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Public Law 93-512
93rd Congress, S. 1064
December 5, 1974

An Act

88 STAT. 1609

To improve judicial machinery by amending title 28, United States Code, to broaden and clarify the grounds for judicial disqualification.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 455 of title 28, United States Code, is amended to read as follows:

Judicial dis-
qualification.

“§ 455. Disqualification of justice, judge, magistrate, or referee in bankruptcy

“(a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

“(b) He shall also disqualify himself in the following circumstances:

“(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

“(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

“(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

“(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

“(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

“(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

“(ii) Is acting as a lawyer in the proceeding;

“(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

“(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

“(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

“(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

“(1) ‘proceeding’ includes pretrial, trial, appellate review, or other stages of litigation;

“(2) the degree of relationship is calculated according to the civil law system;

“(3) ‘fiduciary’ includes such relationships as executor, administrator, trustee, and guardian;



"(4) 'financial interest' means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

"(i) Ownership in a mutual or common investment fund that holds securities is not a 'financial interest' in such securities unless the judge participates in the management of the fund;

"(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a 'financial interest' in securities held by the organization;

"(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a 'financial interest' in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

"(iv) Ownership of government securities is a 'financial interest' in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

"(e) No justice, judge, magistrate, or referee in bankruptcy shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification."

SEC. 2. Item 455 in the analysis of chapter 21 of such title 28 is amended to read as follows: "Disqualification of justice, judge, magistrate, or referee in bankruptcy."

SEC. 3. This Act shall not apply to the trial of any proceeding commenced prior to the date of this Act, nor to appellate review of any proceeding which was fully submitted to the reviewing court prior to the date of this Act.

Approved December 5, 1974.

Waiver of
disqualifi-
cation.

Nonapplicabil-
ity.
28 USC 455
note.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1453 (Comm. on the Judiciary).

SENATE REPORT No. 93-419 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 119 (1973): Oct. 4, considered and passed Senate.

Vol. 120 (1974): Nov. 18, considered and passed House, amended.

Nov. 21, Senate concurred in House amendments.

THE WHITE HOUSE
WASHINGTON

Previous
attached



Scheduling office
may have list
Do not have a list.

June 3, 1975

MEMORANDUM TO: WARREN RUSTAND

FROM: SUSAN PORTER

In our last staff meeting, Mrs. Ford again mentioned the possibility of a dinner for the Supreme Court and the Judiciary. I conveyed to her at the time that this was very much on the minds of the West Side. However, I did want to pass along to you her continuing, particular interest in this.

Thank you.

c: ✓ Philip Buchen



*Just
Cancelled*

Wednesday 9/18/74

DINNER
10/18/74
8 p. m.

9:05 Lucy Winchester called to ask if we had come up with a guest list for their dinner on October 18th for the members of the Federal Judiciary and spouses.

Jay and I were discussing this -- and he feels that we should talk about the timing of this type of dinner in view of all the Watergate cases that are pending before the various courts.

*Have had this
deferred through
conversations with
Lucy & Warren
9/18/74*



THE WHITE HOUSE

WASHINGTON

September 10, 1974

MEMORANDUM FOR PHILLIP W. BUCHEN

FROM: LUCY WINCHESTER L.W.

SUBJECT: Guest list for October 18, 1974 Dinner

A black tie dinner has been scheduled for 8:00 p.m. on Friday evening October 18, 1974 for the members of the Federal Judiciary and spouses. I think that you should be responsible for this guest list. If possible we would like to have your guest list to submit for Mrs. Ford's approval by Wednesday, September 18, 1974.

It should include the following information:

1. Correct marital status
2. Correct title and place of business
3. Current home address and phone number (include area code)
4. Current business address and phone number (include area code)

The State Dining Room can seat 120 persons.

Thank you for any further guidance you might be able to provide.

cc: Warren Rustand



THE WHITE HOUSE
WASHINGTON

August 29, 1975

*Engel,
Albert J.
Aug 1*

Dear Al:

Your letter enclosing a picture taken of the President and Judge Phillips during the Sixth Circuit Conference on Mackinac has been received.

I shall be glad to have the picture put on a mat, and, at the next opportunity I have, I shall ask the President to inscribe an appropriate message over his signature.

All of us from the White House who attended the Conference truly enjoyed the experience, and it was especially delightful for me to be once more among my old friends from Michigan.

Best personal regards.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Albert J. Engel
U. S. Circuit Judge
United States Court of Appeals
for the Sixth Circuit
Federal Building
Grand Rapids, Michigan 49501



THE WHITE HOUSE
WASHINGTON

October 6, 1975

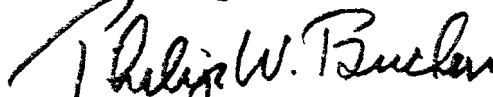
Dear Judge Allen:

Your thoughtful letter to the President is much appreciated. However, in order for your views to be presented in a manner most helpful to the Administration, it is desirable for you to discuss them with people from the Department of Justice.

Therefore, I have requested that Deputy Attorney General Tyler be available to meet with you at your convenience. You may contact him at his office (202-739-2101) and he will arrange for a meeting that will also include Norman Carlson, Director of the Federal Bureau of Prisons, and Maurice Sigler, Chairman of the U. S. Board of Parole.

Thank you very much for your interest.

Sincerely,



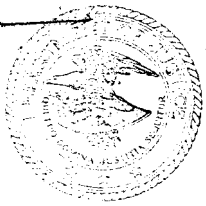
Philip W. Buchen
Counsel to the President

The Honorable T. M. Allen
Judge
Superior Courts
Stone Mountain Judicial Circuit
Decatur, Georgia 30030

cc: The Honorable Harold Tyler



*Allen,
T. M.
(Judge)*



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

September 30, 1975

MEMORANDUM FOR

Mr. Philip W. Buchen
Counsel to the President
The White House

I have reviewed your memorandum of September 22 and the letter from Judge T. M. Allen of Decatur, Georgia.

I would be happy to meet with Judge Allen at his convenience. In view of the subject matter, I'll ask Norman Carlson, Director of the Federal Bureau of Prisons, and Maurice Sigler, Chairman of the U. S. Board of Parole to join me.

Please have Judge Allen contact my office (202/739-2101) if he would like to discuss his proposal with us.

A handwritten signature in dark ink, reading "Harold R. Tyler, Jr.", is positioned above the typed name.

Harold R. Tyler, Jr.
Deputy Attorney General



11/10/10 11/10/10

THE WHITE HOUSE
WASHINGTON
September 22, 1975

MEMORANDUM FOR

The Honorable Harold Tyler
Deputy Attorney General
Department of Justice

Attached is a copy of a letter from Judge T. M. Allen of the Superior Courts of Georgia who requests a meeting with the President in order to discuss a government-sponsored nationwide approach to correction problems.

I would appreciate your suggesting with whom the Judge should be invited to meet concerning this matter, so that we can decline his request by suggesting an alternative meeting.

T.W.B.
Philip W. Buchen
Counsel to the President

cc: Warren Rustand

Attachment



THE WHITE HOUSE

WASHINGTON

Date September 19, 1975

MEMORANDUM FOR: MR. BUCHIN

FROM: WARREN S. RUSTAND

SUBJECT: Judge T. M. Allen requests audience with President in order to discuss his plan for prison reform.

The attached is for your appropriate handling.

Thank you.



