

National Archives



Washington, DC 20408

NATIONAL ARCHIVES ORAL HISTORY PROJECT

Oral History Interview

with

Robert A. McConnell

at

CBS (1800 M St., N.W.)

Washington, D.C.

Interviewed by Rodney A. Ross (National Archives employee)

Basic summary abstract prepared by Donnie Eichhorst (National Archives volunteer)

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Robert A. McConnell. Washington, D.C. April 11, 1985. Interviewed by Rodney A. Ross.

McConnell is currently a vice president at CBS. From 1981 through late 1984, or early 1985, he served as Assistant Attorney General for Legislative Affairs.

The interview gives background on the usual procedures administered by OMB for agency comments on proposed legislation. McConnell held that in the matter of independence for the National Archives the usual procedures were not followed.

McConnell explained the two reasons why Justice opposed particular measures in the Archives independence bill. The first dealt with the provision whereby the Archivist would inform Congress when he was asking the Attorney General to initiate litigation to recover records unlawfully removed. The second dealt with the President's having to give Congress reasons should he remove the Archivist from office.

McConnell also discussed the mechanism whereby Justice made its views known to the President in regards to advice on whether to sign or to veto the Archives independence bill.

McConnell's remarks are in general extremely well-articulated. For some of his responses McConnell read from a prepared text. Hence, the reader of this abstract should accept only the tape itself, or an approved transcript should one be prepared, as an authoritative source.

The interview, approximately 55 minutes in length, was conducted in McConnell's office at CBS. McConnell's remarks can be clearly heard. Those of the interviewer, too, can be heard for the most part.

Abstract of interview with Robert A. McConnell in Washington, D.C., on April 11, 1985.

Interviewer: Rodney A. Ross.

Tape length: One 90-minute cassette (all of side 1 and ten minutes-worth of side 2).

SIDE 1

QUESTION: Background prior to your appointment as legislative liaison at the Justice Department?

ANSWER: McConnell was born in 1944 in Long Beach, California, where he attended high school. He got his undergraduate and law degree at Arizona State University. He then became a legislative assistant to John J. Rhodes, the Congressman from the first district of Arizona who became the Republican leader of the House of Representatives. McConnell spent three years (1970-1973) as Rhodes' legislative assistant.

McConnell then returned to Arizona and entered private law practice from 1973 to 1981 when the President nominated him to be Assistant Attorney General. McConnell gives credit to Rep. Robert H. Michel for his obtaining that position.

McConnell was confirmed in the spring of 1981.

QUESTION: As Assistant Attorney General what were your responsibilities?

ANSWER: The primary responsibility was the liaison for the department between the department and all its components in the Congress, as well as dealing with the White House and the Office of Management and Budget (OMB) in the development of administration policy.

McConnell gave a full explanation as to what a legislative liaison office normally does in a cabinet department. As a general rule the congressional affairs, or the legislative affairs, office handles the congressional liaison. Such offices deal with Congress and advise their agencies on what goes on in Congress. The general counsel's office of those departments handles the development of legislative proposals that go to Congress, plus the interfacing between OMB and other executive departments and agencies as policies are developed.

In the Department of Justice there is no general counsel's office. The Assistant Attorney General for Legislative Affairs handles both internal development of policy positions on legal matters within the Administration and goes to the Hill and conducts liaison for the department. McConnell feels this situation gave him and his staff a deeper involvement. In addition, they were also responsible for the ushering through the confirmation process for Federal judges, U.S. attorneys, U.S. marshals, and other members of the Department of Justice.

QUESTION: When did you first gain awareness that the National Archives was seeking independence from the General Services Administration (GSA)?

ANSWER: The first date McConnell recalls is April of 1984 when he wrote to Rep. Jack Brooks expressing Justice's clear opposition to the legislation as it was written. McConnell does not recall if Justice had done so earlier for the 97th Congress. If the April letter was the first, McConnell would have been aware of the Archives legislation a number of months earlier because of the time needed to decide a position within the department. Then it would have

been sent to OMB to get clearance to send up as the Administration position.

QUESTION: Could you describe the internal mechanism for formulating Justice Department decisions?

