship, born here in the Senate where they were both freshmen together in 1953, would have served this Nation well, whoever might have won that election in 1964.

Barry Goldwater and I were personal friends, as well as professional colleagues and members of the same political team. Even so, I could not automatically count on Barry's support for anything. Once, when I really needed his vote and leaned on him perhaps a little too hard, he said to his Majority Leader, "Howard, you have one vote, and I have one vote, and we'll just see how this thing turns out."

It was at that moment that I formulated my theory that being leader of the Senate was like herding cats. It is trying to make ninety-nine independent souls act in concert under rules that encourage polite anarchy and embolden people who find majority rule a dubious proposition at best.

9 Senator Barry M. Goldwater (R. Ariz.) served in the United States Senate, 1953-1965 and 1969-1987, and was the Republican Party's nominee for President of the United States in 1964. *Id.*

Perhaps this is why there was no such thing as a Majority Leader in the Senate's first century and a quarter—and why it is only a traditional, rather than a statutory or constitutional, office still today.

Indeed, the only Senator with a constitutional office is the President *pro tempore*, who stands third in line of succession to the Presidency of the United States. Our friend Strom Thurmond¹⁰ has served ably in that constitutional role for most of the last 17 years, and I have no doubt that he will serve 17 more.

May I say, in Strom's case, I am reminded of an invitation I recently received to attend the dedication of a time capsule in Rugby, Tennessee, to be opened in 100 years. Unfortunately, I could not attend because of a scheduling conflict, so I wrote them that I was sorry I could not be there for the burying of the time capsule, but I assured them that I would try to be there when they dig it up.

A Baker's Dozen

My friends, these are different times than when Calhoun was Andrew Jackson's Vice President. These are different times than when Lyndon Johnson was Majority Leader in the 1950s and could wield his power to enforce party discipline with cash and committee assignments, as well as the famous "Johnson treatment."

Today, every Senator is an independent contractor, beholden to no one for fundraising, for media coverage, for policy analysis, for political standing, or anything else. I herded cats. Trent Lott and Tom Daschle¹¹ have to tame tigers. And the wonder is not that the Senate, so configured, does so little, but that it accomplishes so much.

That it does is a tribute to their talented leadership. They can herd cats. They can tame tigers. They can demonstrate the patience of Job, the wisdom of Solomon, the poise of Cary Grant, and the sincerity of Jimmy Stewart—all of which are essential to success in the difficult roles they play.

But for whatever help it may be to these and future leaders, let me now offer a few rules for Senate leadership. As it happens, they are an even Baker's Dozen:

1. Understand its limits. The leader of the Senate relies on two prerogatives, neither of which is constitutionally or statutorily guaranteed. They are the right of prior recognition under the precedent of the Senate and the conceded right to schedule the Senate's business. These, together with the reliability of his commitment and whatever power of personal persuasion one brings to the job, are all the tools a Senate leader has.

2. Have a genuine and decent respect for differing points of view. Remember that every Senator is an individual, with individual needs, ambitions, and political conditions. None was sent here to march in lockstep with his or her colleagues

¹⁰ Senator J. Strom Thurmond (D., R. S. Car.) served in the United States Senate, 1954-2003, and served as President *pro tempore* of the Senate, 1981-1987 and 1995-2001, and as President *pro tempore emeritus*, 2001-2003. *Id.*

¹¹ Senator Thomas A. Daschle (D. S. Dak.) represented South Dakota in the United States Senate, 1987-2005, and served as Senate Minority Leader, 1995-2001 and 2003-2005) and as Senate Majority Leader, 2001-2003. *Id.*

and none will. But also remember that even members of the opposition party are susceptible to persuasion and redemption on a surprising number of issues. Understanding these shifting sands is the beginning of wisdom for Senate leaders.

3. Consult as often as possible with as many Senators as possible, on as many issues as possible. This consultation should encompass not only committee chairmen, but as many members of one's party conference as possible in matters of legislation and legislative scheduling.

4. Remember that Senators are people with families. Schedule the Senate as humanely as possible, with as few all-night sessions and as much accommodation as you can manage. I confess with great sin in that category, but it is good advice for the future.