15
Audience

STATE OF GEORGIA
SUPERIOR COURTS OF THE STONE MOUNTAIN JUDICIAL CIRCUIT
DECATUR, GEORGIA 30030

DEKALB AND ROCKDALE
COUNTIES

JUDGE TOM M. ALLEN

September 15, 1975

Mr. Gerald R. Ford
President of the United States
White House
Washington, D. C.

Dear Mr. President:

The pressing problems of energy, peace in the Middle East, and the future of our nation in world affairs, occupies a great deal of your time and clogs the congressional wheels. I realize the press of your work and do not wish to take up much of your time. However, there is a present and more dangerous problem confronting the people of the United States that can be delayed no longer without serious consequences to the public and to the government. The problem is crime and the overcrowding of our prisons.

Florida, last year, had no room in their prison system and refused to take new offenders from the courts. Dr. Allen Ault, our Director of Offender Rehabilitation, has been forced to do the same thing this past month.

Georgia has over ten thousand persons in prison and perhaps several thousand awaiting confinement in local county jails over the state. Crime has not stopped, nor have judges ceased committing persons to prison. The inevitable question is now upon us and all other states - what do we do?

All of our records and the national records show us clearly that approximately eighty five percent of our major crimes are committed by recidivists and that the success rate of all prison systems collectively is very poor. Only thirty percent of those we put into prison do not come back.

576 Mr. Bucher to handle

ACTION
T/D
SCHEDULE NO.
DATE RECEIVED
SEP 18 1975
MESSAGE
SPEAKERS BUREAU
OTHER
APPOINTMENT OFFICE



STATE OF GEORGIA
SUPERIOR COURTS OF THE STONE MOUNTAIN JUDICIAL CIRCUIT
DECATUR, GEORGIA 30030

JUDGE TOM M. ALLEN

DEKALB AND ROCKDALE
COUNTIES

Page 2 - Mr. Gerald R. Ford September 15, 1975

I am not a penologist, nor a psychologist, and have no training in that line, but, as Superior Court Judge, I have made-it my business to study every program in our system and to watch it in operation.

The conclusion I have reached is one based on a common-sense approach to the overall system.

The system does not work and will never work because there is no basic philosophy in corrections accepted by the public and government.

Prison cannot be only "PUNISHMENT" or only "REHABILITATION." In fact, there is no such thing, in reality, as rehabilitation. If there were, the recidivism rate in the United States would not be seventy percent.

A program was begun in Georgia a little over three years ago called "Youthful Offender Program," which now enjoys a recidivist rate of only seven percent. This program allowed me to conceive a new type of prison system, and during the past year Dr. Ault and I have discussed the matter at great length. He believes that what I have developed is a sound approach to our mutual problem. I might state that I am a member of the Liaison Committee of the Council of Superior Court Judges for the State and the Department of Offender Rehabilitation. It was through this committee that Dr. Ault and I began our discussions and work.

Last fall I assisted the Department of Offender Rehabilitation in drafting new legislation entitled "The Adult Offender Act of 1975," which was an extension of the Youthful Offender Program, and which was also endorsed by our Governor George Busbee and



STATE OF GEORGIA
SUPERIOR COURTS OF THE STONE MOUNTAIN JUDICIAL CIRCUIT
DECATUR, GEORGIA 30030

JUDGE TOM M. ALLEN

DEKALB AND ROCKDALE
COUNTIES

Page 3 - Mr. Gerald R. Ford September 15, 1975

passed into law by the Legislature. The governor had appointed a committee to study this problem last year, and their report and my plan were almost identical, although neither knew of the other's work.

Now I am preparing an outline of the prison system, which Dr. Ault has endorsed, to present to the governor. We hope that our state will be able to create such a prison which will be a model for the nation.

This brings me to the reason for this letter. Knowing your busy schedule, I would still like to have an appointment to speak to you personally about this program so as to enlist your support for a possible government sponsored nation wide approach to corrections.

As I mentioned in one of my other letters to you concerning the Family Court (knowing the functions of your aides in Washington, I doubt if you ever saw the letter) I am one of the only four Republican trial judges in the state. We both know that 1976 will be a trying time for the Republican Party, and unless you can offer a new hope for old problems, you may not be elected. I, of course, would like to see you elected, and especially a successful election year for the Republican Party.

I would like for this program to be a Republican Program, conceived, sponsored and executed by those in the Republican Party, in order to show the nation that we are vitally concerned with the problems on our home front.

It is my belief that if you find this theory of penal reform acceptable and sound, it can be of greater importance to the economy of our nation than the oil crisis.



STATE OF GEORGIA
SUPERIOR COURTS OF THE STONE MOUNTAIN JUDICIAL CIRCUIT
DECATUR, GEORGIA 30030

JUDGE TOM M. ALLEN

DEKALB AND ROCKDALE
COUNTIES

Page 4 - Mr. Gerald R. Ford September 15, 1975

If you would be gracious enough to allow me one hour of your time, I will fly to Washington at your convenience so that the entire philosophy can be given you.

Believe me, Mr. President, I do not advocate any ultraliberal social reform nor a policy inconsistent with the emotions of the public. I believe that the physical structure and operation of our system, including the federal prisons, perpetuates the criminal problem, and to this end my work attempts to solve that problem.

I await your reply and the granting of an appointment.

Sincerely yours,



T. M. Allen
Judge, Superior Courts
Stone Mountain Judicial Circuit

TMA:ls



THE WHITE HOUSE
WASHINGTON

*Allen
Judge Tom*

Date: May 6, 1975

MEMORANDUM FOR: Mr. Buchen
FROM: WARREN RUSTAND
SUBJECT: Judge Tom Allen, Superior Court of Georgia
re: equal application of laws between states
concerning domestic matters.

The attached is for your appropriate handling.

Thank you.



STATE OF GEORGIA

SUPERIOR COURTS OF THE STONE MOUNTAIN JUDICIAL CIRCUIT

DECATUR, GEORGIA 30030

JUDGE TOM M. ALLEN

DEKALB AND ROCKDALE
COUNTIES

Page 2.

April 28, 1975

our citizens receive the finest and highest equality of treatment under the law of any nation on earth.

Congress is already aware of the courts problem confronting mothers and children by errant fathers moving from state to state and has attempted to enact legislation to cope with this problem which I believe does more damage than good.

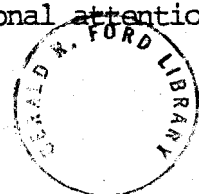
I would suggest that as President of the United States, it would be proper for you to ask the Congress for legislation amending the 14th Amendment to provide that in the area of domestic and family law that no state shall deny equal application of the laws thereby paving the way for a Uniform Court of Family Relations among the fifty states so that every citizen would know that he may receive the highest form of justice than presently known.

The State of Hawaii has one of the finest Family Courts and it is by using that Court as a pattern that I shall attempt to present to the Family Law Section of the American Bar a Model Family Court Act with a complete revision of all of the substantive laws tailored in such a manner that they could be applicable through all the fifty states and to achieve a higher degree of uniformity without resorting to the Federal Court process.

It must be remembered that we are the only nation with fifty different sets of laws governing a single peoples and only with a Constitutional Amendment will we be able to stabilize the family unit and reinstate it as the foundation cement of our society and culture.

I believe this can be done among the states without resorting to Federal control if the states are given a constitutional mandate to create such uniformity.

