

Memorandum

Subject

Re: Presidential Signing of Bankruptcy
Extension Act


Date

June 13, 1984

To

FILES

From

NAME: Ralph W. Tarr 
OFFICE SYMBOL: Office of Legal Counsel

STATEMENT:

This memorandum addresses several issues that we considered in determining whether the President could sign on May 1, 1984, a bill that would extend the transition provisions of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (Reform Act), which provisions, as amended by Pub. L. No. 98-249, 98 Stat. 116, were to expire at midnight on April 30, 1984. In order to frame the issues properly, it is first necessary to set forth the complex factual situation in some detail.

Initially, Congress provided that the transition provisions of the Reform Act would expire on March 31, 1984, and that the permanent bankruptcy court system established by that Act would thereafter take effect. A new bankruptcy court system has not been established as contemplated, however. On June 28, 1982, the Supreme Court held that Congress's broad grant of jurisdiction to the bankruptcy court system created by the Reform Act unconstitutionally conferred the essential attributes of judicial power on non-Article III tribunals. See Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 87 (1982). To enable the bankruptcy court system to continue functioning consistent with the Constitution, the judiciary promulgated a temporary, emergency rule premised on the Reform Act's transition provisions and the judiciary's inherent power, in the absence of legislation to the contrary, to provide itself with instruments needed for the proper

performance of its duties. See Ex parte Peterson, 253 U.S. 300, 312 (1920). 1/

Because the constitutional infirmity in the Reform Act can be cured permanently only by new legislation, it was hoped that Congress would have provided for a new bankruptcy court system by March 31, 1984, the expiration date of both the transition provisions of the Reform Act and the emergency rule. But Congress failed to reach agreement on the content of new bankruptcy legislation. Instead, one day before the transition period terminated, Congress passed S. 2507, which extended the transition period for yet another month to April 30, 1984. See 131 Cong. Rec. S 3502 (daily ed. March 30, 1984); id. at S 3504; id. at H 2123. Had these provisions not been extended, the bankruptcy court system would have been thrown into considerable confusion and the validity of bankruptcy court decisions would have come under intensified attack. Although the current bankruptcy judges could have remained in office absent new legislation, the bankruptcy courts would have lacked jurisdiction. See Memorandum for the Attorney General, from Ralph W. Tarr, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Bankruptcy Court Issues Arising at the End of the Transition Period (March 29, 1984). Thus, the extension of the transition provisions was yet another temporary measure designed to ensure the continued functioning of the bankruptcy court system.

1/ Prior to the expiration of the stay of judgment in Northern Pipeline, the Administrative Office of the United States Courts, at the direction of the Judicial Conference of the United States, drafted a model emergency rule to enable the continued operation of the bankruptcy court system. See Sample Order and Model Rule, 11 U.S.C. (West Supp. 1983). The circuit councils were requested to order each of the district courts within their respective circuits to promulgate this model rule. The interim emergency rule took effect as of December 24, 1982 and was to expire on March 31, 1984, unless appropriate remedial legislation were enacted prior to that date. The courts have concluded that, in addition to the judiciary's inherent authority to provide for the proper performance of its duties, various statutory authorizations support the adoption of the interim rule. See In re Kaiser, 722 F.2d 1574, 1579 (2d Cir. 1983) (invoking 28 U.S.C. §§ 331-332, 2071, Bank. Rule 8018, Fed. R. Civ. P. 83); White Motor Corp. v. Citibank, N.A., 704 F.2d 254, 261-63 (6th Cir. 1983).

In large part, the first Extension Act, Pub. L. No. 98-249, continued the existing bankruptcy court system simply by substituting "April 30, 1984" for "March 31, 1984" in the various transition provisions of the 1978 Reform Act. An amendment authored by Representative Rodino, however, created some ambiguity by providing that: "The term of office of any bankruptcy judge who was serving on March 31, 1984 and of any bankruptcy judge who is serving on the date of the enactment of this Act is extended to and shall expire on May 1, 1984." § 2 of Pub. L. No. 98-249. As explained in greater detail below, this ambiguity as to whether bankruptcy judges held office until April 30 or May 1 further complicated the determination whether the President should sign the second extension bill by midnight of April 30, 1984.

