

## News and Comment

### **Bombers and the Constitution: Can Congress Order Kennedy To Develop a Weapon?**

Carl Vinson, of Georgia, the chairman of the House Armed Services Committee, has decided to try to get Congress to order the President to spend 330-odd million dollars more than he wants to spend on research and development of the B-70 supersonic bomber; this raises a number of interesting questions and several astounding, if unlikely, possibilities.

This has been a good year, generally, for major constitutional questions: the Supreme Court is still sitting on its decision on whether the courts should become involved in the efforts of urban voters to win fair representation in their state legislatures; the decision must be handed down within the next 3 months.

The so-called "military muzzling" hearings raised the constitutional question of how far Congress could pry into the workings of the executive branch, but the issue was resolved in favor of the President when the investigating committee upheld the President's right to invoke "executive privilege" in refusing to permit the Senate to have the names of the particular officers who censored particular speeches.

Now Vinson has raised the question of whether Congress has the power to order the President to spend money on what he regards as an unsound project.

All of these issues are of major importance: If the Supreme Court decides to intervene in the reapportionment cases, the inevitable result will be a shift in political power away from the minority of rural voters who control most state legislatures and toward the urban majority. More slowly, this shift will make itself felt in Congress as the shift in power in the state legislatures begins to be reflected in their apportionment of seats in the House of Representatives.

If Kennedy had accepted the notion that the Senate could order him to sup-

ply the details of who censored what speech, he would have, among other things, undermined his own authority. For the committee intended to call the officers to explain why they had made certain deletions in the censored speeches. Kennedy insisted that such subordinate officials were responsible solely to their superiors in the executive branch; that the President had the power to protect them from being forced to explain their actions to Congress.

A parallel situation in a scientific area could arise if Congress had the power to question a scientist below the policy-making level—in, say, the National Institutes of Health—on why he had approved or disapproved a given proposal. Quite obviously the authority of the policy-making officials, and indirectly the authority of the President, would be weakened if the scientist knew he could be pulled before a hostile congressional committee for ruling unfavorably on a research proposal in which an influential congressman had a special interest, even though the scientist was merely carrying out the policy of his legal superiors. Kennedy insisted that the policy-makers accepted full responsibility for what their subordinates were doing, and that if Congress were dissatisfied with particular decisions it would have to question the policy maker, not the subordinate official who made the decision.

For such reasons Kennedy refused to provide the Senate with the information it wanted, as Eisenhower had refused to provide the McCarthy Committee with the names of officials who had worked on particular security clearances. The Stennis Committee promptly upheld Kennedy's right to withhold the information.

Now Congressman Vinson, who is the senior member of the House of Representatives as well as chairman of the Armed Services Committee, has raised an even more serious question, and he has done so with the unanimous

support of his committee. "To any student of government," the committee report says, "it is eminently clear that the role of Congress in determining national policy, defense or otherwise, has deteriorated over the years. More and more the role of the Congress has come to be that of a sometimes querulous but essentially kindly uncle who complains while furiously puffing on his pipe but who finally, as everyone expects, gives in and hands over the allowance, grants his permission, or raises his hand in blessing, and then returns to his rocking chair for another year of somnolence. . . . Perhaps this is the time, and the RS-70 the occasion, to reverse this trend. Perhaps this is the time to re-examine the role and function of Congress and discover whether it is playing the part that the Founding Fathers ordained that it should."

The term RS-70 (reconnaissance-strike) refers to the new concept of what has been known as the B-70 (bomber) 2000-mile-an-hour strategic plane. The Administration's opposition to it is based on the view that by the time it could be available in quantity (about 1970) it would be obsolete, or at least sufficiently obsolescent to make it highly unsound to spend the \$10 billion it will cost to develop and produce a fleet of the planes.

About \$1.3 billion has already been spent on the B-70, and the Administration is willing to spend the extra several hundred million dollars to produce three different prototypes of the plane on the grounds that it would be worth the extra money to learn about the problems and possibilities of flying a very large plane at very high speeds. These planes are scheduled to fly in the next 2 years. What the Administration does not want to do is to begin spending the large amounts of money needed to develop the specialized subsystems—the radars, missiles, navigation equipment, and so forth—necessary to move from a prototype airframe to a usable weapon system. This money would be largely wasted unless a decision to go ahead with the full weapon system were made, and the Administration has made it clear that it is at least unlikely that such a decision will be made. On this basis, the Administration refused to spend the extra \$180 million Congress made available last year, and almost certainly will refuse to spend the extra \$300-odd million Congress will presumably make available this year.

In an effort to assert congressional control, and Congress's conviction of the continuing value of manned bombers, Vinson's committee has reported out a bill which does not merely make the money available, as in past years, but "directs" the Secretary of the Air Force to spend the money. The committee report elaborates on this: "Lest there be any doubt about what the RS-70 amendment means, let it be said that it means exactly what it says: i.e. that the Secretary of the Air Force, as an official of the executive branch, is directed, mandated, ordered, and required to utilize the full amount of the \$419 million authority granted. . . . If this constitutes a test as to whether Congress has the power to so mandate, let the test be made and let this important weapons system be the field of trial."

