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Press release on address by Senator Strom Thurmond (D-SC) before Rotary, Kiwanis, and Lion Clubs of Columbia, S.C., at Jefferson Hotel, 1958 December 1

Strom Thurmond

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Columbia, Dec. 1--Senator Strom Thurmond (D-SC) warned in an address here today that the Executive is the "most powerful branch of the Federal Government" and that it now constitutes a "clear and present danger to our constitutional form of Government."

In addressing a joint meeting of the Rotary, Kiwanis, and Lion Clubs of Columbia at the Jefferson Hotel, the Senator stated that the Executive Branch has derived its power from "a grotesquely exaggerated doctrine of implied powers, and from outright abuses and usurpations." After discussing the inefficiency of the Executive bureaucracy, he asserted: "This ever-growing concentration of power, with its seeds of corruption, is, in the final analysis, infinitely more dangerous than even gross inefficiency."

He said the remedy for this overbalance of power lies in the Congress, which he charged is unwilling to insist on Executive adherence to the Constitution. He called on the American people to make Congress respond to its obligation to curb the power of the Executive by "voices raised in protest, enforced by judicious use of the ballot."

At the beginning, the Senator pointed out that earlier in the fall he had criticized the Congress publicly for preferring Socialism and that he had also discussed publicly the attempts of the Supreme Court to subject the American people to "judicial tyranny." This address in Columbia completed his overall criticism of the operation of the three branches of the Federal Government.

Senator Thurmond presented an array of facts and figures showing the immense size and scope of the Executive Branch. He said the number of non-military employees on the Federal payroll approximates the gross population of South Carolina, adding that the work in 2,116 agencies or "tentacles of control." These agencies and employees, he said, "control and regulate every phase of our existence."

The Federal Government was also pictured by the Senator as being the "country's largest landholder," and the Executive Branch as the "world's largest real estate agent." He said the Government owns 87.5 per cent of the land in Nevada. He asserted further that Federal domestic landholdings total 21 times the entire land area of South Carolina.

The South Carolina Democrat had special criticism for the Federal budget, which he said had multiplied 140 times since 1900.
He stated that the budget has been balanced only five times in the past 20 years, and that during fiscal 1959 we will have the largest peacetime deficit in history. Acknowledging that defense expenditures have accounted for some of this increase, the Senator pointed out that defense spending for 1959 will be $4.3 billion under the 1953 defense budget while non-defense spending for 1959 is estimated at $9.2 billion above the 1953 level.

In speaking of taxes and inflation, the staunch advocate of government economy made this remark: "I would only remind you that the income tax is only one of innumerable Federal taxes levied, and not nearly so oppressive as the non-statutory tax of inflation, which is also levied primarily by the Federal Government."

The Senator devoted the major part of his address to reviewing a long list of Executive abuses and usurpations of power. He started with Thomas Jefferson's use of the "implied powers" to purchase the Louisiana Territory, and cited eight other Presidents for abusive or usurpative acts.

In discussing the most recent Executive actions, Senator Thurmond was especially critical of the use of troops at Little Rock, the withholding of Executive papers from congressional investigators, Justice Department interventions before the judiciary as a "friend of the court," and refusal of the Executive to follow the legislative mandate of the Congress. As an example of the latter, he chided the Administration for its refusal to construct the permanent-type hospital at Fort Jackson. It was approved by the Congress both in 1955 and 1957.

The Senator also decried the use of the foreign trade program by the Secretary of State as a "misapplied weapon of foreign policy." He said the "tragedy of this abuse" had been impressed on him during the recent hearings by his Textile Study Subcommittee.

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Recently, at Rock Hill, I delivered an address in which I pointed out in detail that in Congress, socialism is preferred. Shortly thereafter, at Olanta, I discussed the attempts of the Supreme Court to subject the American people to judicial tyranny.

This afternoon, I would like for us to consider briefly, the largest and most powerful branch of the Federal Government -- the Executive Branch, as supplemented by the quasi-Executive independent agencies.

First, let us examine the size of this awesome monster.

It is true that the total number of persons on the Federal payroll decreased from 2,403,311 at the beginning of 1957 to 2,325,434 at the end of 1957 -- a total decrease of 77,877. These widely acclaimed figures do not indicate that there was an increase of 15,511 in civilian executive departments, but there was. Cuts in the military there have been, but the hordes who fill the tentacles of control and regulation continue to swell. Of the total 2,325,434 non-military personnel, 2,000,729 are in the Executive departments, and another 296,744 are in the so-called Independent Agencies.