By the time the President left Washington, D.C. on April 19, 1984 for his trip to the People's Republic of China (China), Congress had not passed either new, substantive bankruptcy legislation or a bill providing for yet another extension of the existing court system. Congress still had not passed any bankruptcy legislation when the President left Hawaii on April 24, 1984. The President was not scheduled to return to the United States until May 1, 1984, between 2:00 A.M. and 4:00 A.M. Hawaii-Aleutian time (7:00 A.M. to 9:00 A.M. Eastern time.) ^{2/}, when he was to stop in Fairbanks, Alaska. Because it would be exceedingly difficult and expensive to deliver a bill to the President in China, the White House sought our advice on whether, in the event Congress passed a last-minute bill extending the bankruptcy court system, the President could sign the bill when he arrived in Fairbanks, Alaska. ^{3/} This inquiry required the resolution of the following questions:

1. Were the terms of office of the current bankruptcy judges to expire at midnight of May 1, 1984 instead of at midnight of April 30, 1984, when all other elements of the current bankruptcy court system, including the courts, were to expire?

^{2/} See 15 U.S.C.A. § 263 (West Supp. 1983) (designation of zone standard times); see also 15 U.S.C. § 260a (standard time of each zone advanced one hour commencing at 2 o'clock antemeridian on the last Sunday of April).

^{3/} On April 26, 1984, when the President arrived in China, Congress passed S. 2570, a bill to extend the termination date of the transition provisions of the Bankruptcy Reform Act of 1978 from April 30, 1984 to May 25, 1984. See 131 Cong. Rec. S 4480-81 (daily ed. April 12, 1984); id. at H 3090 (daily ed. April 26, 1984).

Assuming that the offices of the bankruptcy judges were to expire at midnight on April 30, 1984:

2. Would a bill signed at 2:00 A.M. to 4:00 A.M. Hawaii-Aleutian time on May 1, 1984, be retroactive to 12:01 A.M. of that day?

3. Could Congress constitutionally include in the extension bill a provision that would operate retroactively to restore the judges to office after a lapse of some hours during which they would be ousted from office?

Assuming that the President would have to sign the bill by midnight on April 30, 1984:

4. Does the President have to sign the enrolled bill for the measure to become law, or may he give his oral consent and sign the bill later?

5. May the President sign a facsimile of the enrolled bill, such as a telex, and sign the original enrolled bill on return?

6. Is the President required to sign the bill in the United States?

7. Is the time and date the President signs the bill defined by the local time at the place of signing, or the corresponding time and date in Washington, D.C. at the precise moment of signing?

1. Whether the Terms of Office of the Current Bankruptcy Judges Expire at Midnight on May 1, 1984

As noted above, Congress on March 30, 1984, passed a bill that extended the expiration date of the transition provisions of the Bankruptcy Reform Act from March 31, 1984 to April 30, 1984, with one significant exception. See § 1 of Pub. L. No. 98-249. That exception was the Rodino amendment, enacted as § 2 of Pub. L. No. 98-249, which stated that "The term of office of any bankruptcy judge who is serving on March 31, 1984 . . . is extended to and shall expire on May 1, 1984." If § 2 of the first Extension Act authorized the incumbent judges to remain in office until midnight of May 1, 1984, then the President could sign the bill in Alaska on May 1 rather than in China, without threatening the continued functioning of the bankruptcy court system.

The language of the Rodino amendment, however, is itself ambiguous. A term of office that "is extended to and shall expire on May 1, 1984," might be construed as expiring at

midnight of April 30; alternatively, the term might continue up to midnight of May 1. The ambiguity is increased because the relevant day is the first of the month rather than the last. That is, a term that is extended to and shall expire on April 30 is logically construed as expiring at midnight of April 30, so as to avoid leaving an untidy, unaccounted for 24 hour gap at the end of the month. But a term that is extended to and shall expire on May 1 is more naturally read as extending up to but not including May 1, so as to leave a clean break at the end of one month and the beginning of the next one.