Mr. President, I do not advocate Federal control under this area of law but since our constitution is framed to protect the rights of its citizens, I firmly believe that the time in our history is upon us when the family itself could be recognized as the strength of our heritage in our society and given constitutional attention



STATE OF GEORGIA
SUPERIOR COURTS OF THE STONE MOUNTAIN JUDICIAL CIRCUIT
DECATUR, GEORGIA 30030

JUDGE TOM M. ALLEN

DEKALB AND ROCKDALE
COUNTIES

Page 3.

April 28, 1975

and protection. The purpose of this letter is to establish contact with your office with an attempt to obtain your opinion and I am forwarding a copy to Senator Herman Talmadge, Senator Sam Nunn and the Representative from my District, Representative Elliott Levitas.

If the idea appeals to you, I would appreciate your comment and would be honored to fully discuss the proposal and the proposed amendment and changes in the law with you in person at your pleasure.

I respectfully remain,

Yours truly,


Tom M. Allen
Judge

TMA:ls

cc:

Senator Herman Talmadge

Senator Sam Nunn

Representative Elliott Levitas

Mr. Harry X. Cole, Chairman

Family Law Section

American Bar Association



THE WHITE HOUSE
WASHINGTON

August 6, 1976

*Judiciary
Dinner
11/24/75*

Dear Warren:

Enclosed is a photograph of some exceedingly joyful men taken by the White House photographer. Only the Englishman seems a bit dour.

I hope you'll find it to be a delightful reminder of your evening at the British Embassy.

Also, I enclose another photo taken at the President's dinner in honor of the Judiciary.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Warren E. Burger
Chief Justice
United States Supreme Court
1 First Street, NE.
Washington, D.C. 20543

Enclosures



24NO75 A7426-19

THE WHITE HOUSE
WASHINGTON

February 25, 1976

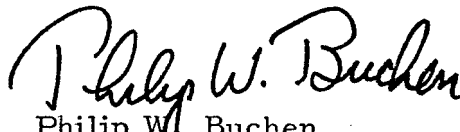
Dear Judge Reilly:

Many thanks for your letter of February 22nd on the subject of the Mayor's Veto of D. C. Council Bill No. 1-137.

I did find, after you called, that we were aware of the problem which you had raised in your letter, and of course are giving it the serious weight which it deserves.

Your interest and concern are appreciated.

Sincerely,


Philip W. Buchen
Counsel to the President

The Honorable Gerard D. Reilly
Chief Judge
District of Columbia Court of Appeals
Washington, D. C.



THE WHITE HOUSE
WASHINGTON

December 2, 1975

Dear Stu:

Many thanks for your helpful letter concerning George E. Hill as one deserving of appointment to the National Transportation Safety Board.

I am urging the Director of the Presidential Appointments Office to give careful consideration to your endorsement.

Very warmest personal regards.

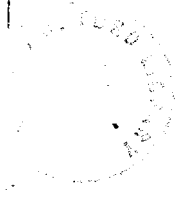
Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Stuart Hoffius
Circuit Judge
State of Michigan
Seventeenth Judicial Circuit
Grand Rapids, Michigan

*Hoffius
George
(Judge)*



THE WHITE HOUSE

WASHINGTON

December 2, 1975

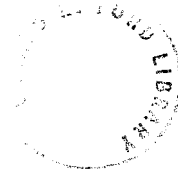
MEMORANDUM FOR: DOUGLAS BENNETT

FROM: PHIL BUCHEN *P.*

Attached is correspondence from Judge Stuart Hoffius of Grand Rapids in which he endorses George Hill as a member of the National Transportation Safety Board.

Judge Hoffius is a good friend of the President and mine and I respect his judgment very highly.

Attachment



STATE OF MICHIGAN
SEVENTEENTH JUDICIAL CIRCUIT
GRAND RAPIDS

STUART HOFFIUS
CIRCUIT JUDGE

November 25, 1975

Philip W. Buchen, Esquire
Office of the President
The White House
1600 Pennsylvania Avenue
Washington, D. C. 20500

Re: Appointment of George E. Hill to the National Transportation Safety Board

Dear Phil:

I have recently written to the Presidential Personnel Office endorsing the appointment of George E. Hill as a Democratic member of the National Transportation Safety Board on which a vacancy will occur December 1, 1975. I understand the current appointee does not seek reappointment.

You may recall that Mr. Hill was United States District Attorney here for many years having served as Prosecuting Attorney, Chairman of the Michigan Public Service Commission, and District Judge in Marquette. I enclose a biography of his experience and qualifications.

I feel Mr. Hill is well-qualified for this position and exemplifies the type of philosophy in government which is completely compatible with the views of the President and would hope that his application would receive favorable consideration from the White House.

Yours most sincerely,



STUART HOFFIUS
Circuit Judge

SH:vli

Enclosure

*P.S. Best to you & Bunny -
SH.*

United States Court of Appeals
for the Third Circuit
United States Courthouse
Philadelphia, Pa. 19106

Arlin M. Adams
Circuit Judge

November 12, 1975

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchen:

The American Judicature Society
is so very pleased to receive your acceptance of
the invitation to participate at the luncheon meet-
ing on Saturday, February 14, 1976.

As you so kindly suggest, I shall be
pleased to meet with you before the meeting and dis-
cuss the plans for the occasion.

Thank you very much for your acceptance.

Sincerely yours,

Arlin M. Adams

Arlin M. Adams



*Ans accepted
2/14/76
Adams,
Arlin
(Judge)*

THE WHITE HOUSE
WASHINGTON

November 11, 1975

*Adams,
Arlin
(Judge)*

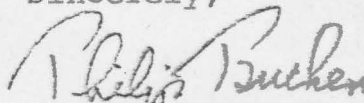
Dear Judge Adams:

It is indeed an honor for me to be invited by you to participate in the luncheon meeting of the American Judicature Society on Saturday, February 14, 1976.

I am happy to accept your invitation and in the event you should be coming to Washington before the scheduled event, I would like very much to meet with you to go over the plans and the nature of my remarks.

I look forward to seeing you whenever it is convenient.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Arlin M. Adams
Circuit Judge
United States Court of Appeals
for the Third Circuit
United States Courthouse
Philadelphia, Pennsylvania 19106



Feb. 1976



THE
FIDELITY
BANK

BRIDGE PLAZA, 100 N. 1ST STREET
PHILADELPHIA, PENNA. 19107
TELEPHONE 312-445-4111

November 5, 1975

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

Dear Phil:

I understand that Judge Arlin Adams has extended an invitation to you to address a meeting of the American Judicature Society in February of 1976.

I hope your calendar is such that you can accept. It would be of importance to the Administration, to the Bar, and our judicial system.

In addition, it would be great to have you in Philadelphia once more and also Arlin Adams is one of our very best Judges, one of our very best citizens, and a close personal friend.

Warm regards always,

Sincerely,

FCPMcG hm



2/14/76

United States Court of Appeals
for the Third Circuit
United States Courthouse
Philadelphia, Pa. 19106

Arlin M. Adams
Circuit Judge

October 29, 1975

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Buchen:

The mid-winter meeting of the American Bar Association and the American Judicature Society will be held in Philadelphia in February, 1976. The American Judicature Society always sponsors a luncheon meeting in this regard, and this year the time scheduled for this event is Saturday, February 14, 1976.

Since the focus of the American Judicature Society is on how citizens can contribute to the improvement of our judicial process, and since the present administration strongly shares this concern, we believe that remarks by you on this occasion would be particularly timely.

