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REMARKS BY SENATOR HUBERT H. HUMPHREY

Students fro

ABILENE CHRISTIAN COLLEGE APRIL 2, 1973

Art me neese Pres John Sevens chancella Don Moorie ( Beechams Brings) Tomp Prozza 22

A CONSTITUTIONAL CRISIS IS AT HAND IN OUR NATION, A CRISIS ARISING NOT FROM THE NORMAL POLLS AND TUGS, CHECKS AND BALANCES BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES, BUT RATHER, A CRISIS DUE TO A DELIBERATE, CONSCIOUS AND MANUFACTURED ATTEMPT TO CONCENTRATE IN THE EXECUTIVE, POWER FORBIDDEN TO IT -- POWER OVER THE PURSE.

AND, THE PURPOSE OF THIS CONFRONTATION IS NOT TO PROTECT THE PUBLIC INTEREST, BUT TO SANCTIFY AN IDEOLOGY AND PROTECT THE SPECIAL INTERESTS SO LONG IDENTIFIED WITH RICHARD NIXON AND THE REPUBLICAN PARTY.

THE POLITICAL STRATEGY OF THE WHITE HOUSE IS CLEAR:

-- ENGINEER A CONFRONTATION BETWEEN THE LEGISLATIVE AND EXECUTIVE BRANCHES;

-- BEGIN A COORDINATED HIGH PRESSURE PUBLIC RELATIONS CAMPAIGN DESIGNED TO PICTURE THE CONGRESS AS THE "BIG SPENDERS";

-- DRAW THE BATTLE LINE BY PRESENTING A BUDGET THAT DECIMATES SOCIAL PROGRAMS IN THE NAME OF HOLDING DOWN TAXES;

-1-

#### -2-

-- ILLEGALLY IMPOUND BILLIONS OF DOLLARS OF CONGRESSIONALLY APPROPRIATED FUNDS -- ALL IN THE NAME OF THE ECONOMY AND EFFICIENCY.

AND, AS A RESULT OF ALL FOUR TACTICS, THE INTENTION IS TO DIVIDE AND OVERWHELM AN EMBITTERED, STALEMATED CONGRESS. ARTICLE 1, SECTION 1, OF THE CONSTITUTION VESTS ALL LEGISLATIVE POWERS IN THE CONGRESS OF THE UNITED STATES. SECTION 9 OF THAT SAME ARTICLE SAYS THAT NO MONEY SHALL BE DRAWN FROM THE TRASURY, BUT IN CONSEQUENCE OF APPROPRIATIONS MADE BY LAW. ARTICLE 2, SECTION 3, SAYS THAT THE PRESIDENT SHALL TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED. THERE IS A CAREFUL DELINEATION OF FUNCTION HERE -- THE POWER OF THE PURSE BELONGS TO CONGRESS THE DUTY OF IMPLEMENTATION IS THE RESPONSIBILITY OF THE EXECUTIVE. BUT REALITY IS HARDLY THAT SIMPLE WILLIAM HOWARD TAFT ONCE REMARKED, "LET ANYONE MAKE THE LAWS OF THE COUNTRY, IF

-3-

I CAN CONSTRUE THEM."

THERE PERHAPS IS NO BETTER CASE IN POINT THAN THE IMPOUNDMENT OF CONGRESSIONALLY APPROPRIATED FUNDS IMPOUNDMENT CAN AND DOES ALTER, CHANGE, OR EVEN TERMINATE PROGRAMS IT CAN AND DOES SIGNIFICANTLY ALTER, CHANGE, OR REVISE, Turnet

DECLARED PUBLIC POLICY.

LIT CAN AND DOES PERFORM THE FUNCTION OF ITEM VETO WHICH IS PROHIBITED BY THE CONSTITUTION.

DURING THE HISTORY OF OUR NATION, PRESIDENTS HAVE WITHHELD FUNDS FROM SUCH CONGRESSIONALLY APPROVED PROGRAMS SUCH AS BOMBER AND AIR FORCE GROUPS, FOOD PROGRAMS, FLOOD CONTROL PROJECTS, MODEL CITIES, HIGHWAY CONSTRUCTION, RURAL ELECTRICAL PROGRAMS AND HOSPITAL CONSTRUCTION.

