tained unanimous consent to take from the table House Joint Resolution 107, authorizing the President of the United States to proclaim Oct. 11, of each year, General Pulaski's Memorial Day. The resolution was agreed to with a committee amendment limiting the memorial day to Oct. 11, 1935, rather than Oct. 11, of each year. The Senate on May 28 passed the House joint resolution and the President signed it on June 6.

Parliamentarian's Note: This resolution was similar to Senate joint resolution (S.J. Res. 21) which had previously passed both Houses and which provided for an annual commemorative day, each October, without limitation. The Senate joint resolution was vetoed by the President on Apr. 11, 1935.

§ 18. Effect of Adjournment; The Pocket Veto

The President is not restricted to signing a bill on a day when Congress is in session. He may sign within 10 days (Sundays excepted) after the bill is presented to him, even if that period extends beyond the date of the final adjournment of Congress. The President is said to "pocket veto" a bill where he takes no action on the bill during the 10-day period and where the Congress adjourns before the expiration of that time in such a manner as to prevent the return of the bill to the originating House.

The Supreme Court first considered the question of the pocket veto in 1929 in what is commonly referred to as the Pocket Veto Case.[19] In this case a Senate bill (S. 3185) authorizing certain Indian tribes to offer their claims to the Court of Claims was presented to the President on June 24, 1926. On July 3 of that year the first session of the 69th Congress adjourned *sine die.* The 10-day period for Presidential approval expired on July 6, by which time the President had neither signed the bill nor returned it to the Senate with his reasons for disapproval.

Taking the position that the bill had become law, the Indian tribes affected sought adjudication of their claims in the Court of Claims in accordance with the terms of the bill. The United States demurred to their petition on the ground that the bill had not become law. The Court of Claims sustained the demurrer and dismissed the petition. The Supreme Court granted certiorari in the case[20] to determine

19. *Okanogan, et al.* v *U.S.,* 279 U.S. 655 (1929).

20. 278 U.S. 597.

whether ". . . within the meaning of the last sentence [of art. I, § 7, paragraph 2] . . . Congress by the adjournment on July 3 prevented the President from returning the bill within 10 days, Sundays excepted, after it had been presented to him. . . ."[1] The Court answered this question in the affirmative, and held that the bill did not become law.[2]

Mr. H. William Sumners, of Texas, a member of the Committee on the Judiciary submitted a brief as *amicus curiae* in the case in which he argued that only a final adjournment of the Congress, terminating its legislative existence, would prevent the President from returning a bill for reconsideration within the meaning of the Constitution and that during interim adjournments the President could return a bill to an agent of the House in which the bill originated to be presented as unfinished legislative business when that House reconvened.

Counsel for the petitioners argued further that the term "ten days" in the Constitution should be construed as meaning 10 "legislative days" so that the period would cease running while the Congress was not in session.

The *amicus curiae* argued that the President has only a qualified negative over legislation which requires him to return vetoed bills to the Congress along with his written objections. Thus, ". . . the provision as to the return of a bill within a specified time is to be construed in a manner that will give effect to the reciprocal rights and duties of the President and of Congress and not enable him to defeat a bill of which he disapproves by a silent and 'absolute veto,' that is, a so-called 'pocket veto,' which neither discloses his objections nor gives Congress an opportunity to pass the bill over them. . . ."[3]

To this the Court responded that the President does indeed have only a qualified negative over legislation which requires the return of a disapproved bill along with his written objections. To carry out this "monumentous duty," however, the President must have the full amount of time allotted to him by the Constitution. ". . . And it is plain that when the adjournment of Congress prevents the return of a bill within the allotted time, the failure of the bill to become a law cannot properly be ascribed to the disapproval of the President . . . but is attributable solely to the action of Congress in adjourning before the time allowed the Presi-

1. 279 U.S. 655, 674.

2. *Id.* at p. 692.