5. Choose a good staff. In the complexity of today's world, it is impossible for a Member to gather and digest all the information that is necessary for him or her to make an informed and prudent decision on major issues. Listen to your staff, but don't let them forget who works for whom.

6. Listen more often than you speak. Once again, as my late father-in-law, Everett Dirksen, once admonished me in my first year in this body, "occasionally allow yourself the luxury of an unexpressed thought."

7. Count carefully and often. The essential training of a Senate majority leader perhaps ends in the third grade, when he learns to count reliably. But 51 today may be 49 tomorrow, so keep on counting.

8. Work with the President, whoever he or she may be, whenever possible. When I became Majority Leader after the elections of 1980, I had to decide whether I would try to set a separate agenda for the Senate, with our brand new Republican majority, or try to see how our new President, with a Republican Senate, could work together as a team to enact our programs. I chose the latter course, and I believe history has proved me right. Would I have done the same with a President of the opposition party? Lyndon Johnson did with President Eisenhower, and history proved him right as well.

9. Work with the House. It is a coequal branch of government, and nothing a Senator does—except in ratifications and confirmations—is final unless the House concurs. Both my father and my step-mother served in the House, and I appreciate its special role as the sounding board of American politics. John Rhodes¹² and I established a Joint Leadership Office in 1977, and it worked very well. I commend the arrangement to others.

10. No surprises. Bob Byrd and I decided more than twenty years ago that, while we were bound to disagree on many things, one thing we would always agree on was the need to keep each other fully informed. It was an agreement we never broke—not once—in the eight years we served together as Republican and Democratic leaders in the Senate.

12 Representative John J. Rhodes (R. Ariz.) served in the United States House of Representatives, 1953-1983, and as House Minority Leader during the 93d Congress through the 96th Congress. *Id.*

11. Tell the truth, whether you have to or not. Remember that your word is your only currency; devalue it, and your effectiveness as a Senate leader is over. And always get the bad news out first.

12. Be patient. The Senate was conceived by America's founders as "the saucer into which the nation's passions are poured to cool." Let Senators have their say. Bide your time—I worked for eighteen years to get television in the Senate, and the first camera was not turned on until after I left. But patience and persistence have their shining reward. It is better to let a few important things be your legacy than to boast of a thousand bills that have no lasting significance.

13. Be civil, and encourage others to do likewise. Many of you have heard me speak of the need for greater civility in our political discourse. My friends, I have been making that speech since late into the 1960s, when America turned into an armed battleground over the issues of civil rights and Vietnam. Having seen political passion erupt into physical violence, I do not share the view of those who say that politics today are meaner or more debased than ever. But in this season of prosperity and peace—which is so rare in our national experience—it ill behooves America's leaders to invent disputes for the sake of political advantage, or to inveigh carelessly against the motives and morals of one's political adversaries. America expects better of its leaders than this, and it deserves better.

I continue in my long-held faith that politics is an honorable profession. I continue to believe that only through the political process can we deal effectively with the full range of the demands and dissents of the American people. I continue to believe that here in the United States Senate, especially, our country can expect to see the rule of the majority co-exist peacefully and constructively with the rights of the minority, which is an interesting concept.

It doesn't take Clays and Websters and Calhouns to make the Senate work. Doles and Mitchells did it. Mansfields and Scotts did it. Johnsons and Dirksens did it. Byrds and Bakers did it. Lotts and Daschles do it now and do it well. The founders didn't require a nation of supermen to make this government and this country work, but only honorable men and women laboring honestly and diligently and creatively in their public and private capacities.

It was the greatest honor of my life to serve here and to lead here. I learned much about this institution, about this country, about human nature, and about myself in the eighteen years that it was my pleasure to serve the people of the State of Tennessee.

My friends, I enjoyed some days more than others. I succeeded some days more than others. I was more civil some days than others. But the Senate, for all its frustrations and foibles and failings, is indeed the world's greatest deliberative body. And, by God, I love it.

Thank you very much.