BUT THERE ARE DIFFERENT KINDS OF IMPOUNDMENTS, FIRST, FUNDS MAY BE WITHHELD FROM A PROGRAM TO "EFFECT SAVINGS OR PREVENT DEFICIENCIES." THIS IS AUTHORIZED BY LAW.

Classic example - always used to

Thomas Jefferson Refused to spend \$50,000 for gun boats on

THE MISSISSIPPI -- EVEN THOUGH THIS MONEY WAS APPROPRIATED

BY CONGRESS.

JEFFERSON SAID THAT THE MONEY WAS NOT NEEDED.

THE UNITED STATES HAD JUST PURCHASED THE LOUISIANA

TERRITORY AND THE THREAT THAT MADE GUNBOATS NECESSARY HAD

ABATED. JEFFERSON WAS SAVING MONEY \_ CIRCUM angel after the congress had appropriated AND IN 1905 AND 1906, THE CONGRESS ENACTED THE

DEFICIENCY ACTS TO PREVENT EXECUTIVE AGENCIES FROM HASTILY

SPENDING THEIR COMPLETE APPROPRIATIONS AND THEN SEEKING ADDITIONAL

APPROPRIATIONS.

THESE ACTS ESTABLISHED A BUDGET TECHNIQUE OF MONTYLY

ALLOTMENTS TO PREVENT UNDUE EXPENDITURES.

-5-IN 1950, A CLAUSE WAS ADDED TO THE ANTI-DEFICIENCY ACTS THAT PROVIDED THAT MONEYS COULD BE WITHHELD TO BRING ABOUT "GREATER EFFICIENCY OF OPERATION," "TO TAKE INTO ACCOUNT "CHANGES IN REQUIREMENTS," OR "SUBSEQUENT DEVELOPMENTS AFTER THE APPROVAL OF THE APPROPRIATIONS," Though these last three phrases are vague -- and in my JUDGMENT DO NOT REPRESENT CLEAR LAW, THEY NEVERTHELESS WERE NOT MEANT TO BE VEHICLES FOR THWARTING THE DECLARED POLICY OF CONGRESS THE LEGISLATIVE HISTORY IS NOT VAGUE ON THAT POINT -- THE ANTI-DEFICIENCY ACTS ARE INSTRUMENTS OF ACCOUNTING -- NOT OF CHANGING CONGRESSIONAL INTENT OR POLICY. NOR WERE THEY MEANT TO OBVIATE THE SEPARATION OF POWERS DOCTRINE IN THE GUISE OF EFFICIENCY, CHIEF JUSTICE