ANSWER: The actual structure is pretty much the same in all cases. For instance, if Congressman X introduces a bill, it goes to a given committee. Most times it is considered by the committee and if it has any implications that will affect the Department of Justice the chairman of that committee will write a letter to the Attorney General requesting the department's views.

When that request comes to the Office of Legislative Affairs the legislation is reviewed to determine what elements within the department might be interested in that bill. If it had constitutional concerns the Office of Legal Counsel would be given a copy, etc. It is usually sent to from three to seven offices. One office would be designated the "reporting office" and the others "advisory" offices. Time tables would also be assigned. Advisory divisions should have their views on the bill to the reporting division by a certain date. The reporting division should have a proposed position to McConnell by a subsequent date. In the Archives legislation McConnell felt the Office of Legal Counsel would have been the reporting division.

The bill report would come in the form of a letter for McConnell's signature. There would also be copies of what other offices had to say, and a briefing paper if there were disputes within the department and an explanation as to how they were resolved. McConnell would then review the letter and decide if the Attorney General should see it before sending it on to OMB.

If the request for comment had gone through another department and OMB felt Justice should look at it, they would send it over for comments.

There are not many bills moving in Congress that are not looked at by the Justice Department, if for no other reason, for pure legal analysis.

QUESTION: Did the Justice Department ever go on record regarding S.905 prior to the time the conferees met to iron out final differences between House and Senate bills?

ANSWER: McConnell is not sure they went on written record. The committee knew through oral discussion Justice's concerns. They knew "by copy" what Justice had to say about the House bill and which deficiencies were duplicated in the Senate bill.

QUESTION: Could you explain the Justice Department's concerns in the proposed National Archives legislation?

ANSWER: There were two general problem areas. One was a constitutional problem of the separation of powers. The bill remains an unjustified infringement on the powers of the presidency. An additional area of significant concern was the litigating authority of the Attorney General. These were the two areas of concern in the bill.

According to McConnell, the evolution of the Archives legislation during the 98th Congress was a sad scenario of mismanagement of the legislative apparatus of the Administration. McConnell believes Justice was completely in keeping with the established procedures of the Administration for cleared, exchanged executive branch views with the legislative branch. OMB, on the other hand, which was supposed to supervise those procedures didn't use them at all. The Justice Department seldom had any idea of what OMB was telling people about their willingness to accept language that was objectionable to the Justice Department.

QUESTION: Could you explain fully why you considered the bill a constitutional infringement on the powers of the President?

ANSWER: The bill was designed to establish an independent establishment within the executive branch, the National Archives and Records Administration. ^(NARA) It would be headed by the Archivist of the United States. Under another section of the bill the Archivist would be appointed by the President with the advice and consent of the Senate.

The Justice Department never took a position on the desirability of an independent National Archives. Justice was concerned about control over executive branch documents. After placing NARA under the executive branch the legislation then proceeded to weaken the executive branch's authority over the new agency in two ways. The conferees announced their intention to continue oversight over the newly independent agency. It's another thing to require the Archivist to notify Congress of a litigation request to the Attorney General. That is an extraordinary infringement, in Justice's view, on litigative authority power.

When the Archivist felt the head of an agency had failed to initiate action to recover documents unlawfully removed the could request the Attorney General to initiate litigation. At the same time the Archivist is required to notify Congress he is making that request.

QUESTION: I thought that was a follow-up if the Attorney General declined to act.

ANSWER: No. Section 203 requires the Archivist to notify Congress when he makes a referral to the Attorney General. The scenario of the question would have been repugnant to Justice. This second scenario, however, is absolutely repugnant to Justice because it assumes that disputes within the executive branch are incapable of being resolved consistent with the law and that Congress must be notified. That premise ignores the fundamental structure of the executive branch. The provision ignores the fact that all parties concerned are subject to the President's control and the resolution of disagreements will represent a presidential decision.

Justice finds it extremely objectionable that the Archivist can determine that litigation is necessary when the executive branch has made no such determination. Further, that determination will be publically disclosed on the supposed need to institute legal action. Such a determination will have been made by an individual who most likely isn't an attorney and has no responsibility in the area of deciding whether or not litigation should be pursued.