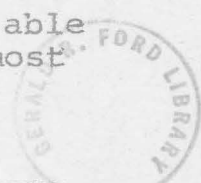
I should be very pleased to call upon you in Washington to discuss this matter further if you wish and if your schedule permits.

We are most hopeful that you will be able to accept this invitation and we look forward most enthusiastically to your affirmative response.

Sincerely yours,

Arlin M. Adams

Arlin M. Adams



THE WHITE HOUSE

WASHINGTON

November 3, 1975

Dear Judge MacBride:

As promised, enclosed is a copy of the Law Review article I mentioned concerning the appearance of Presidents and Ex-Presidents as Witnesses.

It was my pleasure to meet you on Saturday. I am sure you are as gratified as I am that the taking of the President's deposition went smoothly.

With best wishes.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Thomas J. MacBride
Judge
District Court of the United States
for the Eastern District of California
Sacramento, California

Enclosure

*MacBride
Thom. J.
(Judge)*



UNIVERSITY OF ILLINOIS LAW FORUM
VOLUME 1975 - No. 1

PRESIDENTS AND EX-PRESIDENTS
AS WITNESSES: A BRIEF
HISTORICAL FOOTNOTE

*Ronald D. Rotunda**

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

October 7, 1975

*Mc Allister,
Thom,
(F.
Gady)*

Dear Judge McAllister:

Unfortunately, our office was only able to come up with five copies of the "Weekly Compilation of Presidential Documents."

I hope these will help to meet some of your needs.

Sincerely,

Eva Daughtrey
Secretary to
Philip Buchen

The Honorable Thomas F. McAllister
Judge
United States Court of Appeals
for the Sixth Circuit
Grand Rapids, Michigan 49502

Enclosures



THE WHITE HOUSE
WASHINGTON

October 6, 1975

*Mc Allister,
Thoms. F.
(Judge)*

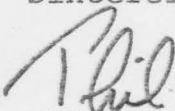
Dear Tom:

Your letter relieved me of some concern about whether my message to you about meeting with Ambassador Rush had either come too late or had not reached you at all. I am delighted that you were able to have such a fruitful meeting with him and Mrs. Rush.

We shall indeed be glad to honor your request for more copies of the July 21 issue of "Weekly Compilation of Presidential Documents."

Bunny is looking forward to seeing you and Dorothy this week when she is in Grand Rapids. I am only sorry I cannot be there with her and you.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Thomas F. McAllister
Judge
United States Court of Appeals
for the Sixth Circuit
Grand Rapids, Michigan 49502



Paris

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

Sept 26 75

CHAMBERS OF
THOMAS F. McALLISTER
UNITED STATES CIRCUIT JUDGE

GRAND RAPIDS, MICHIGAN 49502

Dear Phil,

We were deeply
honored to receive the
transatlantic telephone call
to ask us to make
arrangements to see
Ambassador Rush - and
last night we had the
great pleasure of being
with him and Mrs Rush,
and discussing France
and its people, a subject
dear to our hearts - &

was an occasion of moment
- to Dorothy and me - and
only another instance of
your friendship and



the views of all the French
people. If it were not for
France, my life would have
lacked as much of the
color and incident that go
to make up happiness.

Just before I received the
telephone call from your
office, I had before me
the "Weekly Compilation of
Presidential Documents -

Monday, July 21, 1975" and
because of the press of time,
I brought it with me to
France, to answer it and
thank you for sending it
to me — and now,
ungraciously enough, I
express the hope, that your
secretary might send me

generosity. I have known all
the Ambassadors of the United
States to France since World
War I, with a few exceptions,
but have rarely had a
tete-a-tete meeting with them.
Nearly all my French friends
now were most active members
of the Resistance. Many are
close friends of General
de Gaulle, while others,
whom we are to be with
at a little town outside
Paris, next Sunday, were
admirers of Marshall
Petain. So all of these
with the remaining members
of World War I, give me
the general, as well as
the distinct impression of

six more copies, if they are
still available. Members of
my family ~~rest~~ ^{here} in my
self advertised attitude of
being of consequence.

Next week, I make a
pilgrimage to Urdun,
which I have done so many
times before.

Again, dear Phil, I thank
you for your over generous
remembrance of me on so
many occasions - and
Dorothy and I send our
love to Bunny and you

Yours
Tom

THE WHITE HOUSE
WASHINGTON

August 20, 1976

NOTE FOR: Phil Buchen

FROM: Ken Lazarus

I assume you have seen this.



Adams.
Arline

THE WHITE HOUSE
WASHINGTON

Phil

Enclosed are copies of
the statute and a DoD
opinion respecting the
Appointment of Judge
Allen Adams to the U.W.
Delegation this Fall.

Nino did not write the
opinion and when Bill
Seranton spoke with
Nino, he indicated that
he was not in full
agreement with the
thoughts of one of his
subordinates. Hence
Adams called the Chief
Justice and the head
of the ABA Section on
Ethics.

Adams is waiting for
word from us.

Doug



Robin

Department of Justice

Washington, D.C. 20530

AUG 5 1976

MEMORANDUM FOR THE HONORABLE KENNETH A. LAZARUS
Associate Counsel to the President

Re: Appointment of a Federal Judge
to the U.N. Delegation

This is in response to your inquiry relating to the appointment of a Judge of the U.S. Court of Appeals 1/ to be a Representative of the United States to the General Assembly of the United Nations.

Section 2(c) of the United Nations Participation Act of 1945, 22 U.S.C. 287(c), provides that the President shall appoint by and with the advice and consent of the Senate not to exceed five representatives of the United States to attend a specified session or sessions of the General Assembly of the United Nations. Pursuant to section 3 of the Act, 22 U.S.C. 287(a), those representatives "act in accordance with instructions of the President transmitted by the Secretary of State."

Even though the Constitution does not contain for judges any express prohibition from simultaneous service in the Executive Branch similar to that established for Congressmen under Article I, Sec. 6, Clause 2, I would nonetheless advise, if this were a matter of first impression, that an appointment of the sort suggested would be inconsistent with the constitutional doctrines of separation of powers and independence of the judiciary. However, in addition to the absence of any explicit prohibition there is a constitutional practice of appointing federal judges to temporary office in the Executive Branch which goes back to the diplomatic service rendered by Chief Justices John Jay and Ellsworth during the Administrations of Presidents Washington and John Adams. The last instance was the appointment of District Judge Boldt to

1/ We have been informally advised that the judge in question is in active service.

U.S. DEPARTMENT OF JUSTICE

RECEIVED
AUG 10 1976

the position of Chairman of the Pay Board in 1971. 2/ Because of this long standing practice, and the absence of any explicit constitutional text, I think it cannot be maintained that such an appointment would be unconstitutional.

During this century, however, it has been asserted with increasing frequency that, while the practice of appointing judges to temporary positions in the Executive Branch may have been justified by the conditions prevailing during the early years of the Republic, "the propriety of the practice should be examined anew if the integrity of the judiciary in American life is to be preserved." S. Exec. Rept. No. 7, supra. That report cites the following undesirable aspects of such appointments:

"(1) Reward may be conferred or expected in the form of elevation to a higher judicial post.

"(2) The judicial and Executive functions may be improperly merged.

"(3) The absence of the judge from his regular duties increases the work load of the other judges of the Court, if any, and may result in an impairment of judicial efficiency in the disposition of cases.

"(4) Nonjudicial activities may produce dissension or criticism and may be destructive of the prestige and respect of the federal judiciary.