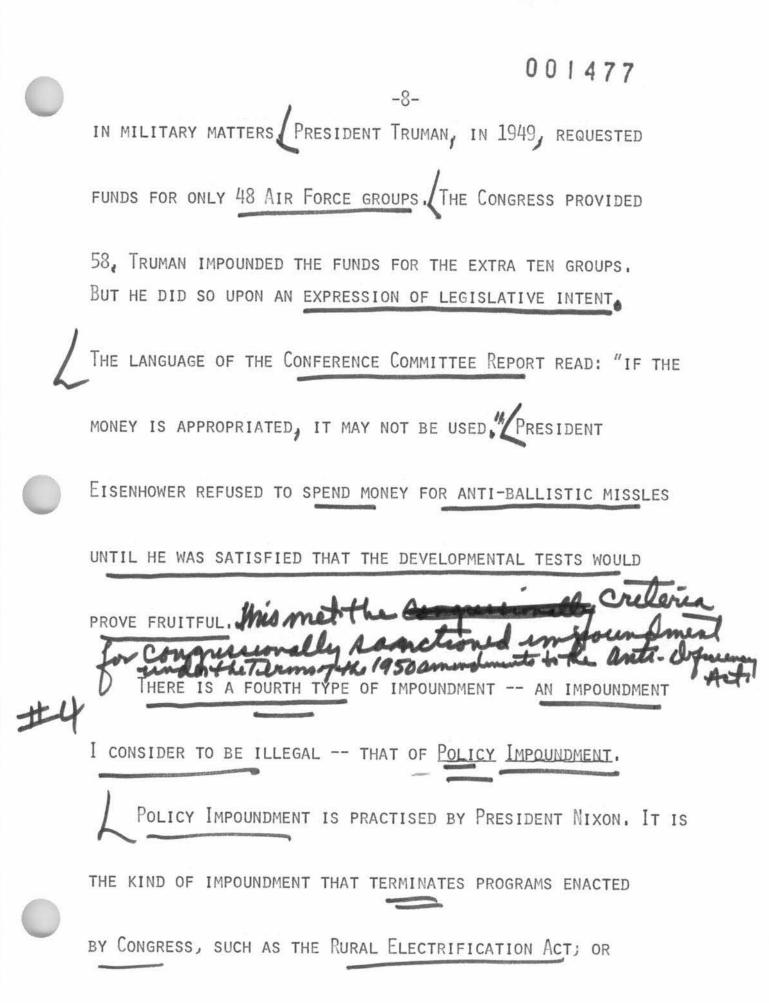
WARREN, IN 1965, DECLARED THAT SEPARATION OF POWERS WAS

-6-"OBVIOUSLY NOT INSTITUTED WITH THE IDEA THAT IT WOULD PROMOTE GOVERNMENTAL EFFICIENCY, IT WAS, TO THE CONTRARY, LOOKED TO AS A BULWARK AGAINST TYRANNY CONGRESSIONALLY DIRECTED IMPOUNDMENT IS A SECOND TYPE OF FUND WITHHOLDING IN THE 1968 REVENUE AND EXPENDITURE CONTROL ACT, CONGRESS FIXED A SPENDING CEILING AND MADE ABOUT HALF THE MANDATED BUDGET CUTS PROVIDED BY THAT ACT, THE PRESIDENT WAS DIRECTED TO MAKE THE OTHER HALF OF THE REQUIRED REDUCTIONS. HERE THE PRESIDENT WAS CARRYING OUT A CONGRESSIONAL DIRECTIVE. OR ANOTHER EXAMPLE: IN TITLE VI OF THE 1964 CIVIL RIGHTS ACT, THE PRESIDENT IS DIRECTED TO WITHHOLD FUNDS FROM FEDERALLY FINANCED PROGRAMS IN WHICH THERE IS EVIDENCE OF DISCRIMINATION.

001475

-7-OF THESE INSTANCES HAVE THESE THINGS IN COMMON! THE CONGRESS HAS EXPRESSLY DELEGATED TO THE PRESIDENT, IN STATUTE, AND DEBATE, AND LEGISLATIVE HISTORY, THE POWER TO WITHHOLD FUNDS CONGRESS DIRECTED THE IMPOUNDMENT, THE EXECUTIVE DID NOT AUTOMATICALLY ASSUME THE POWER. IN FACT, THE VERY ACT OF CONGRESS DELEGATING OR DIRECTING THE PRESIDENT TO IMPOUND FUNDS WAS AN EXPRESSION OF CONGRESSIONAL AUTHORITY AND A RECOGNITION THAT THE PRESIDENT DID NOT HAVE INHERENT POWER TO ACT ON HIS OWN INITIATIVE, A THIRD KIND OF IMPOUNDMENT I REFER TO AS "DEFENSE IMPOUNDMENT." THERE IS LITTLE QUESTION IN MY MIND THAT THE CONSTITUTION GIVES A PRESIDENT BROAD SCOPE TO EXERCISE JUDGMENT IN HIS CAPACITY AS COMMANDER IN CHIEF. IN FACT, PRESIDENTS HAVE USED IMPOUNDMENT EXTENSIVELY

001476



-9-

SIGNIFICANTLY ALTERS A PROGRAM BY SEVERE CUTS IN THE FUNDING,

SUCH AS THE WATER POLLUTION CONTROL ACT OF 1972, WHERE PRESIDENT NIXON'S WITHHOLDING HAS HAD A MAJOR IMPACT ON POLICY AND PROGRAM OBJECTIVES.

POLICY IMPOUNDMENT HAS RESULTED IN SUBSTANTIAL CUTS IN PROGRAMS 📾 HOUSING, WATER AND SEWER GRANTS, AND MEDICAL FACILITIES AND HOSPITAL CONSTRUCTION -- THEREBY CHANGING LEGISLATIVE INTENT, UNDER POLICY IMPOUNDMENT, FUNDS ARE WITHHELD NOT MARINE TO EFFECT SAVINGS, NOT AS DIRECTED BY CONGRESS, NOT AS COMMANDER IN CHIEF, BUT BECAUSE THE PRESIDENT HAS UNILATERALLY DECIDED TO IMPOUND MONEY FOR PROGRAMS THAT ARE NOT HIS PRIORITIES. T IS A METHOD OF SUBSTITUTING EXECUTIVE WILL FOR

-10-

CONGRESSIONAL PURPOSE.