It just so happens that the total number of Federal Executive employees approximates the gross population of South Carolina.

The question naturally arises as to where the immense number of people are utilized. There is plenty of room. Our Federal bureaucracy consists of 13 departments; 16 commissions; 24 administrations; 23 types of government corporations; 711 offices; 96 services; 96 bureaus; 621 divisions; 45 boards and 471 miscellaneous or functional bodies. These are the 2,116 organizations
which comprise our Executive Department and Independent Agencies. These are the 2,116 tentacles that control and regulate every phase of our existence. They cover, but are not limited to, the fields of transportation, communication, banking, investment, labor conditions and relations, power, water, highways, housing, education, health, charity, insurance, farming and even recreation.

It would not be remiss to think of the Federal Government as the country's largest landholder, and the Executive Department as the world's largest real estate agent. Within the continental limits of the 48 States, the Federal Government owns outright a total of 409.5 millions of acres of land. This is exclusive of approximately 24 million acres held in trust by the Federal Government.

It is interesting to note that in Nevada, the sixth largest State in the Union, the Federal Government owns 87.5 per cent of the land in the State. To comprehend the vastness of Federal lands in the United States, we might think of it as more than 21 times the total land area of South Carolina. Additionally, the Federal Government owns another 365 million acres in territories and possessions. Much of the domestic land is highly improved, as is indicated by the fact that this land represents only 7 per cent of the total value of domestic Federal land with improvements.

In the approximately 170 year-history of our present form of government, our experience indicates that the size of the Executive Branch is directly proportionate to the combination of the national debt and taxes. Hence, the size of the Executive Branch may be indicated in terms of the debt and taxes.

Since 1900, the Federal budget has multiplied 140 times, although the population has little more than doubled. True, much of
the increase in budget was due to defense requirements, but national defense spending planned for 1959 will be $4.3 billion under the 1953 Korean war defense budget, while non-defense expenditures for 1959 are estimated at $9.2 billion above the 1953 level. Also, non-defense spending for fiscal 1959 is to be increased by $5.9 billion against an increase of only $2 billion for defense purposes.

I feel sure that most of you are aware that the debt limit was raised this year from $275 billion to $288 billion. In the last 20 years, the public debt has grown to nearly seven times its 1939 size. In only five of the last twenty years has the budget been balanced. The five years in which the country did not operate in/cred were 1947, 1948, 1951, 1956 and 1957. Incidentally, the deficit for fiscal 1959 will be the largest peacetime deficit in our history. The interest alone on our huge indebtedness is approximately $8 billion, or about 1/6 of our annual defense budget. The latest figures show that the national debt is equivalent to an indebtedness of $5,240 by every family in the United States.

As to the tax part of the picture, it is my belief that the Internal Revenue Service will impress this upon your minds and pocketbooks between the first of next month and April 15 better than I could possibly do in words. I would only remind you that the income tax is only one of innumerable Federal taxes levied, and not nearly so oppressive as the non-statutory tax of inflation, which is also levied primarily by the Federal Government.

I have deliberately taken some time to demonstrate in words the monstrous size of our Federal Executive bureaucracy. Such a bureaucracy, even if it were desirable, is inefficient and unwieldy. Indeed, it has become so large and filled with overlapping services
and functions, that jurisdictional disputes are becoming quite common.

Aside from the basic inefficiency of any organization so large and extensive in scope, there is an even more basic and fundamental objection to its existence. For every power that accrues to and is exercised by Government, there is a loss of a right by an individual. Therefore, any power exercised by the Executive must be at the expense of the right of the individual, and any unconstitutional exercise of the "individual's" powers is an abuse. Such an employment of power may be unconstitutionally exercised at the expense of another branch of the Federal Government, or at the expense of a State Government, in which instance the exercise is a usurpation, or in common words, a larceny of power.

The history of the Executive Branch, and most particularly the recent history, is bountiful with examples of both abuses and usurpations. With every increase in size and scope of the Executive Branch, the probability of an increase in abuses and usurpations becomes greater, since each increase in size and scope necessarily adds to the already overlarge concentration of power. Lord Acton expressed it simply in the words: "Power tends to corrupt. Absolute power corrupts absolutely."

This ever-growing concentration of power, with its seeds of corruption, is, in the final analysis, infinitely more dangerous than even gross inefficiency.