Because the language of the Rodino amendment is inconclusive, external guides for statutory interpretation are required. Representative Rodino offered his provision as a last-minute floor amendment and the brief legislative history is unhelpful in determining whether Congress intended the terms of bankruptcy judges to expire at midnight of April 30 or May 1. See 131 Cong. Rec. H 2122-23 (daily ed. April 30, 1984). However, it is a fundamental canon of statutory construction that a section of a statute should not be read in isolation from the context of the Act. Rather, in interpreting legislation the Court should "look to the provision of the whole law, and to its object and policy." Richards v. United States, 369 U.S. 1, 11 (1962); see also Panama Refining Co. v. Ryan, 293 U.S. 388, 439 (1935) (Cardozo J., dissenting). Insofar as the bankruptcy courts and the entire transition system were to expire on April 30, 1984, it is extremely incongruous to interpret the Rodino amendment as authorizing the judges alone, absent their courts, their support staff, and the procedural rules pursuant to which they conducted business, to continue in office throughout the day of May 1, 1984, particularly in view of the lack of any express congressional intent to create such an incongruity. The overall structure of the first Extension Act and its evident purpose -- to extend the transition period to midnight of April 30, 1984 -- suggest that § 2 was similarly intended to extend the terms of office of incumbent judges up until May 1, but not through May 1. See Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 211 (1979) (if the law does not define the meaning of a statutory phrase precisely, a court should look to the ordinary meaning of that phrase, illumined by the structure of the Act).

Finally, we note that at the time Congress considered passing the second Extension Act, extending the transition period yet another month to May 25, 1984, its Members clearly believed that the current bankruptcy court system, including the judges' terms in office, would expire on April 30, 1984.

See, e.g., 131 Cong. Rec. H 3085 (daily ed. April 26, 1984) (remarks of Rep. Fish); id. (Rodino amendment to be replaced with new § 2 which states: "The term of office of any bankruptcy judge who was serving on April 30, 1984, . . . is extended to and shall expire on May 25, 1984.") (emphasis added). Although postenactment developments cannot be accorded the weight of contemporary legislative history, subsequent authoritative expressions concerning the scope and meaning of prior legislation cannot be ignored. See North Haven Bd. of Education v. Bell, 456 U.S. 512, 535 (1982). We therefore concluded that the terms of office of incumbent bankruptcy judges extended up to 12:00 A.M. on May 1 but did not continue up to midnight of May 1, 1984.

2. If the Offices of the Bankruptcy Judges Terminate at Midnight of April 30 Would a Bill That Extends Their Terms of Office and Which is Signed Between 2:00 and 4:00 A.M. (Hawaii-Aleutian time) on May 1, be Effective Retroactively to 12:01 A.M. of That Day?

Generally, as a rule of convenience, the law does not recognize fractions of a day. See e.g., Lapeyre v. United States, 84 U.S. (17 Wall.) 191, 198 (1873). Thus, if on a given day the President signs a bill that involves, e.g., a statutory benefit scheme, the President's assent is regarded as having been given at the start of the day. See Taylor v. Brown, 147 U.S. 640, 646-46. (1893). But the rule of disregarding fractions of a day is merely one of convenience that "must give way whenever the rights of parties require it," that is, "whenever it becomes important to the ends of justice, or in order to decide conflicting interests." Louisville v. Savings Bank, 104 U.S. 469, 474-75 (1881). As explained by Justice Story:

there is no ground of authority, and, certainly, there is no reason to assert, that any such general rule prevails, as that the law does not allow of fractions of a day. On the contrary, common sense and common justice equally sustain the propriety of allowing fractions of a day, whenever it will promote the purposes of substantial justice. Indeed, I know of no case, where the doctrine of relation, which is a mere fiction of law, is allowed to prevail, unless it be in furtherance and protection of rights, pro bono publico.

In re Richardson, 20 F. Cas. 699, 702 (C.C.D. Mass. 1843)
(No. 11,777).

Significantly, whenever a statute implicates constitutional limitations on the legislative authority of Congress and the Executive, courts disregard the general rule against recognizing fractions of a day and "look to the precise time the statute became law by the President's action." United States v. Will, 449 U.S. 200, 225 n.29 (1979). 4/ In Will, for example, the

4/ As the Supreme Court explained at some length in Will:

The Government asks us to invoke the rule that the law does not recognize fractions of a day, see, e.g., Lapeyre v. United States, 17 Wall. 191 (1873); it is argued that we should treat the President's assent as having been given at the start of October 1, the same time the Year 1 increase was to take effect. It is correct that "the law generally reject[s] all fractions of a day, in order to avoid disputes." 2 W. Blackstone, Commentaries *141. Here, however, the Government acknowledges that the statute was signed by the President after the Year 1 increase had taken effect. This Court, almost a century ago, stated:

"[W]henever it becomes important to the ends of justice, or in order to decide upon conflicting interests, the law will look into fractions of a day, as readily as into the fractions of any other unit of time. The rule is purely one of convenience, which must give way whenever the rights of parties require it. . . . The law is not made of such unreasonable and arbitrary rules." Louisville v. Savings Bank, 104 U.S. 469, 474-475 (1881) (quoting Grosvenor v. Magill, 37 Ill. 239, 240-241 (1865); citations omitted). Accord Combe v. Pitt, 3 Burr. 1423, 97 Eng. Rep. 907 (K. B. 1763); 2 C. Sands, Sutherland on Statutory Construction § 33.10 (4th ed. 1973).