3. *Id.* at p. 676.

dent for returning the bill had expired. . . ."[4]

The Court rejected the contention of the counsel for the petitioners that the 10-day limitation in the Constitution should be construed as 10 "legislative" days since it could find no precedent or reason to so modify the plain meaning of the words used. And for like reasons it rejected the contention of the *amicus curiae* that the term "adjournment" as used in article I section 7, paragraph 2 means the final adjournment of Congress. On the contrary, it found that the term adjournment as used in other parts of the Constitution is not limited to a final adjournment.

The Court then considered the contention that the President may return a vetoed bill to an agent of the House in which it originated when that House is not in session. The Court found that ". . . under the constitutional mandate [a vetoed bill] is to be returned to the 'House' when sitting in an organized capacity for the transaction of business and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill; and that no return can be made to the House when it is not in session as a collective body and its members are dispersed. . . ."[5]

Finally, the Court found that the Congress had acquiesced in the "pocket vetoes" of Presidents since the administration of James Madison, and that, "long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions of this character."[6]

The Supreme Court again considered the question of the "pocket veto," albeit indirectly, in 1938 in the case of *Wright* v *United States*.[7]

Senate bill No. 713 of the 74th Congress, having passed both Houses, was presented to the President on Friday, Apr. 24, 1936. On Monday, May 4, 1936, the Senate took a recess until noon, Thursday, May 7, 1936, while the House of Representatives remained in session. S. 713 was vetoed by the President and returned along with his message of disapproval to the Secretary of

4. *Id.* at pp. 678, 679.

5. As authority for its finding that the term "House" means a constitutional quorum assembled for the transaction of business, the Court cited *Missouri Pac. Ry. Co.* v *Kansas*, 248 U.S. 276, 280, 281, 283: and 1 Curtis' *Constitutional History of the United States*, 486, n. 1.

6. 279 U.S. 655, 689.

7. 302 U.S. 583.

the Senate on May 5.[8] When the Senate reconvened on May 7, the veto message of the President was laid before the Senate, recorded in the Journal, and referred to the Committee on Claims. No further action was taken on the bill.

The bill proposed to grant jurisdiction to the Court of Claims to hear the case of David A. Wright. Mr. Wright subsequently sought adjudication of his case in the Court of Claims, contending that S. 713 had become law. The Court of Claims denied his petition, and the Supreme Court granted certiorari.[9]

The Court held that S. 713 had not become law since the President had followed a valid veto procedure. The Court found that since the Senate was in recess for less than three days while the House of Representatives remained in session in accordance with article I, section 5, clause 4, of the Constitution,[10] this was not an "adjournment" of Congress within the meaning of article I, section 7, clause 2, that would have prevented the President from returning a vetoed bill with his objections. The Court found that the definition of "the Congress" in the Constitution is precise. Both the Senate and the House of Representatives constitute the Congress.[11]

The Court further answered the objection of the petitioner that a vetoed bill could not properly be returned to the Secretary of the Senate when that body was in recess:

> . . . The Constitution does not define what shall constitute a return of a bill or deny the use of appropriate agencies in effecting the return.
>
> Nor was there any practical difficulty in making the return of the bill during the recess. The organization of the Senate continued and was intact.
>
> The Secretary of the Senate was functioning and was able to receive, and did receive, the bill. . . . To say that the President cannot return a bill when the House in which it originated is in recess during the session of Congress, and thus afford an opportunity for the passing of the bill over the President's objections, is to ignore the plainest practical considerations and by implying a requirement of an artificial formality to erect a barrier to the exercise of a constitutional right.[12]

A third decision regarding the pocket veto was handed down by

8. The 10-day constitutional period for Presidential consideration would have expired on the next day, May 6.

9. 301 U.S. 681.

10. That is, "Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting."

11. U.S. Const. art. I, § 1.

12. 302 U.S. 583, 589, 590.

the U.S. Court of Appeals for the District of Columbia in 1974, in *Kennedy* v *Sampson*.[13] The Court there held that a bill—allegedly pocket-vetoed—did become a law, and an intrasession adjournment of Congress did not prevent the President from returning the bill where appropriate arrangements had been made for the receipt of Presidential messages during the adjournment.