Due to the complex nature of the various excessive acts of the Executive, it is impractical to distinguish between abuses and usurpations in reviewing them. Executive abuses and usurpations were not unknown in our early history. It is notable that they have always been more pronounced in times of war or severe domestic strife.
The most clear-cut point of demarcation by the Executive from his constitutional power probably originated in 1803, surprisingly, perhaps, through an act of Thomas Jefferson. The act was the purchase by Jefferson for the United States of the Louisiana Territory. Jefferson, himself, felt an amendment to the Constitution was necessary to the exercise of the power, but acquiesced, nevertheless, to the concept of "implied powers" of the Executive that were said to stem from the welfare clause. Had Jefferson realized the precedent which he established by what must be clearly denounced as a flagrant abuse of Executive power, he would have insisted on a constitutional amendment authorizing the purchase.

The period between this precedent by Jefferson and the War Between the States was marked by a slow but gradual increase in Executive powers, largely occasioned by the imputation of authority to the Federal Government generally, through the expansion of the doctrine of "implied power."

With the advent of the War Between the States, outright abuses and unquestionable usurpations by the Executive set a sad pattern for future administrations. Lincoln, great man though he was, had little conception of, or respect for, constitutional limitations. The Emancipation Proclamation, issued prior to the adoption of the 13th Amendment, was a deprivation of private property without just compensation, and as such, it probably still stands as the most flagrant and excessive abuse of Executive power which has gone unchallenged in the Courts. Lincoln increased the numbers of the Army and Navy above the statutory limit, and spent millions of dollars of Federal funds never appropriated by Congress. The only serious challenge to Lincoln's usurpations, was the Supreme Court's
rejection of his suspension of the writ of habeas corpus.

As I have stated, abuses and usurpations by the Executive are historically most common in time of war. After the termination of hostilities, the abusive and usurpative acts are usually discontinued, but invariably there results a residual effect/increasing Executive power over the Executive's pre-war authority. Additionally, the precedent of the abuses, especially those which go unchallenged, give a disastrous long-range boost to the spiral of Executive usurpations.

The period between 1865 and 1915 was marked by the once again steady, but faster, expansion of "implied powers." Two incidents in this period are worthy of note in any review of Executive abuses.

In 1877, President Hayes dispatched Federal troops into several States to cope with disorders growing out of a general railway strike, without any request from the governments of the States involved. Seventeen years later, President Cleveland committed the same offense by sending troops to Chicago during the Pullman strike. Both of these acts were in violation of Article IV of the Constitution, and the first undoubtedly set the precedent for the latter. Neither act was challenged in the courts.

Prior to our entry into World War I, President Wilson engaged in one of the most clear-cut usurpations of power by an Executive that had occurred up to that time. The President requested Congress to pass legislation/authorizing the arming of merchant vessels flying the United States flag. The House of Representatives passed the bill, but it was defeated in the Senate. The President, despite the bill's defeat, authorized and directed the arming of United States merchant ships by Executive Order, and directed that they fire
on any unidentified submarine. Although criticism of the
Presidential Order was bitter, his action was never officially
challenged.

During World War II, Executive usurpations are considered by
most historians to have reached their zenith. It was during this
period that the use of Executive Agreements, to avoid the necessity
of Senate confirmation/essential to the validity of treaties, was
revived and greatly expanded. The idea originated with President
Theodore Roosevelt in 1905, when the Senate failed to approve a
treaty by which the United States would assume collection of
Dominican revenues, in order that the Latin American republic might
eventually hope to liquidate its staggering foreign debt. Subsequent
to the Senate's failure to ratify the protocol, the first President
Roosevelt entered into an Executive Agreement embodying the same
provisions. Some of the stigma of this act was removed in public
opinion by Senate ratification of the treaty two years later.

The second President Roosevelt utilized the same device in his
destroyers-for-bases "deal" of September 1940, the assumption of the
defense of Iceland from Great Britain and entering into the so-called
"Atlantic Charter," to mention the most outstanding. Such
usurpations of treaty-making power have, through the means of
precedent, had extremely far-reaching effects, on one of which I
shall elaborate shortly.