"(5) A judge, upon resumption of his regular duties, may be called upon to justify or defend his activities under an Executive commission." 3/

2/ For other instances see, e.g., 40 Op. A.G. 423 (1945); S. Exec. Rept. No. 7, 80th Cong., 1st Sess., reprinted in 33 A.B.A.J. 792 (1947); Mason, Harlan Fiske Stone, 704 fn.

3/ For Chief Justice Stone's rejection of President Franklin D. Roosevelt's offer to serve on a commission to study the rubber supply during World War II, and for his attitude on Justice Jackson's service on the Nuremberg Tribunal, see Mason, op. cit., pp. 709-720.

In 1958 Chief Justice Warren, in a letter addressed to Congressman Keating, commented adversely on a proposal to have a Justice of the Supreme Court serve on a commission to determine presidential disability:

"MY DEAR MR. CONGRESSMAN: During the time the subject of inability of a President to discharge the duties of his office has been under discussion, the members of the Court have discussed generally, but without reference to any particular bill, the proposal that a member or members of the Court be included in the membership of a Commission to determine the fact of Presidential inability to act.

"It has been the belief of all of us that because of the separation of powers in our Government, the nature of the judicial process, the possibility of a controversy of this character coming to the Court, and the danger of disqualification which might result in lack of a quorum, it would be inadvisable for any member of the Court to serve on such a Commission.

"I realize that Congress is confronted with a very difficult problem, and if it were only a matter of personal willingness to serve that anyone in the Government, if requested to do so, should make himself available for service. However, I do believe that the reasons above mentioned for nonparticipation of the Court are insurmountable." 4/

This trend culminated in 1973 in the approval by the Judicial Conference of the United States of Canon 5G of the Code of Judicial Conduct of United States Judges:

4/ Presidential Disability, Hearings before the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, 85th Cong., 2d Sess., p. 14.

Nevertheless, Chief Justice Warren accepted the position of Chairman of the Commission to investigate the assassination of President Kennedy.

"G. Extra-judicial appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

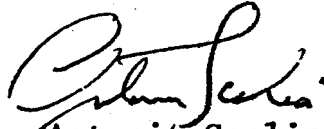
"Commentary

"Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary."

Since the duties of the United States Representative to the General Assembly of the United Nations are not of a historical, educational, or cultural nature, Canon 5G precludes a federal judge on active duty from accepting that position. It is far from clear what sanctions are available for violation of the Judicial Conference's Canons. Some judges have openly refused to comply with those portions which relate to required financial disclosure -- with apparent impunity except for publication of their names by (I believe) the Administrative Office of the United States Courts. Nonetheless, it does seem inadvisable to place the President in the position of prompting action which is in violation of the Canons.

Finally, I wish to recall the fact that the Executive Branch has taken a rather firm stand of late on various

matters bearing upon the principle of separation of powers. I refer in particular to our opposition to disapproval of Executive action by one-house or concurrent resolutions, and congressional participation in the appointment of Executive officers. It would invite attack to combine such a pristine view of separation vis-à-vis the Congress with a latitudinarian stance insofar as the courts are concerned.

A handwritten signature in dark ink, appearing to read "Antonin Scalia". The signature is fluid and cursive, with a large initial "A" and a stylized "S".

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE

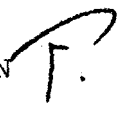
WASHINGTON

August 18, 1976

MEMORANDUM FOR:

DOUGLAS BENNETT

FROM:

PHIL BUCHEN 

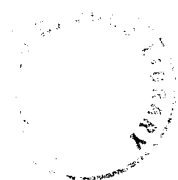
SUBJECT:

Judge Arlin Adams to be
Appointed a Member of the
U. S. Delegation to the
UN General Assembly

At your request, I talked to Judge Arlin Adams on August 17. I gave him the citations from U.S.C. Sec. 287(c) and Sec. 287a. I told him that I thought we could also get a letter from Ambassador Scranton to the effect that the position of Judge Adams on the delegation would not concern him with issues of fact or policy.

Judge Adams said he would talk to Judge Tuttle in Atlanta and let me know the result. Judge Tuttle apparently has some responsibility for interpreting and enforcing the canons of the Judicial Conference of the U. S.

cc: Ken Lazarus



to the Treasury as miscellaneous receipts. July 15, 1946, c. 577, § 2, 60 Stat. 535.

Library references: United States 91: C.J.S. United States § 126.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in the text, is classified to sections 743, 752-754b, 757, 757b-758, 760, 764-766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Codification. Section was not enacted as a part of the "Eretton Woods Agreements Act" which constitutes sections 256 to 256k—1 of this title.

UNITED NATIONS ORGANIZATION

§ 287. Representation in Organization—Appointment of principal and deputy representatives; rank, status and tenure; duties

(a) The President, by and with the advice and consent of the Senate, shall appoint a representative and a deputy representative of the United States to the United Nations, both of whom shall have the rank and status of envoy extraordinary and ambassador plenipotentiary and shall hold office at the pleasure of the President. Such representative and deputy representative shall represent the United States in the Security Council of the United Nations and may serve ex officio as United States representative on any organ, commission, or other body of the United Nations other than specialized agencies of the United Nations, and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may from time to time direct.

Appointment of additional deputy representative; tenure; duties

(b) The President, by and with the advice and consent of the Senate, shall appoint an additional deputy representative of the United States to the Security Council who shall hold office at the pleasure of the President. Such deputy representative shall represent the United States in the Security Council of the United Nations in the event of the absence or disability of both the representative and the deputy representative of the United States to the United Nations.

**Appointment of special and alternate representatives;
number; senior representative; duties**

(c) The President, by and with the advice and consent of the Senate, shall designate from time to time to attend a specified session or specified sessions of the General Assembly of the United Nations not to exceed five representatives of the United States and such number of alternates as he may determine consistent with the rules of

cedure of the General Assembly. One of the representatives shall be designated as the senior representative.

**Additional appointees; conditions governing certain appointments;
designation of certain State Department officers
to sit on Security Council**

(d) The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in the organs and agencies of the United Nations, but the representative of the United States in the Economic and Social Council and in the Trusteeship Council of the United Nations shall be appointed only by and with the advice and consent of the Senate, except that the President may, without the advice and consent of the Senate, designate any officer of the United States to act, without additional compensation, as the representative of the United States in either such Council (A) at any specified session thereof where the position is vacant or in the absence or disability of the regular representative, or (B) in connection with a specified subject matter at any specified session of either such Council in lieu of the regular representative. The President may designate any officer of the Department of State, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States in the Security Council of the United Nations in the absence or disability of the representative and deputy representatives appointed under subsections (a) and (b) of this section or in lieu of such representatives in connection with a specified subject matter. The advice and consent of the Senate shall be required for the appointment by the President of the representative of the United States in any commission that may be formed by the United Nations with respect to atomic energy or in any other commission of the United Nations to which the United States is entitled to appoint a representative.

Representation by President or Secretary of State

(e) Nothing contained in this section shall preclude the President or the Secretary of State, at the direction of the President, from representing the United States at any meeting or session of any organ or agency of the United Nations.

Compensation

(f) All persons appointed in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of rates authorized by sections 866 and 867 of this title for chiefs of mission and Foreign Service officers occupying positions of equivalent importance, except that no member of the Senate or House of Representatives or officer of the United States who is designated under subsections (c) and (d) of this section as a represen-



tative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation. Dec. 20, 1945, c. 583, § 2, 59 Stat. 619; Oct. 10, 1949, c. 660, §§ 1, 2, 63 Stat. 734.