SNCE 1970, PRESIDENT NIXON HAS CONSISTENTLY IMPOUNDED EIGHT TO \$12 BILLION IN CONGRESSIONALLY APPROPRIATED FUNDS EACH YEAR. AND, UNTIL LAST FALL WHEN CONGRESS PASSED MY IMPOUNDMENT INFORMATION ACT, THE PRESIDENT NEITHER EXPLAINED, REPORTED, OR JUSTIFIED EXECUTIVE IMPOUNDMENT, HE SIMPLY DID IT. POLICY IMPOUNDMENT IS EXECUTIVE ARROGANCE. LIT ENCROACHES UPON THE CONSTITUTIONAL PREROGATIVES OF CONGRESS.  $\zeta$  IT VIOLATES THE SEPARATION OF POWERS. AND, IT GIVES THE PRESIDENT AN ITEM VETO -- NEITHER SANCTIONED BY THE CONSTITUTION NOR GRANTED BY CONGRESS. BUT, PRESIDENT NIXON CLAIMS THAT HE POSSESSES INHERENT

-11-CONSTITUTIONAL POWER TO IMPOUND, FIRST, TO FIGHT INFLATION, AND SECOND, TO RESOLVE THE MEANING OF CONTRADICTORY LAWS THE PRESIDENT'S DEPUTY ATTORNEY GENERAL --JOSEPH SNEED -- IN TESTIMONY BEFORE THE SEPARATION OF POWERS SUBCOMMITTEE, SAID THAT THE PRESIDENT HAS INHERENT "LATITUDE" TO REFUSE TO SPEND OR DEFER SPENDING REGARDLESS OF CONGRESSIONAL ACTION. Such an assertion is to my mind a blind reading of the

SUCH AN ASSERTION IS TO MY MIND A BLIND READING OF THE CONSTITUTION A 1969 JUSTICE DEPARTMENT MEMORANDUM PREPARED BY THEN ASSISTANT ATTORNEY GENERAL, NOW SUPREME COURT JUSTICE, WILLIAM H. REHNQUIST, SAID:

"WITH RESPECT TO THE SUGGESTION THAT THE PRESIDENT

HAS A CONSTITUTIONAL POWER TO DECLINE TO SPEND APPROPRIATED

-12-

FUNDS, WE MUST CONCLUDE THAT EXISTENCE OF SUCH A BROAD

POWER IS SUPPORTED NEITHER BY REASON NOR PRECEDENT."

THOSE ARE UNEQUIVOCAL WORDS

REHNQUIST IS CORRECT. THERE IS NO CONSTITUTIONAL AUTHORITY

TO IMPOUND FUNDS; TO TERMINATE PROGRAMS; OR SUBSTITUTE THE PRESIDENT'S JUDGMENT FOR THAT OF THE CONGRESS ON DOMESTIC POLICY.

X WITH RESPECT TO THE INFLATION CONTROL ARGUMENT, IF IMPOUNDMENT IS JUSTIFIED ON THE BASIS OF FIGHTING INFLATION OR PROTECTING THE DEBT LIMIT, THEN THE PRESIDENT HAS PICKED A WEAK TOOL TO COMBAT A SERIOUS PROBLEM.

THE EMPLOYMENT ACT OF 1946 PLACES RESPONSIBILITY TO

EXECUTIVE BRANCH. IN ADDITION, THERE ARE OTHER POWERFUL MEANS FOR FIGHTING INFLATION ANTI-TRUST ACTIONS TO INCREASE COMPETITION,

IN THE ENTIRE FEDERAL GOVERNMENT -- NOT EXCLUSIVELY IN THE

ECONOMIC CONTROLS, CUTTING IMPORT RESTRICTION, INCREASING TRADE, AND GOVERNMENT FISCAL AND MONETARY POLICY. IMPOUNDMENT OUGHT NOT TO BE SUBSTITUTED FOR THESE WEAPONS IN OUR FIGHT AGAINST INFLATION, BUT, THE PRESIDENT IS CORRECT WHEN HE NOTES THAT CONGRESS HAS IN SOME INSTANCES PASSED CONTRADICTORY LAWS BELT, the WAY TO RESOLVE CONFLICTS OVER CONTRADICTORY LAWS IS NOT TO TAKE UNILATERAL PRESIDENTIAL ACTION, BUT TO RETURN TO THE CONGRESS AND ASK FOR A CLARIFICATION THAT IS THE RESPON-SIBLE WAY -- THE CONSTITUTIONAL WAY -- TO MAKE CHANGES IN

