

YOUNGSTOWN STATE UNIVERSITY

ORAL HISTORY PROGRAM

Bricker Amendment Project

Bricker Amendment

O. H. 125

HERBERT BROWNELL

Interviewed

by

Dr. Joseph May

on

November 9, 1977

HERBERT BROWNELL, JR.

Herbert Brownell, Jr. was born in Peru, Nebraska on February 20, 1904. Educated in schools in Nebraska, he entered Yale Law School, receiving his legal degree in 1927. After a number of years in the practice of law, he entered politics in New York State, serving in the state legislature from 1933 to 1937. He managed Thomas E. Dewey's campaign for Governor of New York in 1942 and his presidential campaigns in 1944 and 1948. He played a prominent role in Dwight D. Eisenhower's presidential campaign in 1952.

President Eisenhower appointed Brownell Attorney General of the United States and he served from 1953 to 1958. In that capacity the President relied principally on Brownell in dealing with the Bricker Amendment challenge, rather than relying on Secretary of State John Foster Dulles. The reason for this was that Brownell had established friendly relations with Ohio Senator John W. Bricker dating back to 1944 when Bricker was the Republican vice presidential nominee and Brownell was campaign manager for Governor Dewey, who headed the ticket. Brownell and Bricker retained good personal relations throughout the Bricker Amendment controversy which peaked in 1954.

Despite this personal relationship, efforts at a compromise solution, desired by Eisenhower, came to naught because Brownell, representing the viewpoint of the federal

bureaucracy in the Justice Department and the State Department, could never find a text for the proposed amendment to the Constitution which would satisfy the goals of Senator Bricker and at the same time not have unintended effects which Brownell sought to avoid.

This interview concerns only Brownell's involvement in the Bricker Amendment episode. It should be read in conjunction with an interview with Senator Bricker, also accessioned in the Oral History Collection at Youngstown State University. Reading the two interviews will give the views of the leading participant on each side of the controversy. Further information about the Bricker Amendment can be found in the introduction to the interview with Senator Bricker.

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INTERVIEWEE: HERBERT BROWNELL
INTERVIEWER: Dr. Joseph May
SUBJECT: Bricker Amendment
DATE: November 9, 1977

M: This is an interview with Herbert Brownell for the Youngstown State University Oral History Program by Dr. Joseph May on November 9, 1977.

In fact, that was one of the things that I wanted to ask you about. They have a restriction that if you are to quote or cite from this, you need written permission. And there is one particularly good thing you say, in there, that is very quotable about the importance of the issue. I particularly would like to quote that if it would be all right with you.

B: Well, I checked that over yesterday and it is all right with me to do it.

M: Okay, fine. Well, then, if I could get a letter to that effect, because they require it in writing.

Mr. Brownell, you were right in the middle of the thick of the thing from the beginning to the end. There's so many questions I can ask you but we only have a limited amount of time, I realize. I have three or four areas I thought I would concentrate on. Just to give you an outline of the whole interview, the first one would be the area of the Knowland Substitute, how it came about. Then second, I'd like to ask you some things about the negotiations with the Bricker forces in December and January of 1953-1954. Then, there's some questions that I'd like to ask about the emergence of the George Substitute, with what happened in that respect. And, then, if we have time, I'd like to find out why the negotiations

in 1955 broke down. I have a good deal of the correspondence on that.

B: We'll have to refer to my records as you ask the questions so I'll get it in the right chronological order.(Laughter)

M: And then if we have time, there's a question about the Status of Forces Agreement that I would like to ask. The problem of reaching an agreement, within the administration on that. So that is the general direction I would like to go. So the first area here on the Knowland Substitute. You had meetings with the Republican Policy Committee in the summer of 1953 and. . . Well, backing up, in April, when you were testifying before the hearings, and summer, of course, several things happened, one of which was: the Judiciary Committee came out with this revised Which clause version.

B: Oh yes.

M: And another thing that happened I gathered was that it seemed like the support for the Bricker Amendment was beginning to build up. Now, was the idea for the Knowland Substitute purely an idea to head off the passage of the more serious Which clause version? Did it come, one hundred percent out of the desire to prevent this, or did President Eisenhower genuinely feel that he wanted. . .in other words, where did the pressure for the Knowland Substitute come from?

B: Well, as I recall it, the Bricker forces were pretty well convinced that the President would not go along on their original draft and so that they maintained that, in the original language, it would not get through the Senate that the President had enough backing to defeat it. That was the main reason that an attempt was made to modify the language--try and get something that would be acceptable to the President. Then there was also a feeling among the Republican Senators that they must support John Bricker who was personally very popular and had fought hard for this for several years. He carried some of the senators with him on a personal basis. So I think the Knowland Substitute was probably for a combination of reasons, both of those reasons.

