

VITAL SPEECHES

— OF THE DAY —

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THE BEST THOUGHTS OF THE BEST MINDS ON CURRENT NATIONAL QUESTIONS

IMPARTIAL · CONSTRUCTIVE · AUTHENTIC

Why? Because we have to be able to reach out to them. In fact, there's an old adage that the best schools in the country have high maintenance parents. I like that. We were high maintenance parents. Why? Because we were in those schools demanding that our children get a good education. When you have parents in your face every day you will educate them, because you have no choice. The other piece is, as we wrap around these services, and this is something we just accomplished—one of the first things I said to myself is, actually I learned, was my first visit to Santee High School back in the fall of last year. A young man followed me around, literally followed me around the whole time I was there. This is where student voices make such a big difference. Followed me around and said Mr. Superintendent, can you keep my school open a little bit longer? I said why? He says because I don't feel safe going out of this school at night and more importantly I don't have a computer at home. That was a signal. That's when I engaged Mayor Villaraigosa. I said, mayor, we have to move this bus stop where these kids are having to walk this gang gauntlet, two blocks closer to the school. That happened. Of course it got tagged the day it happened. The bottom line is those are the kinds of things we have to do. That was a very simple thing. I said we need to do something else.

I was talking to Mike Lansing, a previous board member. I said Mike, why can't we put a Boys & Girls Club or a YMCA at or near our campuses? He said superintendent, that's already been done in Santa Clarita. Let's go up and look at it. So we went up to Santa Clarita and we looked at it. When we got back I said what's our most challenged middle school? Markham. I said let's see if we can't get one there. So we just opened up a Boys & Girls Club on Markham's campus thanks to Marlene Cantor and the YMCA, we're going to put a YMCA on University High School's campus. Why a Y? A Y is open 20 hours a day. So what does that mean? That means it becomes a community resource, not only a resource for that school but it becomes a community resource. If I'm going to engage parents and empower parents, etc., if I'm going to educate them, then now I have a place right there in the center of the neighborhood where they can get that done. And guess what? Think big, start small, scale fast. We're going to put Boys & Girls Clubs near or on as many campuses as we can throughout the district, the same thing with YMCAs. I just got a letter from the YMCA and they are already looking at East LA and South Central. These are the kinds of things we've been doing. Obviously we've been doing a lot. ♦

Politics in 2009

POLITICAL TRENDS IN THE US CONGRESS AND NEXT ADMINISTRATION

Address by BUTLER C. DERRICK, former United States Congressman and Chief Deputy Majority Whip
Address by JOHN L. NAPIER, former United States Congressman and Federal Judge on
the United States Court of Federal Claims

Delivered to the Corporate Counsel Roundtable, The Defense Research Institute, New York, New York, January 24, 2008.

MR. DERRICK: Having spent your time dealing with important, but dry subjects, I hope that John and I will provide you with some interesting and helpful fact about what to expect on the Federal level in 2009.

This election cycle is not dull. It is probably one of the most interesting that I have witnessed in my lifetime. Usually, we would know with some certainty who the Republican nominee will be. Maybe not as certain on the Democratic side, but the choice would have been narrowed to no more than two serious candidates.

Would any of you ever dreamed that we would have a woman and a man of color as the leading contenders for the Democratic nomination? Maybe we would have given some thought to a woman, but not a young first term dynamic black Senator. What a great country we are. What a large umbrella we have for inclusion.

Neither John nor I will be running for President. John, a Republican, and I, a Democrat, have been friends for almost 30 years. When we were both Members of Congress,

we worked closely. We disagree on philosophy in many areas. We also disagree on more substantive matters, such as who should be the next President of our country.

It appears that civility has been removed from the rules of the House and Senate. Why? Are people just meaner? Are they more "blood-thirsty?" I don't think the Members are much different than they were 50 or 100 years ago. I believe there are two basic reasons for the lack of civility. They are a lack of respect for the institution and the small majorities.