In Burgess v. Salmon, 97 U.S. 381 (1878), this Court was required to look to the time of day when a statute was enacted as compared to another and related event. This Court held that, notwithstanding the general rule, a person could not be subjected to a civil fine for violating a statute passed on the same day he engaged in the conduct but after that conduct had occurred. To impose a penalty on an act innocent when performed would render the statute an ex post facto law.

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Compensation Clause of the Constitution prevented Congress and the President from according any retroactive effect to a bill signed by the President during the day of October 1, insofar as the law would have repealed ("diminished") a judicial salary increase that became effective as of 12:01 A.M. that day. Thus, the question of whether a bill signed by the President between 2:00 and 4:00 A.M. (Hawaii-Aleutian time) of May 1, 1984 would be retroactive to 12:01 A.M. of that day requires a determination of whether the bankruptcy extension bill is "in furtherance and protection of public rights, pro bono publico" or whether it involves important rights of parties and constitutional limitations on the Congress.

From the perspective of parties involved in bankruptcy proceedings, the time at which the President signed the bill could have considerable significance. If the rule of disregarding fractions of a day were applicable, certain parties with vested, superior or secured interests in ongoing bankruptcy proceedings would benefit therefrom. Other parties for whom important rights would vest if the bankruptcy system ceased to function at midnight of April 30 would clearly benefit from an opposite inquiry into the exact sequence of events. Because conflicting interests of parties are in issue, there is by definition no general public good furthered by reliance on the rule against recognizing fractions of a day. More importantly, our initial conclusion, that given the conflicting rights involved the bill should not be given retroactive effect to the beginning of the day, is confirmed by our conclusion with respect to a related question: could Congress, consistent with the Constitution, expressly make the bill retroactive?

(Footnote continued)

Id., at 384-385. Thus Burgess dealt not so much with benefits and penalties as it did with constitutional limitations on the legislative authority of Congress and the Executive. In the context of periodic increases, the Compensation Clause, like the Ex Post Facto Clause of Art. I, § 9, places limits on Congress and the President. Because of the constitutional implications, the logic of Burgess applies to the statute for Year 1 and requires us to look to the precise time the statute became law by the President's action.

United States v. Will, 449 U.S. at 225 n.29

3. Whether Congress Constitutionally Could Include in the Extension Bill a Provision That Would Operate Retroactively to Restore the Judges to Office After a Lapse of Some Hours During Which the Judges Held No Office

Under existing legislation the terms of office of the incumbent bankruptcy judges were to expire at midnight of April 30, 1984. Moreover, the President's power to appoint, with the advice and consent of the Senate, bankruptcy judges for the "new" court system created by the Reform Act of 1978 was to become effective as of 12:01 A.M. on May 1, 1984. If the incumbent bankruptcy judges were no longer in office at the time the President signed the second Extension Act, and if, by making the bill retroactive Congress were to restore those judges to office, then Congress, by legislating, would have effectively appointed those judges to office in violation of the Appointments Clause. See U.S. Const., Art. II, § 2, cl. 2; Buckley v. Valeo, 424 U.S. 1, 124-37 (1976) (Congress may not, consistent with the Appointments Clause of the Constitution, itself appoint officers of the United States). Because the Appointments Clause prohibits Congress from appointing officers of the United States, we cannot constitutionally construe a bankruptcy extension bill signed by the President between 2:00 and 4:00 A.M. on May 1 as retroactive to 12:01 A.M. of that day, for to do so would permit Congress to reappoint the current judges to offices that they no longer held.

The reason why Congress may not expressly make legislation retroactive in this instance similarly explains the principle described above: that if a statute implicates constitutional limitations on the legislative authority of Congress, the customary rule of disregarding fractions of a day is inapplicable. Congress may not, either expressly or impliedly, make a bill retroactive if the Constitution places constraints on its power to do so.

4. Whether, if the President Must Sign the Bill By Midnight of April 30, 1984, to Avoid a Lapse in the Provisions for a Bankruptcy Court System, the President is Required Physically to Sign the Bill, or Whether He May Give His Oral Consent and Sign the Bill Later?