**REMARKS DURING THE SWEARING IN OF
HOWARD H. BAKER, JR.
AS U. S. AMBASSADOR TO JAPAN (2001)¹**

*President George W. Bush
The Ambassador to Japan, Howard H. Baker, Jr.*

THE PRESIDENT: Senator Baker, you've drawn quite a crowd here to the White House. (Laughter.) Mr. Vice President, Mr. Secretary, CIA Director George Tenet, I believe is here. Justice O'Connor is here, thank you so much for coming. The Ambassador from Japan is here, thank you very much for being here, Mr. Ambassador, and your lovely wife.

Madeleine Albright,² I believe is here—Madame Secretary. Larry Eagleburger³ is here. Elizabeth Dole,⁴ I believe is here. Senator. Elizabeth, thank you very much. The former Ambassadors to the country of Japan are on the stage with us, they have been introduced. Members of the United States Senate are here. Members of the Tennessee congressional delegation are here.

Thank you all for coming, and welcome. Today, we call upon one of America's most valued statesmen to help be the keeper of one of America's most valued friendships. Howard Baker has held many titles during the course of his long and distinguished career. They include sailor, senator, Minority Leader, Majority Leader, and White House Chief of Staff.

In a few moments, he'll add "ambassador" to that list. And, once again, America is very grateful. (Applause.)

All the former ambassadors here are living examples of the very highest standards of diplomatic excellence. And between them, Mike Mansfield,⁵ Walter

1 Office of the Press Secretary, The White House, June 25, 2001, available at <http://georgew.bush-whitehouse.archives.gov/news/releases/2001/06/20010626-9.html>. The swearing-in ceremony took place in the East Room of the White House. *Id.* Baker was sworn in by Secretary of State Colin Powell.

2 Madeleine K. Albright, U. S. Secretary of State, 1997-2001. Biographies of the Secretaries of State: Madeleine Korbil Albright, Office of the Historian, U. S. Department of State, available at <http://history.state.gov/departmenthistory/people/albright-madeleine-korbil>.

3 Lawrence S. Eagleburger, U. S. Secretary of State, 1992-1993. Biographies of the Secretaries of State: Lawrence Sidney Eagleburger, Office of the Historian, U. S. Department of State, available at <http://history.state.gov/departmenthistory/people/eagleburger-lawrence-sidney>.

4 Senator Elizabeth H. Dole (R. N. Car.) represented North Carolina in the United States Senate, 2003-2009. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=D000601>.

5 Michael J. Mansfield represented Montana in the United States Senate, 1953-1977, and in the U.S. House of Representatives, 1943-1953, and served as Senate Majority Leader, 1961-1977, and as United States Ambassador to Japan, 1977-1988. *Id.* at bioguide.congress.gov/scripts/biodisplay.pl?index=M000113.

Mondale,⁶ Tom Foley,⁷ and Howard Baker have accumulated over a hundred years of elected office. (Laughter.) That's a lot of balloon drops. (Laughter.)

Thirty-four of those years are accounted for by Mike Mansfield alone. The senator began the tradition of high-level political figures serving as our Ambassador to Japan. He held that post for more than 11 years, longer than anyone else. Japanese press calls these figures "o-mono"—the big guys. (Laughter.) Well, we're all very honored to have the original big guy with us.

And by the way, Senator Thurmond,⁸ he informed me—with quite clear language—that he is four months younger than you are. (Laughter.)

We send the very best people to Japan because the United States has no more important partner in the world than Japan. Our alliance is rooted in the vital strategic and economic interests that we share. It is the cornerstone of peace and prosperity in Asia. And today this partnership is helping us tackle global problems, as well.

I'm looking forward to welcoming the Prime Minister this weekend at Camp David. Together, we will explore ways we can continue to strengthen our security relationship. We will talk about the Prime Minister's agenda for reforming and revitalizing the Japanese economy. We'll discuss how our countries can work together on realistic and effective responses to global problems such as AIDS in Africa and climate change.

I will also tell the Prime Minister that America's thirty-eighth Ambassador to Japan is a man of extraordinary ability, grace, and good humor. In every post he has held, Howard Baker has brought uncommon intelligence and an uncanny ability to calm the ship of state, even in days of crisis.

He comes from good stock. His grandmother, Lillie "Mother Ladd" Mauser⁹—(laughter)—was Tennessee's first woman sheriff. (Laughter.) His father and his step-mother both served in the House. He married into good stock, as well. He counts Senator Everett Dirksen and the grand old man of the Grand Old Party, Alf Landon,¹⁰ as fathers-in-law. And what the Prime Minister is going to find out, he took an extraordinary woman as a bride, in Senator Nancy Kassebaum Baker. (Applause.)