Historical Note

1949 Amendment. Subsec. (a). Act Oct. 10, 1949, created the new post of deputy representative, and allowed the principal and deputy representatives to serve ex officio on any organ, commission, or body, other than specialized agencies, of the United Nations.

Subsec. (b). Act Oct. 10, 1949, amended subsection generally to provide for the appointment of an additional deputy representative.

Subsec. (c). Act Oct. 10, 1949, amended subsection generally, to provide for the appointment of special and alternate representatives.

Subsec. (d). Act Oct. 10, 1949, allowed the designation by the President of any State Department officer, whose appointment is subject to confirmation by the Senate, to sit on the Security Council in certain instances.

Subsec. (f) added by Act Oct. 10, 1949.

Short Title. Congress in enacting Act Dec. 20, 1945, which is classified to sections 287-287e of this title, provided by section 1 of Act Dec. 20, 1945, that it shall be popularly known as the "United Nations Participation Act of 1945".

United States Loan for Construction of Permanent Headquarters in New York City. Act, Aug. 11, 1943, c. 834, 62 Stat. 1286, authorized the President to loan to the United Nations \$63,000,000 to construct a permanent headquarters in New York City, provided for the repayment of the loan without interest in installments beginning July 1, 1951, and continuing until July 1, 1982, and authorized the Reconstruction Finance Corporation to advance to the United Nations up to \$25,000,000 until such time as the \$63,000,000 is appropriated by Congress.

Establishment of Permanent Headquarters in New York; Agreement Between United Nations and United States. Joint Res. Aug. 4, 1947, c. 482, 61 Stat. 736, provided:

Whereas the Charter of the United Nations was signed on behalf of the United States on June 26, 1945, and was

ratified on August 8, 1945, by the President of the United States, by and with the advice and consent of the Senate, and the instrument of ratification of the said Charter was deposited on August 8, 1945; and

Whereas the said Charter of the United Nations came into force with respect to the United States on October 24, 1945; and

Whereas article 104 of the Charter provides that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes"; and

Whereas article 105 of the Charter provides that:

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this article or may propose conventions to the Members of the United Nations for this purpose; and

Whereas article 28 and other articles of the Charter of the United Nations contemplate the establishment of a seat for the permanent headquarters of the Organization; and

Whereas the interim arrangements concluded on June 26, 1945, by the governments represented at the United Nations Conference on International Organization instructed the Preparatory Commission established in pursuance of the arrangements to "make studies and prepare recommendations concerning the location of the permanent headquarters of the Organization"; and

Whereas during Preparatory Committee of the United States passed unanimous Representatives D. agreed to unanimous December 11, 1945 Nations "to locate Nations Organization States"; and

Whereas the General Assembly, December 14, 1946, re-named headquarters shall be established the area bounded by Forty-eighth Street East Forty-second

Whereas the General Assembly on December 17, 1946, Secretary-General and concluding authorities of the United Nations in an agreement arrangements required a fulfillment of the Charter of the United Nations and to be referred to the draft agreement by the Secretary of State and

Whereas the General Assembly on December 17, 1946, the coming into effect referred to above be authorized to arrangements with authorities of the United Nations to determine on privileges, immunities in connection with headquarters of the United Nations

Whereas the United States, at appropriate authority of New York City, New York, half of the United States with the United States headquarters of agreement is in

Whereas the United States provides that it shall be by an exchange of United States of the United States

Resolved by Representatives America in Con

ensure that amenities of United Nations headquarters district in New York City are not prejudiced and that purposes of district are not obstructed by use made of land in vicinity of district, New York City Police Department is such "appropriate American authority". Id.

§ 287a. Action by representatives in accordance with Presidential instructions; voting

The representatives provided for in section 287 of this title, when representing the United States in the respective organs and agencies of the United Nations, shall, at all times, act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Charter of the United Nations. Dec. 20, 1945, c. 583, § 3, 59 Stat. 620.

Library references: United States 40; C.J.S. United States §§ 33-40.

§ 287b. Reports to Congress by President

The President shall, from time to time as occasion may require, but not less than once each year, make reports to the Congress of the activities of the United Nations and of the participation of the United States therein. He shall make special current reports on decisions of the Security Council to take enforcement measures under the provisions of the Charter of the United Nations, and on the participation therein under his instructions, of the representative of the United States. Dec. 20, 1945, c. 583, § 4, 59 Stat. 620.

Library references: United States 41; C.J.S. United States § 41.

§ 287c. Enforcement of economic and communication sanctions; penalties

(a) Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

(b) The proceeds resulting from the use of Special Drawing Rights by the United States, and payments of interest to the United States pursuant to article XXVI, article XXX, and article XXXI of the Articles of Agreement of the Fund, shall be deposited in the Exchange Stabilization Fund. Currency payments by the United States in return for Special Drawing Rights, and payments of charges or assessments pursuant to article XXVI, article XXX, and article XXXI of the Articles of Agreement of the Fund, shall be made from the resources of the Exchange Stabilization Fund.

Pub.L. 90-349, § 3, June 19, 1968, 82 Stat. 188.

§ 286p. Same; certificates; issuance; purpose

(a) The Secretary of the Treasury is authorized to issue to the Federal Reserve banks, and such banks shall purchase, Special Drawing Right certificates in such form and in such denominations as he may determine, against any Special Drawing Rights held to the credit of the Exchange Stabilization Fund. Such certificates shall be issued and remain outstanding only for the purpose of financing the acquisition of Special Drawing Rights or for financing exchange stabilization operations. The amount of Special Drawing Right certificates issued and outstanding shall at no time exceed the value of the Special Drawing Rights held against the Special Drawing Rights certificates. The proceeds resulting from the issuance of Special Drawing Right certificates shall be covered into the Exchange Stabilization Fund.

(b) Special Drawing Right certificates owned by the Federal Reserve banks shall be redeemed from the resources of the Exchange Stabilization Fund at such times and in such amounts as the Secretary of the Treasury may determine.

Pub.L. 90-349, § 4, June 19, 1968, 82 Stat. 188.

§ 286q. Same; limitation on allocations to the United States

Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States vote to allocate in each basic period Special Drawing Rights under article XXIV, sections 2 and 3, of the Articles of Agreement of the Fund so that allocations to the United States in that period exceed an amount equal to the United States quota in the Fund as authorized under the Bretton Woods Agreements Act.

Pub.L. 90-349, § 6, June 19, 1968, 82 Stat. 189, amended Pub.L. 91-599, ch. 1, § 2, Dec. 30, 1970, 84 Stat. 1657.

References in Text. The Bretton Woods Agreements Act of 1945, as amended, referred to in text, is Act July 31, 1945, c. 339, 59 Stat. 512, which is classified to sections 238 to 256k-1 of this title.

1970 Amendment. Pub.L. 91-599 added "in each basic period" following "vote to allocate" and substituted "allocations to the United States in that period exceed an amount equal to the United States quota

in the Fund as authorized under the Bretton Woods Agreements Act" for "net cumulative allocations to the United States exceed an amount equal to the United States quota in the Fund as heretofore authorized under the Bretton Woods Agreements Act of 1945, as amended".

Legislative History. For legislative history and purpose of Pub.L. 91-599, see 1970 U.S. Code Cong. and Adm. News, p. 5284.