I was a "Watergate baby." I think this title was given us by the "Old Bulls," who thought we were a lot of children, who had been elected only because President Nixon had resigned under a cloud. As a matter of fact, the youngest Member was Tom Downey (D-NY) who was only 24 years old when he was elected. There were 76 new freshmen in my class. We all thought we had been elected to the greatest legislative body on the earth. We took the attitude that it was our duty to save the country. It was one of the greatest honors our citizens could bestow. When I entered

a room in South Carolina many times the audience would stand as a show of respect. They were proud. I was proud. Back then, Congressmen and the Congress were held in great respect. The rules were lax. Even being lax, I have always felt if you know the difference between right and wrong, the rules are not necessary. Back then, anyone could join anyone for a meal or travel.

At the time of our arrival, committee chairmen were all powerful. They held power over the movement of legislation and the advancement of a young congressman. A Chairman attained these positions by seniority and stayed Chairman until he left Congress. Congressionally speaking, they were Gods.

Our class decided to change these rules. Our class, together with the moderate Democrats who were there, constituted a majority. We decided to interview the prospective chairmen before deciding to vote for them. They were incensed that these “young whipper snappers” had the gall. But most complied. The Chairman of the Armed Services Committee decided it was beneath him, until staff showed him where the votes were. Reluctantly, he agreed to appear. He was a very proud and very haughty man and held great power. Most of our class were sitting in the room as the door opened. In the haughtiest manner, he said, “Now what can I do for you boys and girls?” Well, that was his last tenure as Chairman. In addition to the Chairman of the Armed Services Committee, Eddie Hebert (D-LA), we voted out Olin Teague (D-TX), Chairman of the Agriculture Committee and Wright Patman, Chairman of the Banking Committee.

Having voted these three senior chairmen out of office, the committee system would never be the same. To a large degree, the power shifted from the Chairmen to the Membership. Before, most lobbyists and others had only to deal with the Chairmen. Now they found it necessary to broaden their base to the entire committee membership. The Speaker, Majority Leader, Majority Whip, together with the Chairmen, had lost their status as “Gods.”

Most of the ill feeling towards Congress today has been brought about by the Members themselves. Today the approval rating of Congress is about 10%. This started when both bodies of the Congress started televising their proceedings. It became politically expedient to damn the body, which they had been elected to serve. Many Members used this to grandstand. The press was too close. Every act—large or small—was reported.

In the mid 1970’s and through the 1980’s, the Democrats held large majorities. This made it unnecessary in most instances for the Democratic party to pressure Members for their vote. Or, in other words they could afford to be magnanimous. When the Republicans gained a small majority in 1994, the magnanimity stopped. The Republicans could not afford to do so and get their legislative program passed.

The forth-coming session will be very contentious be-

cause of the reasons I have just mentioned, and it is an election year. In addition to this, the political center of the country has changed in recent years and has moved to the Left. The next two years will entail large spending and tax cuts. It will be similar to the 1986 tax bill where Republicans and Democrats were vying to see which one could give the business community the largest tax break. This in spite of the polls that show the American people would rather do away with the Bush tax cuts and use the money for a national health care plan.

In addition there will be revision of the bankruptcy laws, allowing people to keep their homes, even though they can’t make the payments. Incidentally, this will end in the greatest benefit to the lending institutions, most of whom shouldn’t have made the loans in the first place.

If the Democrats gain a large majority in the House and the Senate, a single payer national healthcare plan similar to Hillary Clinton’s healthcare plan of 1993 will be adopted.

There will be an attempt at campaign finance reform somewhere closer to federal financing. Before 1974 the business community could not have political action committees. PACs were reserved for the labor unions. The business community rightly felt that this gave labor an unfair advantage. In 1973 the Congress passed legislation allowing business and others to create political action committees.

The creation of these political action committees had a double effect. It allowed employers to collect money from employees and use it in a way that would help the industry they represented. The greatest change came about in the political system. Congressmen and Senators were no longer dependent on the parties for financing their campaigns. This, of course, caused both parties to lose much of their power over Members. It also allowed candidates and their handlers to raise more and more money.

A limit on the amount of personal money was put in the bill. This part of the legislation was declared unconstitutional by the courts.

Politics is becoming more and more a plaything of the rich. When I came to Washington in 1974, labor had great power. Now the business community dominates the city, largely because of the large PAC contributions.