McConnell feels that effective law enforcement and management dictates such responsibility be placed in an officer of the government whose position authorizes them to make such judgments and not in those who have but one perspective of circumstance. The Archivist would want the papers back while the Attorney General would look at it from many angles: on getting the papers back, on whether the law had been violated, on national security, etc. Justice thought that decisions by the executive and judicial branches regarding whether the law has been violated should be provided in a manner undisturbed by a wave of public passion.

McConnell states there have been historical instances where public pronouncement interferes with unbiased review of the facts. Many don't realize that the commencement of litigation is really one of the most intrusive functions the government can perform. It utilizes the full impact of the Federal government on an individual. McConnell feels the public disclosure that is required by the Archives independence law distorts and undermines the discretion of the delegated authority of the Attorney General.

The other major objection by Justice was the requirement that the President must explain to Congress the reasons for the removal of a presidentially appointed Archivist. That requirement assumes the President, in determining what is the best means to execute the law, must adhere to some unspecified congressionally supervised standard in supervising the administration of the executive branch. The lawyers of the Justice Department would not construe that as a provision putting any limitation on the presidency, but it hurt to see the executive branch acquiesce in that kind of thing because it encourages Congress to add more offensive provisions in the future.

QUESTION: Is that unique in terms of the President having to explain his rationale for removing officers?

ANSWER: McConnell didn't recall specifics but he thought there were one or two other instances where that type of requirement has come in for a newly created agency. The Justice Department under William Smith, and traditionally, protects the powers of the presidency to make sure the President is able to administer and run the executive branch. McConnell sees many opportunities within our system to cut corners and blur the lines between the branches. The Justice Department is constantly trying to keep the lines between the branches as clear as can be.

QUESTION: Could you describe the process that your office used in discussions with the Hill?

ANSWER: Concerning the letter McConnell sent to Rep. Jack Brooks, its last paragraph stated that OMB has advised Justice that the letter was consistent with the President's program. This paragraph is important because it points out that this position has been through the whole review process described earlier. Once that process is complete Justice is notified by OMB that Justice has "clearance" and that paragraph can be added. The Hill sees that paragraph and knows this is a cleared position, no matter whose name has been signed. This position, then, could be taken for the collective view of the Administration.

The Justice Department adhered to that process. This meant that once Justice had a cleared position, Justice stuck to it. Justice believed in the

need to enforce the coordinated centralized mechanism. Bill Smith insisted on this. Justice had in fact done so. After Justice's position was established then members of the Justice Department staff and members of the committee would have discussions on their concerns and how similar problems were resolved in the past. Infringement problems are not unique; they are dealt with daily in different committees.

McConnell feels that congressional staff knew instinctively which positions would be criticized even before Justice's views were sought. The Justice Department's views on litigating authority are well known. The numerous cases need to be watched over by the same individual authority, namely the Attorney General. In this way contrary theories won't be developed as different cases make their ways through the courts.

QUESTION: Did you yourself have contact with Hill staff members on the Archives independence issue?

ANSWER: Contacts would have been through members of McConnell's staff. McConnell thought ~~his~~ only verbal congressional contact he had was with Rep. Frank Horton. McConnell could have had other contacts but mostly he remembered his deputies and attorney advisers having had relatively constant communications on the issue and discussing the matter with McConnell.

QUESTION: After the conferees had voted, they received a letter from you stating what you wanted from them. Would you describe how that happened?

ANSWER: McConnell is not sure of the timing. He recalls Justice had no clear information of when the conferees were meeting. There were a number of other things going on in Capitol Hill at the time. This was part of the barrage at the end of the session. The scheduling process was chaotic.

At some point Justice believed there would be a compromise that would satisfy the department. Then Justice got a feeling from OMB and the Hill that the compromise would not take place. Justice then immediately prepared the letter which went through the clearance process. McConnell recalls that it took a great deal of effort to speed that process up, but Justice had the letter signed and delivered before the conference, and perhaps some members had it before the conference. Rep. Frank Horton, however, did not see it until after the conference and was very upset.

McConnell sees this episode as one of several very frustrating legislative liaison problems that the Justice Department had in giving administration cleared positions to the Government Operations and Governmental Affairs committees on the Hill. He feels a possible reason for the problems was that those ~~two~~ two committees have oversight over OMB. OMB "almost throws out the rule book out the door" when OMB is dealing with their own committees.