§ 286r. Same; United States participation in special drawing account

The provisions of article XXVII(b) of the Articles of Agreement of the Fund shall have full force and effect in the United States and its territories and possessions when the United States becomes a participant in the special drawing account.

Pub.L. 90-349, § 7, June 19, 1968, 82 Stat. 189.

UNITED NATIONS ORGANIZATION

§ 287. Representation in Organization—Appointment of representative; rank, status and tenure; duties

(a) The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the United Nations

who shall have the rank and status of Ambassador Extraordinary and Plenipotentiary and shall hold office at the pleasure of the President. Such representative shall represent the United States in the Security Council of the United Nations and may serve ex officio as representative of the United States in any organ, commission, or other body of the United Nations other than specialized agencies of the United Nations, and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may, from time to time, direct.

Appointment of additional representatives; rank, status and tenure; duties; reappointment unnecessary

(b) The President, by and with the advice and consent of the Senate, shall appoint additional persons with appropriate titles, rank, and status to represent the United States in the principal organs of the United Nations and in such organs, commissions, or other bodies as may be created by the United Nations with respect to nuclear energy or disarmament (control and limitation of armament). Such persons shall serve at the pleasure of the President and subject to the direction of the Representative of the United States to the United Nations. They shall, at the direction of the Representative of the United States to the United Nations, represent the United States in any organ, commission, or other body of the United Nations, including the Security Council, the Economic and Social Council, and the Trusteeship Council, and perform such other functions as the Representative of the United States is authorized to perform in connection with the participation of the United States in the United Nations. Any Deputy Representative or any other officer holding office at the time the provisions of this Act, as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended.

[See main volume for text of (c)]

Additional appointees; conditions governing certain appointments; designation of certain State Department officers to sit on Security Council

(d) The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in organs and agencies of the United Nations. The President may, without the advice and consent of the Senate, designate any officer of the United States to act without additional compensation as the representative of the United States in either the Economic and Social Council or the Trusteeship Council (1) at any specified session thereof where the position is vacant or in the absence or disability of the regular representative or (2) in connection with a specified subject matter at any specified session of either such Council in lieu of the regular representative. The President may designate any officer of the Department of State, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States in the Security Council of the United Nations in the absence or disability of the representatives provided for under subsections (a) and (b) of this section or in lieu of such representatives in connection with a specified subject matter.

Appointment of representative to European office of United Nations; rank, status and tenure; duties

(e) The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the European office of the United Nations with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State. Such person shall, at the direction of the Secretary of State, represent the United States at the European office of the United Nations, and perform such other functions there in connection with the

participation of the United States in international organizations as the Secretary of State may, from time to time, direct.

Representation by President or Secretary of State

(f) Nothing contained in this section shall preclude the President or the Secretary of State, at the direction of the President, from representing the United States at any meeting or session of any organ or agency of the United Nations.

Compensation

(g) All persons appointed in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of rates authorized by sections 866 and 867 of this title for chiefs of mission and Foreign Service officers occupying positions of equivalent importance, except that no member of the Senate or House of Representatives or officer of the United States who is designated under subsections (c) and (d) of this section as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation. As amended Sept. 28, 1965, Pub.L. 89-206, §§ 1, 2, 79 Stat. 841, 842.

References in Text. This Act, as amended, referred to in subsec. (a) of this section, probably means the amendment to this section by Pub.L. 89-206, which became effective on Sept. 28, 1965.

1965 Amendment. Subsec. (a). Pub.L. 89-206, § 1(a), deleted the provisions which related to the appointment, rank and status, tenure and duties of a deputy representative of the United States to the United Nations.

Subsec. (b). Pub.L. 89-206, § 1(a), substituted provisions that the President, by and with the advice and consent of the Senate, shall appoint additional persons with appropriate titles, rank, and status to represent the United States in the principal organs of the United Nations and in such organs, commissions, or other bodies as may be created by the United Nations with respect to nuclear energy or disarmament, that such persons shall serve at the pleasure of the President and subject to the direction of the Representative of the United States to the United Nations, that such persons shall, at the direction of the Representative of the United States to the United Nations, represent the United States in any organ, commission, or other body of the United Nations, including the Security Council, the Economic and Social Council, and the Trusteeship Council, and perform such other functions as the Representative of the United States is authorized to perform in connection with the participation of the United States in the United Nations, and that any Deputy Representative or any other officer holding office at the time the provisions of this Act, as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended, for provisions which authorized the President, by and with the advice and consent of the Senate, to appoint an additional deputy representative of the United States to the Security Council who shall hold office at the pleasure of the President, and which required such deputy representative to represent the United States in the Security Council of the United Nations in the event of the absence or disability of both the representative and the deputy representative of the United States to the United Nations.

Subsec. (d). Pub.L. 89-206, § 1(b), eliminated provisions which required the rep-

resentative of the United States in the Economic and Social Council and in the Trusteeship Council of the United Nations to be appointed only by and with the advice and consent of the Senate and which required the advice and consent of the Senate for the appointment by the President of the representative of the United States in any commission that may be formed by the United Nations with respect to atomic energy or in any other commission of the United Nations to which the United States is entitled to appoint a representative.

Subsec. (e). Pub.L. 89-206, § 2, added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub.L. 89-206, § 2, redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub.L. 89-206, § 2, redesignated former subsec. (f) as (g).

United Nations Environment Program Participation. Pub.L. 93-183, Dec. 15, 1973, 87 Stat. 713, provided:

"[Sec. 1. Short Title] That this Act [enacting this note] may be cited as the 'United Nations Environment Program Participation Act of 1973'.

"Sec. 2. [Congressional Declaration of Policy] It is the policy of the United States to participate in coordinated international efforts to solve environmental problems of global and international concern, and in order to assist the implementation of this policy, to contribute funds to the United Nations Environmental Fund for the support of international measures to protect and improve the environment.

"Sec. 3. [Authorization of Appropriations] There is authorized to be appropriated \$40,000,000 for contributions to the United Nations Environment Fund, which amount is authorized to remain available until expended, and which may be used upon such terms and conditions as the President may specify: *Provided*, That not more than \$10,000,000 may be appropriated for use in fiscal year 1974."

United States Grant for Expansion and Improvement of United Nations Headquarters. Pub.L. 91-622, Dec. 31, 1970, 84 Stat. 1387, provided: "That there is hereby authorized to be appropriated to the Secretary of State out of any money in the Treasury not otherwise appropriated,

from the other House a resolution with respect to the same plan, then—

(a) If no resolution of the first House with respect to such plan has been referred to committee, no other resolution with respect to the same plan may be reported or (despite the provisions of section 204 (a)) be made the subject of a motion to discharge.

(b) If a resolution of the first House with respect to such plan has been referred to committee—

(1) the procedure with respect to that or other resolutions of such House with respect to such plan which have been referred to committee shall be the same as if no resolution from the other House with respect to such plan had been received; but

(2) on any vote on final passage of a resolution of the first House with respect to such plan the resolution from the other House with respect to such plan shall be automatically substituted for the resolution of the first House.

Approved December 20, 1945.

[CHAPTER 583]

AN ACT

To provide for the appointment of representatives of the United States in the organs and agencies of the United Nations, and to make other provision with respect to the participation of the United States in such organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United Nations Participation Act of 1945".

SEC. 2. (a) The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States at the seat of the United Nations who shall have the rank and status of envoy extraordinary and ambassador plenipotentiary, shall receive annual compensation of \$20,000, and shall hold office at the pleasure of the President. Such representative shall represent the United States in the Security Council of the United Nations and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may from time to time direct.