M: So, in part, it was a need to keep the party together?

B: Yes.

M: For fear of splitting the party at this crucial time when the President's program was before the Congress.

- B: Yes, it was really the first test of the President's strength in foreign affairs as to whether or not he could keep the party on an internationalist course, which is the reason he ran in the first place, and it was a test with the group in the Senate that was really nationalistic or isolationist or whatever you want to call it.
- M: One of the things I found out that was very interesting-- and I got this from Senator Bricker himself . . . Oh, by the way, I'm sorry, I didn't answer the question you asked earlier. I am working on a book on this, hoping to have a full manuscript just on the Bricker Amendment and the controversy.
- B: It needed to be done. I'm glad you're doing it.
- M: Yes. Senator Bricker is giving me access to his papers and several interviews and I have seen the materials in the Eisenhower Library. The Department of Justice papers have been made available to me now and many other sources which I've collected on this. One of the surprises that came out and Senator Bricker was the first one to broach it to me--was that in those first six months in 1953, Senator Taft the majority leader, was working to delay the Bricker Amendment. Bricker was surprised to find this out and I got from several other sources that Taft, behind the scenes, though verbally giving support, very mild support in public, was working to delay the thing on the floor.
- B: I think that's correct.
- M: And I was wondering if you recall how that was worked out. Was that worked out from the President and Taft or did you speak to Taft?
- B: No, I didn't. I think that Taft genuinely wanted to support the President as much as possible and that he did so in this case. When did he die?
- M: Oh, he died in, I believe it was around June in 1953. June or July in 1953, somewhere in there because Knowland was taking over his duties as early as during May.
- B: Well, I know that Knowland was asked somehow by the administration to introduce the Substitute. He didn't write it or compose it himself. It was composed over in the administration, but I haven't gotten the connecting link of how this was done. Do you recall if you asked Knowland to do it or if this was done through the White House Staff?

- B: I think it was done by a group of Senators, Senator Ferguson and Senator Knowland. They wanted to prevent a split between Eisenhower and Bricker for partisan reasons I suppose, largely, and they genuinely felt, as did Senator Bricker, that something had to be done along these lines restricting the treaty-making powers of the President and they wanted to accomplish that if they could without a split in the party.
- M: And Senator Knowland, probably feeling that he had to represent the administration's point of view and probably knowing that Senator Taft's. . .
- B: That's right, he was trying to get a compromise on language.
- M: Because I think at the beginning, he probably was for the Bricker Amendment the same as anybody else, the other group, the people around Bricker, I don't think there was probably any difference or distinction, so his thinking had to change as he got into it too.
- B: That's true.
- M: But, he didn't consult with Bricker on this. This is the thing, because, not even a day before the Substitute was introduced, Bricker didn't know anything about it.
- B: I think that's correct.
- M: And Bricker just took it as simply an administration ploy, a diversionary tactic, I think is what he called it.
- B: Well, I think it was a group of Senators that really originated that, rather than the administration.
- M: Oh, that early?
- B: Yes.
- M: Well, now that is a new angle. (Laughter)
- B: I, of course, can't prove it but I think I would have known about it if it was an administration move.
- M: You don't think it came out of Phleger's committee to coordinate the response of the agencies to the Bricker Amendment that was headed by Phleger at the White House?
- B: I'm not sure that they got active that soon.

M: They got active early, as early as March of that year and they had about five or six meetings right on through.

B: It's conceivable that they consulted with Knowland and Ferguson on that. If so, I didn't know about it at the time.

M: Well, one of the things that the Bricker people say is that the administration adopted a conscious strategy of delay. And, I'm not sure--I want to get your reaction on this. I can see where they would think this, that when you go into these conferences--going into the second area of my question--your conferences in December and January, there were so many of them, I'm just beginning to get them untangled, what was discussed at each one.

B: That's December of 1953?

M: Right, and January.

B: Well, I think undoubtedly that everybody on the administration side hoped that they could delay it and put it over, at least for another year, that it would die out. I think the delay probably was the first. . .

M: So, you would say there was a deliberate strategy of delay?

B: To prevent a vote, yes.

M: To prevent a vote. Well, this is the way they regarded it.

B: I think that's what Taft was trying to do.