-14-

POLICY. BY POLICY IMPOUNDMENT, THE PRESIDENT IS VIOLATING THE COMITY THAT HAS SO CHARACTERIZED EXECUTIVE-LEGISLATIVE RELATIONSHIPS FOR TWO HUNDRED YEARS AND, DESPITE AN OCCASIONAL STATEMENT THAT THE PRESIDENT INDEED WANTS TO COOPERATE WITH CONGRESS, HIS ATTITUDE AND ACTIONS SPEAK DIFFERENTLY. INSTEAD OF HIDING BEHIND DUBIOUS CONSTITUTIONAL ARGUMENTS THE PRESIDENT AND HIS ADVISERS OUGHT TO LEVEL WITH THE AMERICAN PEOPLE, AND TELL THE PEOPLE WHAT THEY ARE REALLY UP TO AND WHAT THEY REALLY DO NOT LIKE. AND WHAT THEY DO NOT LIKE IS QUITE OBVIOUS THEY DO NOT LIKE THE FACT THAT CONGRESS HAS CHANGED AND CHALLENGED THEIR PRIORITIES. The issue is not how m money we spind, but rother

-15-CONGRESS HAS CUT DEFENSE, MILITARY PROCUREMENT, FOREIGN AID, AND SPACE SPENDING IT HAS INCREASED FUNDS FOR HOUSING, COMMUNITY FACILITIES, WATER AND AIR POLLUTION, POVERTY PROGRAMS, EDUCATION AND HEALTH CARE. WHAT ARE THE REMEDIES TO PRESIDENTIAL IMPOUNDMENT? CAN CONGRESS ASSERT ITS WILL? - Myanswern yes! FIRST, CONGRESS CAN AND HAS IN THE PAST ESTABLISHED MINIMUM LEVELS OF WHAT MUST BE ACCOMPLISHED WITH APPROPRIATED MONEY, FOR EXAMPLE, IN THE FISCAL YEAR 1972 VETERANS ADMINI-STRATION APPROPRIATION, CONGRESS STIPULATED THAT THE FUNDS MUST PROVIDE NOT LESS THAN AN AVERAGE OF 97,500 BEDS FOR VETERANS ADMINISTRATION HOSPITALS THAT YEAR. SECOND, CONGRESS CAN USE MANDATORY LANGUAGE SUCH AS

THE PRESIDENT IS "DIRECTED," "SHALL," "MUST," "REQUIRED,"

OR "ORDERED" TO SPEND APPROPRIATED FUNDS CONGRESS HAS DONE SO BEFORE, SUCH AS IN THE 1970 CONTINUING RESOLUTION FOR EDUCATION FUNDS. CONGRESS, UNDERSTANDABLY, HAS BEEN RELUCTANT TO USE SUCH LANGUAGE BECAUSE IT RECOGNIZES THAT CONDITIONS DO -CHANGE -- THAT CHANGES MIGHT BE NECESSARY IN THE SPENDING OF FUNDS, BUT, UNTIL THE NIXON ADMINISTRATION CAME INTO OFFICE, CONGRESS AND THE PRESIDENT HAVE ALWAYS HAD A

-16-

RELATIONSHIP THAT WAS INFORMAL BUT CLEARLY UNDERSTOOD

ON THE USE OF FUNDS.

THAT COMITY NO LONGER EXISTS PERHAPS MANDATORY LANGUAGE

WILL HAVE TO BECOME STANDARD IN ALL APPROPRIATION BILLS

SO THAT THE PRESIDENT WILL CLEARLY FOLLOW AND EXECUTE

THE LAW,

THIRD, CONGRESS CAN ESTABLISH IMPOUNDMENT PROCEDURES TO AFFIRM OR REJECT ANY FUND WITHHOLDING LEGISLATION PRESENTLY BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS WOULD REQUIRE CONGRESS TO AFFIRM THE LEGALITY OF ANY\_PROPOSED IMPOUNDMENT, OTHERWISE THE PRESIDENT WOULD BE DIRECTED TO SPEND THE FUNDS. Fourth, Congress could go -- and some members of the SENATE AND I HAVE GONE -- TO COURT TO FORCE THE PRESIDENT TO USE THE APPROPRIATED FUNDS. THE COURTS HAVE BEEN RELUCTANT TO ENTER THIS THICKET OF CONGRESSIONAL-EXECUTIVE CONFRONTATION, BUT IT IS MY JUDGMENT THAT THEY CAN NO LONGER STAND BACK. THE COURTS WILL HAVE TO MAKE A DECISION ON THE IMPOUNDMENT