This raises the question of what Congress could do if it accepted Vinson's proposal and the President then, as he surely must, refused to comply with the Congressional order. The possibilities are pretty horrifying: Congress might, for example, vote a contempt citation against the Secretary of the Air Force, and proceed to try him, under a power which has not been exercised in over a century, in the halls of Congress. Congress could then put him in jail, at least until the end of the Congressional session. Again, it might impeach the Secretary for refusing to spend the money, or impeach his boss, the Secretary of Defense, for refusing to make the money available to the Secretary of the Air Force, or impeach *his* boss, the President, for refusing to make the money available to the Secretary of Defense.

The remedies, in short, are so drastic that they are most unlikely to be used: the most moderate of the formal remedies would be a contempt citation against an Administration official, put through with the intention not of putting the man in jail, but of providing a way to get a test case before the Supreme Court: the official would appeal his contempt conviction on the grounds that he could not be in contempt for refusing to obey the Congressional order because Congress did not have the power to issue the order in the first place. The Supreme Court could then hand down its opinion on the division of power between the legislative and executive branches. Even this less drastic procedure (as opposed to impeachment, from which there is no appeal) is entirely unlikely—for there is little doubt that the Supreme Court would

support the President, and the whole procedure would result in the humiliation of Congress, which neither Congress nor the President could want.

What has happened, then, is that Vinson has threatened a struggle he does not have the power to win: Congress is not going to impeach anyone, and the Supreme Court, even if a legal test of the issue is contrived, is not going to hand down a decision which would in effect make Congress clearly superior to the President. Vinson apparently hopes, though, that the threat, with its potential for embittering, to no one's real advantage, the relations between Congress and the Administration will force some sort of concessions from the Administration. Kennedy's indicated tactic is, first, to try to save face for Vinson and Congress by refusing to acknowledge publicly that the issue is a test of strength between the two branches of the government, and, second, privately, to make it unmistakably clear that he feels he cannot give way, and therefore that Congress can gain nothing but may harm the country by forcing a clear test of wills.

The whole affair could provide a useful case history for students of strategy and deterrence.—H.M.

### **Down at the Cape: The Spectacular Has Become Commonplace at America's Spaceport**

With only a few sunbleached "Well Done, John" posters as a reminder of last month's spectacular event, America's best-known piece of waterfront property has gone back to its unique brand of normal.

The big wooden press grandstand overlooking the Mercury launch site sits empty; the nearby motels have illuminated their "vacancy" signs, a sure indication that America's space effort is between extravaganzas, and local cloud formations are, for the time being, no longer of universal concern.

The property involved, of course, is Cape Canaveral, Florida, which, though a relative newcomer to popular knowledge, is now generally regarded as *the* Cape, colloquially overshadowing all the other promontories of the world, Good Hope, Horn, and Cod included.

The 25 scrubby square miles that comprise the Cape were singled out for renown in 1946 when the Joint Chiefs of Staff appointed a Committee on Long Range Proving Grounds to select

a site for long-range testing of missiles. The criteria that were employed in the selection left few spots on earth that could fill the bill as well as Cape Canaveral. These included political stability, which meant indefinite U.S. control or ownership; ocean frontage, to reduce the hazard from straying missiles; water transport (Canaveral is on the inland waterway) for conveying construction material, as well as for carrying the missiles from the fabrication plants to the launching pads; adjacent air facilities (Canaveral is next door to Patrick Air Force Base) for rapid transportation of people and equipment; and, finally, proper alignment with a string of land points halfway around the world for taking measurements of long-range flights and avoiding passage over Soviet-controlled territory.

At the time of Canaveral's selection, there was little urgency in the space program; construction did not start for 2 years, and the first launching, a German V-2 coupled to an upper-stage Army rocket, did not take place until mid-1950.

Today, the Cape makes launches of one sort or another almost every week, but the perilous drama of manned space flight has raised the threshold of public interest. Although the space program has a sharp eye for public relations, the people who run the Cape Canaveral end of it are not displeased that most of the time their domain is somewhat like a theater that fills only for spectacular productions.

For Colonel Glenn's flight some 600 reporters were on hand, and the National Aeronautics and Space Administration has not yet recovered from its strenuous efforts to satisfy the demands of each for some exclusive tidbit which would put him above his fellows.

As the world's biggest spaceport—with the possible exception of its secret Soviet counterpart—Cape Canaveral is as distinct from any other piece of this earth as the Port of New York is distinct from the Western Plains.

Standing at its gates are not, as one might expect, the sentries of the Marine Corps, Army, Navy, or Air Force; nor are they federal guards of any sort. The guard duty is carried on by black-and-white suited employees of Pan American World Airways, which, in the military-civilian-commercial mix of the American space effort, is the prime contractor for operating Canaveral and its string of down-range stations.

Beyond Pan American, the organiza-