Executive usurpations and abuses during World War II were not
limited to the sphere of the so-called Executive Agreements, however.
The outright seizure of the North American Aviation plant in June,
1941, with only the slightest pretense of legality, was outstanding
in the area of abuses. It is interesting to note that the country
was not then yet at war.
A most spectacular example of Executive usurpation of legislative prerogative, was the President’s demand for repeal of portions of the Emergency Price Control Act, in 1942. The President stated in clear and unmistakable terms that if Congress did not repeal the offensive acts, he would refuse to enforce them. As one writer expressed it, the President advanced the claim that he had the power "to suspend the Constitution in a situation deemed by him to make such a step necessary."

The abuses and usurpations, and attempts thereat, have diminished hardly at all in the post-war period. One vicious abuse was terminated by the Supreme Court in 1952. It decided in a six-to-three decision that the seizure by the President of the steel mills during the Korean conflict was unconstitutional.

The most recent abuse, and by far the worst to date, was the subjugation of Little Rock to rule by Federal troops. Not only did the President use Federal armed forces without a request of the State Government, but he did so under the pretext of enforcing a court decision, which on its face violated the Constitution, specifically the Tenth Amendment. There was no war or so-called insurrection to mitigate the offense. As of now, a court challenge is precluded, and there appears under the circumstances to be no official way of insuring that there will be no repetition of this tyrannical act. Public opinion must be brought forcibly to bear to prevent its recurrence. I cannot help but feel that the overall outcome of the recent Congressional elections was influenced more than the press will admit by the Administration’s use of bayonets at Little Rock.

So far I have discussed the most well-known and publicized abuses and usurpations by the Executive. Their recurrence,
obviously, is pyramidal. The apparently innocuous precedents spiral. Concentration of power in the Executive grows proportionately to the size of Government. The truth of Lord Acton's words "Power tends to corrupt" and "absolute power corrupts absolutely" is demonstrated in action.

Usurpation by the Executive has progressed to such a point that it is routine -- so routine in fact that many have lost touch with the point of origin of our Government -- the Constitution. For instance, in 1956 former President Truman expressed the thought that the whole people look to the President "for leadership, and not confined within the limits of a written document."

So much have Executive usurpations of legislative prerogatives become accepted that a writer in the Yale Law Review in 1954 said:

"After all, the function of the Congress under the Federal Constitution is not to dictate legislative policy to the President. It is rather to insure that the policies of the Administration will not be carried into execution without substantial evidence of the consent of the people in different parts of the country."

Have we actually strayed that far from Article I, Section I of the Constitution, which states, "All legislative powers herein granted shall be vested in a Congress of the United States ..."?

A review of some of the less publicized but prevalent activities of the Executive Branch might indicate that in practice we have.

A field of Executive abuse which originated in 1948 seems to be gaining headway. In 1948, Congress appropriated funds for 58 groups for the Air Force, although the President had requested funds for only 48 groups. On October 29, 1949, President Truman issued an Executive Order to the effect that the funds appropriated for 58...
groups should be expended only to the extent of providing the 48 groups he had recommended. Some actions of the Bureau of the Budget of the present Administration appear to indicate that this usurpation of a legislative function is being practiced. As an example, Congress in 1955 authorized and appropriated $5 million for a permanent hospital of 250 beds expandable to 500 beds at Fort Jackson. In 1957, Congress raised the appropriation to $7 1/2 million, and increased the authorized size to 500 beds expandable to 1000. With 1959 almost upon us, the Bureau of the Budget has not permitted one dime to be spent toward this hospital at Fort Jackson. I am proud that my voting record in 1958 was second best on the issue of economy, for I realize the ever present dangers of debt and inflation. Nevertheless, not even the most worthy purpose of economy can justify unconstitutional action.

In view of the tremendous increase in such serious crimes as sedition, narcotics violations and interstate transportation of stolen vehicles, one would suppose the Justice Department would be one part of the Executive Branch which was too busy to indulge in usurpations. In recent years, however, the Justice Department has repeatedly intervened in legal actions to which the Federal Government is not a party, as a so-called "friend of the Court." In so doing, the Executive is acting unconstitutionally, and is an officious intermeddler.

Recently, one commission of the Executive Branch, namely the Federal Communications Commission, attempted to usurp legislative functions on the question of pay television. This is an issue which affects a greater portion of the American public than any current issue in the communications field. Despite the novelty and extremely
broad application of the question, only our most vigorous action in both houses of Congress prevented the Commission from taking action which would have virtually precluded consideration of the question by Congress.