Contributions do not debase our system, but they do bring about access. Access is power.

Federal financing of political campaigns would erase the power and influence that is brought about by money. I am not sure of the form. The problem is what qualifies a candidate to have federal money in a primary. The general election is a liquidated situation and could be handled easily.

As we speak, the Presidential candidates have spent \$400 million and they are not yet to the general election. This is absurd and takes most citizens out of the process. The Congress must begin to correct this imbalance. I believe they will in the next session.

MR. NAPIER: It is a distinct privilege to appear with my long-time, able friend and former colleague, Butler Derrick, to discuss with you political trends in the United States Congress. As lawyers, we both appreciate your leadership in the legal profession, and that adds to the special honor of being here to appear before you.

It was pleasure for Butler and me to work together in the Congress for a number of years, albeit on different sides of the aisle and often with different perspectives on the governmental process. I was on the Senate staff before joining Butler as a Member of the House, where he preceded me by 6 years. As such, I looked to him for much advice and counsel. Thereafter, I served on the Court of Federal Claims, a tribunal that occasionally adjudicated congressional reference cases, and, as other federal courts, is required to discern congressional intent. Butler and I have always respected each others' views, even when they diverge.

Hopefully this afternoon we can convey to you information which will assist you in gaining an accurate assessment for congressional trends, and where we believe federal activity and the political agenda in Washington are headed over the next year and immediately thereafter.

Before we take questions, I would like to make four broad observations, which, I believe, will, by political necessity and by moral imperative, shape the discussion and debate as the Congress engages in the Second Session and as we embark upon a new administration. By political necessity, I mean what the country demands in terms of leadership. By moral imperative, I mean what the country has a right to demand in terms of stewardship.

The Congress is a microcosm of the country. The Congress, especially the House of Representatives, reflects the country's values, its politics, its mood shifts, and to a greater degree than ever before, its demographics. As a political body, the Congress must have consensus to act. And, as we have failed in the body politic to develop consensus over America in the last 20 years, there has been a corresponding lack of consensus in the Congress. And, thus, the Congress has in recent years failed to confront many pressing issues. Some polls say that the President has very low approval ratings.....somewhere around 30%. The same polls say the 110th Congress, First Session, had approval ratings even lower...around 20%. Much of this dissatisfaction comes from gridlock ... from the failure to recognize a consensus from which to act.

Every indication is that the national electorate wants Congress to be solution-oriented. There are several conditions that must occur in the Congress before we can break the current gridlock in government and move toward a purposeful and resolute direction to meaningfully address our Nation's most pressing problems.

1. A Return to Civility

First, we must return to a greater civility in government and especially in the Congress.

Butler's and my friendship and respect have extended beyond the partisan divide. But I submit as an initial observation that friendships and relationships in the Congress today have not weathered the partisanship very well. This is a significant problem in today's political atmosphere.

We have always had partisanship. Partisan political debate is healthy. A certain amount of partisanship – “restrained partisanship”—is necessary and to be expected. After all, we have had political battles, even to the point of a celebrated duel over 200 years ago, where Aaron Burr and Alexander Hamilton shot at one another at the Heights of Weehawken just across the Hudson River from where we now meet. But even that was based to some degree on a code, even if that code was misdirected.

Today's situation, however, is different from any that I have been able to discern in our history. It is much more than the accepted “rough and tumble” of politics. It is a venom that appears –on both sides – and is all too often directed at personal destruction through vendetta. Some say it comes from the pervasiveness of money in politics; others postulate that it comes from the deep and equal divisions in the political electorate; others say it comes from the increasing influence of the extremes, both on the left and the right, and the diminishing control of the center. Some say it is attributable to rise of political consultants' power, especially fringe-issue oriented consultants. Others say it derives from the 24-hour news cycle and the emergence of anonymous blogs on the internet. Whatever the reason, it is a major fact of life in the political life of the Congress and the country, and is clearly a consideration in accurately assessing congressional behavior and activity.

Notwithstanding what I have just observed, most all Members of Congress I have had the privilege to know personally take their leadership and stewardship most seriously. They reject the forces external to the Congress that have set into motion this poisonous political atmosphere. I take off my hat to anyone who is willing to enter the political arena today. Nonetheless, it is still a part of the political life in the Congress.