Article I, § 7, cl. 2 of the Constitution provides that "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall

sign it, but if not he shall return it, . . ." Thus, the plain language of the Constitution contemplates that the President's signature on the enrolled bill is essential to the validity of every statute. The Supreme Court has similarly explained that:

The only duty required of the President by the Constitution in regard to a bill which he approves is, that he shall sign it. Nothing more. The simple signing his name at the appropriate place is the one act which the Constitution requires of him as the evidence of his approval, and upon his performance of this act the bill becomes a law.

Gardner v. The Collector, 73 U.S. (6 Wall.) 499, 506 (1867). We therefore concluded that it was necessary for the President physically to sign the bill in order for it to become a law. 5/

5. Whether the President May Sign a Facsimile of the Enrolled Bill, Such as a Telex, and Sign the Enrolled Bill Itself on Returning to Washington, D.C.

The Constitution sets forth the President's obligation to sign (within ten days) any bill of which he approves in simple terms: "he shall sign it." "It" refers to "every Bill which shall have passed the House of Representatives and the Senate" and been "presented to the President." U.S. Const., Art. I, § 7, cl. 2. The Constitution therefore appears to require that the President sign the actual enrolled bill presented to him, not a copy or facsimile thereof. Neither this Office nor the White House Clerk's Office could discover

5/ This Office has previously opined that the President cannot delegate his bill signing function. See Memorandum for William E. Casselman, II, Counsel to the President from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, March 5, 1975; Memorandum for John D. Ehrlichman, Counsel to the President from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, March 20, 1969; Memorandum for Gerald D. Morgan, Special Counsel to the President from Malcolm R. Wilkey, Assistant Attorney General, Office of Legal Counsel, August 19, 1958. We have also concluded that the President could satisfy the constitutional requirement of signing a bill merely by affixing his initials thereto. See id.

a single instance in which a President had ever signed something other than the actual enrolled bill. See generally Eber Bros. Wine & Liquor Corp. v. United States, 167 Ct. Cl. 672, 674-77 (1964) (although President and Congress have some flexibility in determining how and when President will be presented with a bill, underlying assumption is that President is to sign the original enrolled bill), cert. denied, 380 U.S. 950 (1965).

Section 106 of Title 1 of the United States Code further specifies the process by which a bill passed in both Houses shall be printed, designated the enrolled bill, signed by the presiding officers of both Houses and sent to the President. The statutory provision thus contemplates that the President will sign a particular document that previously was signed by the presiding officers of both Houses. The statute does provide that "[d]uring the last six days of a session such engrossing and enrolling of bills and joint resolutions may be done otherwise than as above prescribed, upon the order of Congress by concurrent resolution." 1 U.S.C. § 106. But nothing suggests that any alternative procedures for the printing and signing of engrossed and enrolled bills were intended to affect the President's constitutional obligation to sign the very bill that Congress presents to him, if he approves. Although it might be argued that the President is approving the content of the bill rather than any particular form in which it is presented to him, we believe this is an insufficient basis for rejecting two hundred years of practice during which the plain language of the Constitution has been interpreted to require the President to sign the document that the presiding officers of Congress have signed and presented to him, rather than a copy or facsimile thereof. See Marsh v. Chambers, 103 S. Ct. 3330, 3334-35 (1983) (an unbroken practice is not something to be lightly cast aside). ^{6/} We accordingly concluded that the President may not sign a telex or other facsimile of the Extension bill in China but must sign the original enrolled bill.

^{6/} We also note that Members of Congress believed that the President is required to sign the enrolled bill itself. See, e.g., 131 Cong. Rec. H 3089 (daily ed. April 26, 1984) (remarks of Rep. Glickman) ("this bill, if passed today, will have to be flown 8,000 miles to Shanghai to be signed at a tremendous cost to the taxpayers of the United States. Probably, Mr. Chairman, this is the first bill in the history of this House that has ever been literally shanghaied on its way to passage); id. (remarks of Rep. Edwards).