Kennedy v *Sampson* involved S. 3418 of the 91st Congress (the Family Practice of Medicine Act), which passed both Houses and was presented to the President on Dec. 14, 1970. On Dec. 22, 1970, Congress adjourned by concurrent resolution for the Christmas holidays, the Senate until Dec. 28, and the House until Dec. 29. On Dec. 24, the last day of the 10-day period for Presidential consideration, the President issued a memorandum of disapproval on the bill which he did not deliver to the Senate, although the Secretary of the Senate had previously been authorized to receive such messages during the adjournment.[14]

Senator Edward M. Kennedy, of Massachusetts, a supporter of the bill in the Senate, sought a declaratory judgment in a U.S. district court that S. 3418 had become public law. The court granted the declaratory judgment based on his finding that the Congress by adjourning for the Christmas holidays did not prevent the return of the bill within the meaning of article I, section 7, and that the bill was, therefore, not subject to a pocket veto by the President.

Judge Waddy cited both the *Pocket Veto* and *Wright* cases to support his conclusion. From the *Pocket Veto* case he cited the following language as an underlying rationale for the court's decision in that case:

> "Manifestly it was not intended that instead of returning the bill to the House itself, as required by the constitutional provision, the President should be authorized to deliver it, during an adjournment of the House, to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks, or perhaps months—not only leaving open possible questions as to the date on which it had been delivered to him, or

13. 364 F Supp 1075 (D.D.C. 1973), affirmed, 511 F2d 430 (C.A.D.C. 1974).

14. The Secretary of the Senate has been authorized by unanimous consent, on Dec. 22, 1970 [116 CONG. REC. 43221, 91st Cong. 2d Sess.], to receive messages from the President of the United States during the adjournment from Dec. 22 to Dec. 28. See also *Procedure in the U.S. House of Representatives* (97th Cong.), Ch. 24 § 12.1.

whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sitting, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid." 279 U.S. at 684.

Judge Waddy then cited the opinion of the Court in the *Wright* case where a direct comment was made on this language:

"These statements show clearly the sort of dangers which the Court envisaged. However . . . they appear to be illusory when there is a mere temporary recess." 302 U.S. at 595.

Judge Waddy found this reasoning compelling, in spite of the fact that the case before him differed from the *Wright* case in that only one House was in recess in the latter while both Houses were in recess in the former when the 10-day period for Presidential consideration expired:

". . . The Senate returned on the third day after the final day for the President to act. The interim two days would have caused no long delay in delivery of the bill; not keeping it in suspended animation. In three days the public would have been promptly and properly informed of the President's objections, and the purposes of the constitutional provisions would have been satisfied."

In the 93d Congress, the President returned a House bill without his signature to the Clerk of the House, who had been authorized to receive messages from the President during an adjournment to a day certain, and the President asserted in his veto message that he had "pocket vetoed" the bill during the adjournment of the House to a day certain. The House regarded the President's return of the bill without his signature as a veto within the meaning of article 1, section 7 of the Constitution and proceeded to reconsider and to pass the bill over the President's veto, after postponing consideration to a subsequent day. Subsequently, on Nov. 21, 1974, the Senate also voted to override the veto and pursuant to 1 USC § 106a the enrolling clerk of the Senate forwarded the bill to the Archives for publication as a public law. The Administrator of General Services at the Archives, upon instructions from the Department of Justice, declined to promulgate the bill as public law on the day received. The question as to the efficacy of the congressional action in passing the bill over the President's veto was mooted when the House and Senate passed on Nov. 26, 1974, an identical bill which was signed into law on Dec. 7, 1974 (Pub. L. No. 93–516). See also *Kennedy* v *Jones,* 412 F Supp 353 (D.D.C.