The leaders and the rank and file—on both sides of the aisle, in both the House and Senate, and in the Executive Branch— have an obligation to work assiduously to bring civility, and at least a modicum of bipartisanship, back into the process. Or they risk abdicating their leadership altogether.

In spite of it being a Presidential election year, I hope and believe there is substantial pressure for the Congress and the President to find issues on which to work together more closely in the spirit of good will. We must stop throwing darts at one another for the sake of political gamesmanship.

2. Bipartisanship

A corollary is the need to return to civility and the necessity to seize issues where there is bipartisan support and where the Administration and both parties in the Congress can craft bipartisan solutions.

There will be few opportunities to work together later in this session if some broad, general accord is not reached early in the session. Assuming Monday through Friday sessions, there are less than 150 days for the Congress to meet before the next election in November. Lurking in the background is a substantial independent vote that demands bipartisanship and results.

There are now over 300 pending congressional committee and subcommittee investigations of the executive branch. Effective oversight and bipartisanship are not mutually exclusive. But a majority of these investigations hinder bipartisan solutions, and divert the attention of decision-makers.

I expect these investigations to continue through the second session, and mention them to highlight the need for a broader tone and spirit for professionalism, cooperation and civility between the parties and the branches of government. I repeat that investigations, per se, are not bad if they serve a legitimate legislative purpose. They are tools in the arsenal of the Legislative Branch, and are a part of the natural tension between the branches. But for purposes of assessing the remainder of this Congress, these investigations must necessarily be factored into the calculus. How they impact civility and bipartisanship is a simple fact of political life in Washington.

One of my heroes in the law is Elliot Richardson, whom I had the privilege to know and with whom I had the honor to work as co-counsel on a case in the early 1990's. In his wonderfully perceptive book, *Reflections of a Radical Moderate*, Elliot Richardson has advocated "restrained partisanship", which he defined as putting "...the national interest first with a highly developed instinct not only for the issues and situations in which competition between the parties would do the system more good than harm, but also for those in which the opposite was true." He goes on to say: "An elusive and impalpable lubricant of congressional business is 'comity.' The word stands for the blend of understanding and respect, courtesy and affection with which rivals in an established institutional setting conduct their dealings with one another. In the congressional case its source is mutual regard for the public interest."

For the upcoming session to be effective, there must be more comity, civility, and bipartisanship. Though he never served in the Congress, I believe Elliot Richardson would have made an outstanding congressional leader. We need "Elliot Richardson" and "Howard Baker" type leadership in the Congress.

3. Consolidation of Leadership Power

The Leadership on both sides of the aisle and in both

bodies must consolidate its power and exert control to assure more civility and bipartisanship to the process.

The first session of the 110th Congress was an exercise in how the "Old Bulls" and the "Mavericks" jockeyed for power, and how the Leadership adapted to and accepted its new responsibilities.

A historical evaluation of the Congress is much like a historical analysis of the country. Power in the Congress has been vested in different venues at different times, and there is constant battle within the institution for power, not only between the political parties, but between the "Old Bulls" and the "Mavericks." The most recent result has been that the Leadership has had to spend inordinate time arbitrating and deciding the outcome between political pragmatism and political ideology. This constant battle for power is not unusual, but it clearly affects the ability of the institution to exert effective national leadership and to come to grips with bipartisan solutions..

Consolidation of power in the Leadership allows the Leadership more flexibility and creativeness to forge compromise without having to clear many details with the rank and file.

Allow me once again to cite Elliot Richardson: "The habit of focusing political debate on practical issues converts the dispersion of power from a potential source of conflict into a means of creating awareness of the necessity for broad based compromise."

As we begin the Second Session, I believe we need and hopefully will see a stronger leadership in both parties further to consolidate power and, thus, the Leadership will be more capable to address practical problem solving with broad based compromise.

4. Security vs. Liberty

The Congress will be increasingly called upon to confront a very divisive issue—how to deal with the issue of our national security vs. our personal liberty. And that debate must be governed by civility, comity, and bipartisanship.