6. Whether the President is Required to Sign a Bill on United States Territory

It is well-settled that the President's constitutional powers, unlike the powers of some state governors, can be physically exercised anywhere in the world. See Eber Bros. Wine & Liquor Corp. v. United States, 167 Ct. Cl. at 672. A necessary component of the President's foreign affairs powers, see U.S. Const., Art. II, § 2, cls. 1, 2 and § 3, is that the President can act in his official status while abroad. Moreover, there is a longstanding practice of the President signing bills outside of the White House or Washington, whether on official trips or working vacations. See Eber Bros. Wine & Liquor Corp. v. United States, 167 Ct. Cl. at 672. Presidents Wilson, Franklin D. Roosevelt, Truman and Eisenhower all signed bills while on trips outside this country. See id. at 701-09 (findings of fact). We therefore concluded that it would be perfectly permissible to sign the bankruptcy Extension bill in China if that were necessary in order to sign the Extension bill before midnight of April 30, 1984.

7. Whether the Time and Date of a Presidential Bill Signing is Defined by the Local Time at the Place of Signing or the Corresponding Time and Date in Washington, D.C.

In the present instance, once we determined that in order to ensure the continuation of the bankruptcy court system the President would have to sign the original enrolled bill in China prior to May 1, 1984, the White House assured us that the bill could be flown to the President for his signature prior to midnight of April 30, 1984, whether measured by Washington, D.C. or China time. ^{7/} There was consequently no need to resolve whether the time of the place at which the

^{7/} Because a person travelling from Washington, D.C. to China crosses the international date line if he goes westward, there is no question that a bill signed in China on April 30 will have been signed prior to May 1, Washington, D.C. time. The international date line, which is roughly coincident with the 180th meridian of longitude, is the arbitrary point at which the date is adjusted to compensate for the fact that a traveller going completely around the earth, carrying a clock that he advanced or retarded by one hour whenever he entered

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bill would be signed or Washington time governed for purposes of defining when the act of signing occurred. 8/ Moreover,

(Footnote continued)

a new time zone, would find on returning to the starting point that the date according to his calculations and experience differed by one day from that kept by persons who had remained there. In crossing the date line eastward, the date becomes a day earlier (May 1 becomes April 30). Thus, a bill signed in China at any time of the day on April 30 would necessarily have been signed before midnight of April 30, Washington, D.C. time. See Encyclopedia Americana 295 (Grolier Int'l ed. 1983); New International Encyclopedia 274 (Dodd, Mead and Co. 2nd ed. 1930).

8/ This Office has opined that in order to preserve fully the President's constitutionally defined ten-day veto period and to avoid any ambiguity as to when the ten-day veto period begins and ends, if the President acts while abroad, the "notation of the time when a bill is presented to or approved by him be made according to the date and hour calculated as of Washington time." Memorandum for the Hon. Robert J. Lipshutz, Counsel to the President, from John Harmon, Assistant Attorney General, Office of Legal Counsel, Re: Presentation of Bills to the President During His Absence from the United States at 4 (Oct. 25, 1977).

As a general rule, however, zoned variations in time are observed in determining the time when statutory rights or liabilities accrue or when statutorily relevant acts take place. Congress has provided that:

In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall insofar as

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because the bill could not operate retroactively without violating the Appointments Clause, we had already concluded that it would be irrelevant whether on May 1, 1984 the bill were deemed signed at 4 A.M. Hawaii-Aleutian time or 9 A.M. Eastern time. In either event, the bankruptcy court system would have ceased functioning and the judges could not constitutionally have been restored to office.

CONCLUSION

We concluded that because the terms of the incumbent bankruptcy judges expired at midnight on April 30, and the Appointments Clause precluded the bill from operating retroactively, the Extension bill should be flown to the President in China and signed prior to 12:01 A.M. of May 1, China time, to avoid the breakdown of the current bankruptcy court system.

The President signed the bill in Peking early in the day on April 30, 1984. For the first time in his incumbency, the President hand dated the bill.

(Footnote continued)

practicable (as determined by the Secretary of Transportation) be the United States standard time of the zone within which the act is to be performed.

15 U.S.C. § 262. Courts have interpreted this statute, in the absence of circumstances pointing to a different outcome, as manifesting a congressional intent to recognize the respective United States' time zones as determinative with regard to acts committed within each time zone. See Sunday v. Madigan, 301 F.2d 871, 874 (9th Cir. 1962). Courts have also concluded that although 15 U.S.C. § 262 is not expressly applicable to time zones outside the United States, there are cogent reasons why Congress would want the same rule to apply worldwide. See id. at 874 (holding that Uniform Code of Military Justice, which was to become effective as of March 31, 1951, became effective in Korea as of midnight on May 30, 1951, Korean standard time).