M: Yes. There was a very colorful phrase that Chuck Webb, who was Senator Bricker's assistant, had in one of his private letters. In describing this later, he said that they were "Negotiations in the Panmunjom style."
(Laughter)

B: That had developed later I think. I think undoubtedly that it was true. I think Senator Bricker thought that this would be probably the first important piece of legislation, call it legislation, or the first important product of the Congress in the Eisenhower administration. As I remember it, it was Resolution Number One. It was signed by a very large number of senators who were co-sponsoring it. And I think, when Eisenhower was elected, they just assumed that this would breeze through. It

could easily have come to a quick vote in the Senate and if it had, it probably would have passed. So that I'm sure that there was an effort to delay it until the full implications of it could be explained and public opinion aroused and public debate started, Bar Associations, and the law schools and things of that sort.

M: I get from several sources here, that President Eisenhower's position was a little bit different even from the Cabinet and certainly the State Department and Justice Department personnel below you. I gather that he really did want a compromise agreement.

B: Oh yes. It was very much on his mind. He realized that if there was a split within the party right at that particular time. . . As I recall it, the . . . yes, I think I'm right in saying that a split at that time in the party on foreign affairs would have been very serious and that he'd like to get this behind him because his . . . it could be done properly, so that he could get on to things that were more on his mind.

M: Yes, right. Did you feel, that in a way sometimes he was leaning on the Justice and State Departments to try to come up with something that . . .

B: Oh yes.

M: Really leaning, "We've got to get this . . . ?"

B: Time after time he told me to get it out of the way.

M: Well, one source said that Eisenhower came into the room at one of these meetings and one of the groups was there and he said, "Now, you stay here until you come up with something." (Laughter) Or words to that effect.

B: He felt that it was holding up action on his legislative program and until he got it out of the way, he wasn't going to get action on a number of other important matters that he thought were, well, more important. He thought, I think, that this was a dispute over language that could be settled without compromising on principle and that it was really a quarrel of lawyers over language.

M: And he always thought that right on through didn't he, to a certain extent, because I know that he would never . . . If you convinced him that this would cut down on executive authority--any given draft that was being studied at the time--would cut down on executive authority,

I know he was determined he would not allow that to happen.

B: That's right.

M: So I suppose, in a way, Phleger and Ranken and some of the others who were fighting this [the Bricker Amendment] in the bureaucracy below had their work cut out for them. If they could convince the President that any given phrase and so forth, cut down on executive authority, then they had blocked the President from giving public support.

B: I think that's right, that's a good analysis.

M: Well, fine, because every draft that was put up to him, it seemed like there was always some way that this could be interpreted which it would be.

B: That's true. You ask a layman to read over the Fourteenth Amendment and how can he possibly get all the implications that are involved there unless he knows the Supreme Court decisions over the period of one hundred years that interpret it and he wouldn't get the slightest idea of some of the implications by reading the language. And that was at the heart of the Bricker debate. You'd look at some language and it sounded fine but then when you really dug into it and applied the cases to it, you find out that it did decrease executive authority to the point where you almost went back to the old Confederation days, before the Constitution was adopted, where we didn't have any power in the Presidency to deal with foreign affairs.

M: Well, at the end of January--this is one of the crucial, January and February is the really crucial part of the whole thing--Eisenhower appeared to ^{be} getting very frustrated. The inability of arriving at any kind of satisfactory compromise and he was a little peeved at Bricker because Bricker wouldn't accept something he thought he should be able to accept. And so he began working on a nation-wide television address and that thing went through eleven drafts. I've got copies of each of the eleven drafts. (Laughter) You probably worked on it yourself.

B: Could be. My assistants did, anyway.

M: Yes. And the President must have spent hours and hours working on those drafts getting it right for a nation-wide television address. And he was talking in private about the ~~Which~~ clause, now mind you, if the ~~Which~~ clause passes, he was going to give Dulles a leave of absence as the

Secretary of State so he can go and testify before the state legislatures to defeat the thing. And then, right at the end, he's getting ready to do this, right at the end, the whole thing gets shelved and he doesn't make the address at all and I don't have any hard facts on why that television address was shelved. I have some theories but, do you have any facts?

B: No.

M: (Laughter)

B: My theory would be, my theory would be that he found out he didn't need to give it, that it was going to be defeated.

M: Well, that's one theory. Now, there's this theory. Knowland had been pressing IKE [President Eisenhower] to come out with the position. I gather Knowland wanted to take any kind of position for his guidance, that Eisenhower was just kind of close-mouthed on this. He felt like he was walking in a mine field. And so Ike wrote Knowland this famous letter, January 25, 1954: "I am unalterably opposed to the Bricker Amendment as reported by the Senate Judiciary Committee." Now, I found out yesterday--in research at Columbia University-- Knowland said he was under the impression that he was authorized to release that letter. However, I have also come across correspondence from Eisenhower to you, saying, "Did I authorize him? I don't recall saying anything about it." I don't know if you recall that memo from Eisenhower or not?