With terrorism an established and constant fact of life in modern society, I believe that most substantive issues that come before the Congress will have some component of "security" as well as some component of "liberty." On the one hand, we will have arguments for strengthening government control and activity; while on the other, we will have arguments against government intrusion in our private lives.

This is the classic argument about the role of government, but the stage is now set in a different setting....terrorism and its effect on security vs. liberty. This over-arching issue permeates every activity ... from how to deal with medical records to how to record financial transactions ... from police and military power to federal building codes for public works projects ... from agriculture and the food supply to immigration and science policy.

► A General Assessment

Within this context, I believe we will find the Second Session of the 110th Congress will be required to address substantial substantive issues in a bipartisan manner, or abdicate its place in the leadership of our country. The State of the Union is set for this coming Monday evening, January 28. There will follow the normal appropriations cycle required for preparing the FY 2009 budget and running the federal government — presentation of the President's budget shortly after the State of the Union, hearings and requests in March and April, mark-ups in May and June, floor activity and Senate action and conference committees in the late summer and fall. This will be punctuated by an anticipated emergency supplemental appropriations bill for Iraq in late spring.

Early on, there will be an accelerated economic stimulus package. How this is integrated into the normal budget process remains to be finalized. This type legislation generally has two components: tax issues and spending issues. I hope this will be the first vehicle for the Congress and President to reach accommodation. Depending on how this debate plays out will directly affect the ever more contentious issues that need to be addressed — health care, infrastructure funding, election financing, bankruptcy, and other emergency economic and defense related issues. More specifically, Butler has cogently laid out the agenda the Democrats will pursue. I believe the remainder of this Congress the Republican agenda will again focus on national

defense, homeland security, and the need for economic stimulus. These issues will remain Republican priorities in the next Congress, and the ills of the healthcare system will become a priority.

The Congress will initially set its own agenda, but much will be derived from what the President proposes in the State of the Union. We must keep in mind that 2008 is an election year, and issues which strike a cord with the presidential electorate will evoke a similar response from the Congress. Thus, we should anticipate a lively session with astute jockeying between the parties. But I believe the consuming concern will be, by necessity, for the Congress and the President to search for bipartisan solutions.

In summary, in the last year of this Administration, the contemporary Congress has the opportunity to work together with the Administration, and vice versa, on our common problems, rather than to work divisively. This begins with civility and comity in the approach to problem-solving. And this applies to the next Congress and the next Administration as well.

We desperately need a restoration of confidence in government. Upon assuming the Presidency in 1974, President Gerald Ford aptly defined government as “the glue that holds society together.” By going the extra mile to assure bi-partisanship, Congress and the President can restore the peoples' confidence in government. This is the great challenge ahead. ♦

SPEECH OF THE MONTH

The Case for an International System of Justice

WHY THE U.S. SHOULD BE PART OF INTERNATIONAL CRIMINAL COURT

Address by JONATHAN FANTON, President, the John D. and Catherine T. MacArthur Foundation
Delivered to the National Press Club, Washington, D.C., December 10, 2007

Fifty-nine years ago today, with the enormity of the Holocaust haunting the world's collective conscience, the United Nations adopted the Universal Declaration of Human Rights. It stated that “recognition of the inherent dignity and ... inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” It was the first global proclamation of human rights—an occasion we observe every December 10, International Human Rights Day.

The Declaration was one of several steps taken to establish a new standard: that crimes against civilians, the extermination of ethnic groups, and acts of torture were inexcusable—even when following orders in times of war. The world appeared well on its way to fulfilling its promise of “Never again.”

Time would tell otherwise. In the past 20 years alone, we have witnessed ethnic cleansing in the former Yugoslavia and genocide in Rwanda and Darfur. Elsewhere we have seen systematic human rights abuses, acts of torture, and other affronts to our ideals of humanity go unpunished by national judicial systems. Even though journalists, working in dangerous conditions, have bravely exposed these abuses, atrocities continued.

But there is hope for a better future. A system of international justice is emerging and growing stronger with each new case tried in a regional court and each new investigation opened by the International Criminal Court, the ICC. The two-key words are “emerging” and “system.” I want to talk with you today about how three key parts of the system—the new ICC; regional human