Another even more subtle Executive usurpation of Congressional powers lies in the growing practice of the Executive to withhold from Congressional investigators information on the conduct of the Government's operations. The power of legislative investigation is one of the most effective checks provided in our system of Government, as is illustrated by the recent labor-racketeering hearings. Recently, the President issued an Executive Order severely limiting the areas on which any of the over two million Government employees could testify, ostensibly extending a privilege formerly limited to the President's official family of highest rank. In defense of that order, Attorney General Brownell prepared a list of precedents in which testimony of Executive actions had been denied Congressional investigators. Mr. Brownell cited a total of 26 instances of Executive refusal of information to Congress, fifteen of which occurred during the Roosevelt and Truman Administrations, and only eleven of which occurred in the entire previous history of the Republic. The earlier precedents had to do with single occasions of refusal to submit papers to Congress, while many of the recent instances cited were blanket orders, cutting off Congressional access to information in wide areas of government bureaucracy for an indefinite period.

Of a certainty, the Congress could and should have prevented Executive usurpations of legislative functions, if by no other means, through the control of appropriations. Unfortunately, such has not
been the case. Not only has Congress failed to effectively resist such usurpations, but has on occasions cooperated in setting the stage for their perpetration.

I would like to detail one example of this — not so spectacular as Lincoln's suspension of the writ of habeas corpus, but much broader in application. Article I, Section 8 of the Constitution specifically delegates to Congress the power to "regulate commerce with foreign nations." Article II, Section 2 gives to the President the power to make treaties with the advice and consent of the Senate.

Prior to the passage in 1934 of the "Reciprocal Trade Agreements Act," agreements with foreign countries on tariff rates were reached through treaties, which were subject to the Constitutional limitation of Senate ratification. By passage of the Trade Agreements Act, Congress not only delegated its tariff-setting powers to the Executive, but in the eventual application of the Act, subscribed to the President's use of Executive Agreements to avoid Senate ratification required for a treaty.

This may sound like a technical problem, confusing and unmeaning to the average citizen. Its practical effects, however, are readily apparent to all. As a result, the power of subjecting any particular domestic industry to the devastating blow of wide-open competition with low-wage foreign imports is left solely in the hands of the President. It is apparently exercised by the Secretary of State as an often misapplied weapon of foreign policy.

Congress, in passing the act, solved their constitutional qualms by providing that each complaint by a domestic industry of substantial injury from tariff reductions be reviewed by the Tariff
Commission. It specified, as is required for a constitutional delegation of power, the guidelines on which the findings of the Tariff Commission should be based. No such guidelines were provided for the President, however, in the unlimited power given him to refuse to implement Tariff Commission findings.

The tragedy of this abuse has been emphatically impressed on me recently as I participated in extensive hearings as a member of the Textile Study Subcommittee. Since 1951, the Tariff Commission has found a necessity for the relief of domestic industry in 26 cases. It has also reported to the President in five other cases in which the Commission was evenly divided. Of these 31 cases, the President declined to implement the action of the Tariff Commission in 20 cases, and allowed the Commission action to stand in only 11. Thus, in approximately two-thirds of the cases, the President rejected the plea for relief.

During the last session of Congress, the Trade Agreements Act expired. It was obvious that its re-enactment, as a practical matter could not be prevented. I, therefore, introduced an amendment to the extension of the Trade Act passed by the House of Representatives. My amendment would have required a simple majority approval by Congress when the President felt the Tariff Commission findings should not be implemented. Although this amendment as slightly revised was accepted by the Finance Committee, largely on Senator Kerr's urging in Committee, the amendment was defeated on the Senate floor.

Lobbying by the Executive was so excessive on this issue that it constituted an abuse in itself. Appropriated funds were used extensively in the propaganda campaign conducted primarily by the
State Department. The defeat of the amendment was largely due to the extreme lobbying measures of the Administration.

The conclusion is inescapable that the Executive is the most powerful branch of the Federal Government. Its power is derived from a grotesquely exaggerated doctrine of implied powers, and from outright abuses and usurpations. The Executive Branch now constitutes a clear and present danger to our constitutional form of Government.

Potentially, the remedy to an overbalance of Executive power lies in the Congress. Obviously, Congress is unwilling to insist on Executive adherence to the Constitution. The solution lies with the American people. Congress is your tool. It is the branch of Government most responsive to your wishes. If you strongly insist by voices raised in protest, enforced by judicious use of the ballot, no part of Government at the present time is beyond your control. The danger to our Constitution, and thereby to our liberty, is clear. It is my deep conviction that the American people, once awakened to the danger, will quell the threat. Let us pray their awakening will not be too late.

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