001486

\* Missouri CASE ANNOUNCED tonight -Niton Impoundment of Highway Junos - illegal QUESTION. FINALLY, THERE MUST BE CONTINUED POLITICAL PRESSURE ON THE ADMINISTRATION THE ADMINISTRATION HAS A PRACTICE OF HOLDING BACK MONEY AFTER AN ELECTION, ONLY TO RELEASE IT BEFORE THE NEXT ELECTION, THE AMERICAN PEOPLE MUST MOUNT THE SAME KIND OF SUSTAINED POLITICAL CAMPAIGN THAT FORCED THE PRESIDENT IN 1970 TO RELEASE EDUCATION FUNDS AND IN 1972 TO RELEASE FOOD STAMPS MONEY PUBLIC OPINION IS A POWERFUL FORCE, EVEN ON A STUBBORN PRESIDENT. How will THIS CONSTITUTIONAL CRISIS BE RESOLVED? I WOULD BE LESS THAN CANDID IF I SAID I KNEW THE ANSWER. I DO KNOW THAT THE CRISIS IS SERIOUS. AND, OF ONE MORE THING I AM CERTAIN, THE PRESIDENT'S VISION

OF AMERICA EVIDENCED IN HIS ILLEGAL IMPOUNDMENTS AND HIS

#### -19-

RECENTLY RELEASED BUDGET, IS NOT THE VISION OF AMERICA THAT

I SEE.

The President claims he knows America -- and Americans. He sees the self-made man, the self-sufficient, the free market, and the virtues of private enterprise.

SURELY THAT IS PART OF AMERICA, BUT IT IS NOT ALL OF

AMERICA.

THERE IS AMERICA.

THERE IS AN AMERICA OF COMPASSION FOR ITS POOR, ITS HUNGRY,

AND ITS SICK.

THERE IS AN AMERICA OF DEVOTION TO HELPING OTHERS HELP

THEMSELVES.

THERE IS AN AMERICA OF GREAT WEALTH, CAPABLE OF GREAT DEEDS, IF ONLY CALLED TO DO SO.

#### -20-

THERE IS AN AMERICA THAT IS NO LONGER CONTENT TO BE PUBLICLY POOR AND PRIVATELY RICH.

THIS IS AN AMERICA NOT FOUND IN THE NIXON BUDGET NOR WELL SERVED BY A DEEPENING CONSTITUTIONAL CRISIS PRECIPITATED BY IMPOUNDMENT.

WHAT AMERICA IS REALLY ALL ABOUT WAS WELL PHRASED IN FRANKLIN DELANO ROOSEVELT'S 1937 INAUGURAL ADDRESS. LOOKING OUT ON A NATION HE DESCRIBED AS ONE THIRD ILL-HOUSED, ILL-CLAD, ILL-NOURISHED, HE SAID:

"THE TEST OF OUR PROGRESS IS NOT WHETHER WE ADD TO THE ABUNDANCE OF THOSE WHO HAVE MUCH; IT IS WHETHER WE PROVIDE ENOUGH FOR THOSE WHO HAVE TOO LITTLE."

This is an America Richard Nixon does not know or

UNDERSTAND.

For Richard Nixon, America is in retreat. It is an America practising domestic disengagement, retrenching --NOT TO FIGHT AGAIN BUT TO ABANDON THE CAUSE OF CONQUERING OUR ILLS AND ENRICHING THE LIVES OF MANKIND.

IT IS NOT MY VISION OF AMERICA.

My vision of America is found in the words of Carl Sandberg:

"I SEE AMERICA, NOT IN THE SETTING SUN OF

A BLACK NIGHT OF DESPAIR AHEAD OF US. I SEE

AMERICA IN THE CRIMSON LIGHT OF A RISING SUN FRESH

FROM THE BURNING, CREATIVE HAND OF GOD. I SEE GREAT

DAYS AHEAD, GREAT DAYS POSSIBLE TO MEN AND WOMEN

OF WILL AND VISION. . "

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