(b) The President, by and with the advice and consent of the Senate, shall appoint a deputy representative of the United States to the Security Council who shall have the rank and status of envoy extraordinary and minister plenipotentiary, shall receive annual compensation of \$12,000, and shall hold office at the pleasure of the President. Such deputy representative shall represent the United States in the Security Council of the United Nations in the event of the absence or disability of the representative.

(c) The President, by and with the advice and consent of the Senate, shall designate from time to time to attend a specified session or specified sessions of the General Assembly of the United Nations not to exceed five representatives of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Assembly. One of the representatives shall be designated as the senior representative. Such representatives and alternates shall each be entitled to receive compensation at the rate of \$12,000 per annum for such period as the President may specify, except that no member of the Senate or House of Representatives or officer of the United States who is designated under this subsection as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation.

December 20, 1945
[S. 1580]
[Public Law 284]

Short title.

U. S. representative
at seat of United
Nations.

Duties.

Deputy representa-
tive to Security Coun-
cil.

Representatives and
alternates for sessions
of General Assembly.



Other appointments.

Economic and Social Council and Trusteeship Council.

Commission with respect to atomic energy, etc.

Representation of U. S. by President or Secretary of State.

Acts of representatives to accord with President's instructions.

Reports to Congress.

Application of enforcement measures.

Penal provisions.

(d) The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in the organs and agencies of the United Nations at such salaries, not to exceed \$12,000 each per annum, as he shall determine, but the representative of the United States in the Economic and Social Council and in the Trusteeship Council of the United Nations shall be appointed only by and with the advice and consent of the Senate, except that the President may, without the advice and consent of the Senate, designate any officer of the United States to act, without additional compensation, as the representative of the United States in either such Council (A) at any specified meeting thereof in the absence or disability of the regular representative, or (B) in connection with a specified subject matter at any specified meeting of either such Council in lieu of the regular representative. The advice and consent of the Senate shall also be required for the appointment by the President of the representative of the United States in any commission that may be formed by the United Nations with respect to atomic energy or in any other commission of the United Nations to which the United States is entitled to appoint a representative.

(e) Nothing contained in this section shall preclude the President or the Secretary of State, at the direction of the President, from representing the United States at any meeting or session of any organ or agency of the United Nations.

SEC. 3. The representatives provided for in section 2 hereof, when representing the United States in the respective organs and agencies of the United Nations, shall, at all times, act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Charter of the United Nations.

SEC. 4. The President shall, from time to time as occasion may require, but not less than once each year, make reports to the Congress of the activities of the United Nations and of the participation of the United States therein. He shall make special current reports on decisions of the Security Council to take enforcement measures under the provisions of the Charter of the United Nations, and on the participation therein under his instructions, of the representative of the United States.

SEC. 5. (a) Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

(b) Any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to paragraph (a) of this section shall, upon conviction, be fined not more than \$10,000 or, if a natural person, be imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents,

or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, concerned in such violation shall be forfeited to the United States.

SEC. 6. The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate Act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed forces, facilities, or assistance provided for therein: *Provided*, That nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements.

SEC. 7. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the United Nations as apportioned by the General Assembly in accordance with article 17 of the Charter, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof, and of their appropriate staffs, including personal services in the District of Columbia and elsewhere, without regard to the civil-service and classification laws; travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Subsistence Expense Act of 1926, as amended, and section 10 of the Act of March 3, 1933, and, under such rules and regulations as the Secretary of State may prescribe, travel expenses of families and transportation of effects of United States representatives and other personnel in going to and returning from their post of duty; allowances for living quarters, including heat, fuel, and light, as authorized by the Act approved June 26, 1930 (5 U. S. C. 118a); cost of living allowance under such rules and regulations as the Secretary of State may prescribe; communication services; stenographic reporting, translating, and other services, by contract, if deemed necessary, without regard to section 3709 of the Revised Statutes (41 U. S. C. 5); local transportation; equipment; transportation of things; rent of offices; printing and binding; official entertainment; stationery; purchase of newspapers, periodicals, books, and documents; and such other expenses as may be authorized by the Secretary of State.

Approved December 20, 1945.

[CHAPTER 534]

AN ACT

To amend further the Civil Service Retirement Act approved May 29, 1930, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 2 of section 5 of the Civil Service Retirement Act of May 29, 1930, as amended, be, and the same is hereby, amended by striking out all of the said paragraph 2 thereof and inserting in lieu thereof the following:

"In computing length of service for the purposes of this Act, all periods of separation from the service, and so much of any leaves of

Military agreements.

Availability of armed forces, etc.

Annual appropriations authorized.

Travel expenses.
44 Stat. 658.
5 U. S. C. § 821;
Supp. IV, § 823.
47 Stat. 1516.
5 U. S. C. § 73b.

46 Stat. 818.

December 21, 1945
[S. 405]
[Public Law 263]

Civil Service Retirement Act, amendment.
48 Stat. 472.
5 U. S. C. § 707.
Ante, p. 577.

Computation of length of service.

Friday 10/8/76

10:00

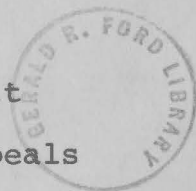
Had a call from Nancy Lazar of the U. S. Court of Appeals said one of the judges remembering reading in the paper within the last six months a story about an executive order concerning ex parte communications between members of the W.H. staff and people from the outside. She asked if we might be able to identify that.

426-7187

Barry said it would be E.O. 11920 (see attached copy of cover page).

She wasn't in when I called back, but she returned my call on Tuesday 10/12 and feels that is the one so I am sending it to her:

Judges Library
Room 5518, U.S. Court of Appeals
U. S. Court House
Washington, D. C. 20001



THE WHITE HOUSE
WASHINGTON

October 12, 1976

To: Nancy Lazar

From: Eva Daughtrey

If this isn't the one
you need, please give
me a call and we'll
check further.



June 10, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER 11920

ESTABLISHING EXECUTIVE BRANCH PROCEDURES
SOLELY FOR THE PURPOSE OF FACILITATING
PRESIDENTIAL REVIEW OF DECISIONS SUBMITTED
TO THE PRESIDENT BY THE CIVIL AERONAUTICS BOARD

By virtue of the authority vested in me by the Constitution and laws of the United States of America including section 301 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and as President of the United States of America, solely to provide Presidential guidance to department and agency heads and in order to facilitate Presidential review of decisions submitted to the President for his approval by the Civil Aeronautics Board pursuant to section 301 of the Federal Aviation Act, as amended, it is hereby ordered as follows:

Section 1. (a) Except as provided in this section, decisions of the Civil Aeronautics Board, hereinafter referred to as the CAB, transmitted to the President pursuant to section 301 of the Federal Aviation Act, as amended, hereinafter referred to as section 301, may be made available by the CAB for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 11652, as amended, decisions of the CAB transmitted to the President under section 301 shall be withheld from public disclosure for five days after submission to the President.

(c) At the same time that decisions of the CAB are submitted to the President pursuant to section 301, the CAB shall transmit copies thereof to the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the CAB transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether, and if so, why, action pursuant to Executive Order No. 11652, as amended, is deemed appropriate. If, after considering the above recommendations, the Assistant to the President for National Security Affairs or his designee determines that classification under Executive Order No. 11652 is