1976); and for a discussion of the constitutionality of intersession or intrasession pocket vetoes see Kennedy, "Congress, The President, and The Pocket Veto," 63 Va. L. Rev. 355 (1977). See also the most recent edition of the *House Rules and Manual* § 112 (annotation following Art. I, § 7 of the Constitution).

Form of Notification of Pocket Veto

§ 18.1 On the first meeting day of the Senate after the Congress has taken an adjournment to a day certain, the President notified that body of his approval of certain bills and, in the same message, his pocket veto of one bill.

On Apr. 12, 1944,[15] the Senate met after an adjournment that began on Apr. 2. A message from the President was presented announcing that he had approved a bill (S. 662) authorizing pensions for certain physically or mentally helpless children as well as a bill (S. 1243) authorizing the construction and operation of demonstration plants to produce synthetic liquid fuels. In the same message the President announced the pocket veto on Apr. 11, 1944, of the bill (S. 555) for the relief of Almos W. Glasgow.

Parliamentarian's Note: Announcement to the Congress of pocket vetoes have taken various forms. On Apr. 9, 1956, the President transmitted to Congress a copy of a press release announcing his "pocket veto" of a bill (H.R. 3963) for the relief of Ashot and Ophelia Knatzakanian. This press release was attached to a veto message of another bill, but it was not printed in the *Congressional Record*.

§ 18.2 The President pocket vetoed three bills during a two-month adjournment to a day certain, and wrote separate memorandums explaining his reasons for so doing in each instance.

On July 19, 1943,[16] there was recorded in the Journal memorandums of disapproval from the President of three bills he had pocket vetoed. They were: (1) H.R. 986, an act to define misconduct for compensation and pension purposes; (2) H.R. 1712, an act for the relief of Sarah Elizabeth Holliday Foxworth and Ethel Allene Brown Haberfeld; and (3)

15. 90 CONG. REC. 3408, 78th Cong. 2d Sess.

16. 89 CONG. REC. 7551, 78th Cong. 1st Sess.

H.R. 1396, an act making certain regulations with reference to fertilizers or seeds that may be distributed by agencies of the United States.

§ 18.3 The President informed the House that he had withheld his approval of numerous bills during an adjournment to a day certain.

On July 26, 1948,[17] there were received in the House during a period of adjournment several messages from the President announcing his disapproval of numerous bills.

The Congress had adjourned on June 19, 1948, pursuant to House Concurrent Resolution 218, until Dec. 31, 1948. The President's memoranda of disapproval of each of these bills were dated July 2, 1948, more than 10 days (excluding Sunday) after the Congress had adjourned.[18]

§ 19. Proposals for Item Veto

There is no express authority under the Constitution for the President to approve part of a bill and disapprove another part of the same measure. However, agitation for such authority occasionally has arisen when measures have been presented to the President for his approval which included unrelated provisions, some of which did not have the President's endorsement or support. Members have offered amendments attempting to include a clause in a bill granting the President a veto power with respect to an item in that bill,[19] though the constitutionality of such a proposal has not been determined, but general executive authority to disapprove only part of a bill does not exist. Numerous constitutional amendments have been introduced in the past to grant the President item veto authority, but these proposals have not been adopted.[20] Suggestions have also been made that the Congress address, legislatively, the definition of the term "bill" as used in the Constitution.

Item Veto and Executive Authority

§ 19.1 To an authorization bill for public works, an amend-

17. 94 CONG. REC. 9368–73, 80th Cong. 2d Sess.

18. See House bills 851, 1733, 1779, 3499, 1910, 4199, 4590, 6184, and 6818 in Calendars of the United States House of Representatives and History of Legislation, final edition, 80th Cong. (1947–1948).

19. See §§ 19.1, 19.2, infra.

20. Charles J. Zinn, The Veto Power of the President, House Committee on the Judiciary, 82d Cong. 2d Sess. (Committee Print 1951), p. 34.