OMB was able to bend the rules because they controlled the clearance process. This was not an isolated instance in dealing with something OMB wanted to make their committee happy about.

QUESTION: I understand the Attorney General recommended that the President veto the bill. Would you describe the Attorney General's involvement and how the President weighs opinions of different agencies?

ANSWER: McConnell cautioned this answer would be vague because this is an area of privileged communications with the President.

When an enrolled bill is submitted by the Congress to the President he has a limited number of days to respond. Those agencies or departments with an interest would go through a similar process described before. The White House, through OMB would send copies of the enrolled bill to the departments asking for their positions. Justice and other agencies were on that list for the Archives bill.

The draft proposal for Justice came down to McConnell for review and he recalls that there were no dissenting views within the Justice Department. Justice prepared an Enrolled Bill Report in the form of a letter from McConnell to the Director of OMB, David Stockman. For such a letter Justice would state its recommendations and its reasons and if its views were very strong Justice would attach a proposed signing statement or a statement of disapproval.

In the case of S 905, while McConnell wouldn't give a statement as to what the advice would have been, it was not inconsistent with what Justice had said on the Hill.

Procedural "games" played by certain members of OMB, McConnell feels, were inexcusable and had caused an emotional edge. He feels in spite of those emotional feelings his "team" remained professional and never lost sight of the legal determination. The recommendation made to the President was based on legal analysis and was strongly held.

SIDE 2

In most bills the Justice Department had no objections, but it was not unusual for Justice to note that a bill was written in such a way as to have caused some concern at Justice regarding litigation questions. If there was to be a statement at the bill's signing, Justice would ask for certain language to clarify the President's mindset when he signed the measure. The statement would thus become a part of the legislative history.

In other instances Justice would recommend withholding of approval. In those cases Justice would always include a proposed statement as to why.

Sometimes Justice would simply send the package to OMB. If Justice felt extremely strongly the department could communicate with Fred Fielding, Jim Baker or Ed Meese and let them know Justice's feelings, recommendations and reasons. All those avenues were available so that the Justice Department's views could be heard.

In the case of the Archives bill earlier meetings had been held between the White House staff, OMB and the Justice Department to point out the seriousness of what Justice saw as the problems in the bill.

QUESTION: Anything you'd like to add?

ANSWER: McConnell wished to point out that the OMB clearance process and procedures are invaluable in making sure the Administration in its various

departments and agencies put forward to Congress a unified view. Only in rare exceptions, like that regarding the Archives bill, did things not work well.

The legislative branch's function is to develop legislation and policy decisions and they deserve the best possible input from the executive branch. The OMB clearance process facilitates this. It is effective and helpful and gives a central focus. McConnell finds it frustrating that this was one of the times that it didn't work.

McConnell also points out that Justice's objections were not to an independent Archives but on litigating authority and the negative aspects of exposing to public view the investigative or litigative decision process. On the other issue about the President's appointive powers, Justice took pride in resisting encroachments.

Letter of July 21, 1986 of Robert A. McConnell to Rodney A. Ross

In addition, I do not recall whether I ever said exactly who was "wheeling and dealing" on this bill for OMB. It was one individual, OMB General Counsel Mike Horowitz.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Legal Agreement Pertaining to the Oral History Interview of

Robert A. McConnell

In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms and conditions hereinafter set forth, I,

Robert A. McConnell of Washington, D.C.
(name) (city and state)

do hereby give, donate and convey to the United States of America all my rights, title and interest in the tape recording and transcript of a personal interview conducted on April 1, 1985 at 1800 H St., NW Washington, D.C. and prepared for deposit in the National Archives. This assignment is subject to the following terms and conditions:

- (1) The tape recording shall be available to all researchers upon its being processed by the National Archives.
- (2) The transcript shall be available to those researchers who have access to the tape recording, as soon as the National Archives' processing schedule allows sufficient time for transcript preparation.
- (3) I hereby assign to the United States Government all copyright I may have in the interview transcript and tape.
- (4) Copies of the transcript and the tape recording may be provided by the National Archives to researchers upon request.
- (5) Copies of the transcript and tape recording may be deposited in or loaned to institutions other than the National Archives.

Robert A. McConnell
Donor

Robert W. Vane
Archivist of the United States

Date April 11, 1985

Date April 10, 1985