6 Walter F. Mondale represented Minnesota in the United States Senate, 1964-1976, and served as Vice President of the United States, 1977-1981, and as United States Ambassador to Japan, 1993-1996. Mondale was the Democratic presidential nominee in 1984. *Id.* at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000851>.

7 Thomas S. Foley represented the State of Washington in the U. S. House of Representatives, 1965-1995, and served as Speaker of the House, 1989-1995, and as United States Ambassador to Japan, 1997-2001. *Id.* at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=F000239>.

8 Senator J. Strom Thurmond (1902-2003) was the oldest person ever to serve in the United States Senate. *Id.* at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=T000254>. He represented South Carolina in the United States Senate, 1954-2003. *Id.*

9 For Lillie Ladd Mauser, see J. LEE ANNIS, JR., HOWARD BAKER: CONCIILIATOR IN AN AGE OF CRISIS, 2d ed. 4, 262-63 n.9 (2007).

10 Alfred M. Landon (1887-1987) served as governor of Kansas, 1933-1937, and was the nominee of the Republican Party for President of the United States in 1936. His daughter, Nancy Landon Kassebaum, represented Kansas in the United States Senate, 1978-1996. *Alfred M. Landon*, Kansas Historical Society, available at <http://www.kshs.org/kansapedia/alfred-m-landon/12126>. Nancy Landon Kassebaum married Senator Baker in 1996.

In the Senate, Howard Baker had a list of rules for being an effective senator. He called it the Baker's Dozen. The list included: listen more often than you speak; be patient; tell the truth, whether you have to or not; and, finally, be civil and encourage others to do the same.

Well, these rules help explain why Howard Baker has made such a mark on American history. They are why he's going to keep making his mark for the years to come. Congratulations.

AMBASSADOR BAKER: Thank you, sir. (Applause.)

(Ambassador-designate Baker was sworn in.) (Applause.)

AMBASSADOR BAKER: Mr. President, Secretary Powell,¹¹ Ambassadors, my former colleagues in the Senate, in the House of Representatives, ladies and gentlemen, this is truly an overwhelming experience, and I am grateful. I am happy to be here, Mr. President, to speak for this country and to speak for you in Japan.

I have conferred with you, with the Secretary of Defense, the Secretary of State, the Vice President, many others in your Cabinet and this government, [and] many in the Congress. I understand my responsibility, and I will discharge it.

I understand, as well, that there is a special, unique relationship that exists between the United States and Japan. It is remarkable, indeed, that given our history and relationship, that Japan and the United States would develop this strong bond, this mutuality of respect, this shared common view of the necessity for peace in the world.

My friend, Mike Mansfield, and one of my predecessors in this office, was fond of saying the bilateral relationship between the United States and Japan is the most important bilateral relationship in the world, bar none. And I always wondered, Mr. Ambassador, how "bar none" got translated into Japanese. (Laughter.)

But Mike Mansfield, I agree with you, it is indeed the most important bilateral relationship, at least in my life and in my career, and it will continue to be. It is the cornerstone of our policy, not only in Japan but in Asia, as well, and throughout the world.

Mr. President, I am grateful to you for giving us this opportunity. I am grateful to you, Secretary Powell, for giving me the chance to serve with you once again. I am glad for all of those who helped us navigate the rocks and shoals of confirmation, of filling out 86 pages of forms—(laughter)—of transiting the requirements of the Office of Government Ethics—(laughter)—of the survival of our marriage—(laughter). More than once, Nancy would point out to me or I would point out to her, this too will pass. (Laughter.)

But, my friends, I could not do this without Nancy at my side, and together we will be a partnership to speak for this nation, to make our contribution to that relationship and to the peace of the world. Mr. President, I thank you, sir. (Applause.)

11 Colin L. Powell, U.S. Secretary of State, 2001-2005. Biographies of the Secretaries of State: Colin L. Powell, Office of the Historian, U.S. Department of State, available at <http://history.state.gov/departmenthistory/people/powell-colin-luther>.

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