B: No.

M: I think it said, "Did I say anything stupid this morning that might give him the impression that I authorized him to release the letter?" I have his memo to you but I don't have any reply that you sent. So, whether the letter was really authorized, Eisenhower wasn't under the impression that it was authorized.

B: I don't recall that incident.

M: Well, he was surprised it was released.

B: Yes, yes.

M: And he said he wouldn't have used Bricker's name if he had known it was going to be released. So, you don't recall how that thing got out? Well, all right.

B: No, I don't.

M: Then Knowland kept pressing him for a statement of support for one of these other new compromises, the Leadership Compromise and the George Substitute. I've got very interesting correspondence, another letter from Knowland. Two drafts of the letter went out to Eisenhower. One of them said, "The Leadership agreement is all right. I won't object to it." The other draft was the exact opposite saying that "No draft should be accepted without more prolonged study." Two inconsistent letters from the President. And, what happened was, he didn't sign either one of them. Now, what I was wondering was, if you could shed any light on how it was that Eisenhower backed off from making any further statement on this because he was being pressed in all directions to make a further commitment one way or the other.

B: When?

M: Right after the beginning of February, right when the George Amendment came up.

B: Well, I can see why the President didn't sign either one. I don't actually remember the incident but he was being pressed by some of the senators, like Senator George, to stay out of the fight all together.

M: Well, yes, that's what George wanted to do, kind of benevolent neutrality. I gather Knowland thought that Eisenhower had agreed not to fight the George Amendment.

B: Well, I'm sure that there was great pressure on Eisenhower not to fight the George Amendment. They took the tack there that essentially it didn't involve the treaty power and that it was a matter of the Senate to decide. The President felt that he wasn't a part of the process of submitting constitutional amendments. And the President obviously didn't want to get into an unnecessary fight with Senator George. I would think that that was the reason that he didn't make any unnecessary statements. He tried to limit his personal participation in the thing as much as possible and let Dulles, myself and others carry the fight against the amendment.

M: So he didn't object to you fighting the George Amendment?

B: No, no. Senator George did. (Laughter) He had the famous press conference.

- M: That "queer attorney general" statement. (Laughter)
- B: Because I had no business mixing in the Senate considerations of Constitutional Amendments.
- M: I'd wondered if George said that, because he felt a little bit--the word is, I don't want to use an emotionally loaded word but it's the only one that comes to mind--double-crossed here. But, Knowland says, "there was a misunderstanding" in later years. He said in an interview that "there obviously was a misunderstanding." I was under the impression that the President would not come out against this and based upon that, I got Senator Bricker to drop the Which clause and accept the leadership thing. And I checked the votes on it and he did. Bricker and the Bricker forces abandoned the Which clause. Of course, he might as well, it would have been beaten anyway.
- B: Yes, yes. By that time.
- M: By that time. So, now, I was put in this terribly embarrassing situation of saying to Bricker, "If you drop the Which clause, and go over to the George Amendment, the administration won't oppose it." And then what happens? Eisenhower says, or indicates in some way--although he wouldn't sign that letter that would have made it public--Eisenhower indicated to them, or they thought he indicated to them that he was going to stay out of it.
- B: Well, that should account for Senator George's statement.
- M: Yes. And then what happens: all the full lobbying effort of the White House hits Capitol Hill to defeat the George Amendment.
- B: Yes. Well, that sounds like a very logical explanation to me because I never knew that Knowland did that. I imagine Senator George thought in effect, "What's going on here? I'm getting two stories." That isn't the way it came out. I think the way it came out was that the journalists had devised it to have a good story but Senator George and I always got along very well.
- M: Oh you mean that "queer attorney general" statement?
- B: Yes, yes. I think he probably meant it. I think your analysis is probably right. He thought it was a queer thing that Senator Knowland would come to him and purporting to represent the administration's viewpoint

and then I'd come to him with the opposite, purporting to represent the administration's viewpoint. I think that's probably the correct analysis of why he made that statement.

- M: But the whole White House lobbying effort did go into it at the last minute to defeat. . . And by the way, it was successful. But it also was the reason why Knowland said he decided, in view of the thing--he voted "No" on the George Amendment the first time it came up--and that's why, where he made his famous speech going back to the back of the Senate and said, "I'm voting as a Senator" and switched and voted in favor of it because he felt he owed George something.
- B: Well, throughout, there was a lot of Senatorial politics involved, a matter of prestige. To the Senators it was almost as important as what the Constitutional Amendment said. I felt that that was always a factor. They say that Senator Bricker was so well liked that a lot of senators kind of hated to vote against him. They felt they were sort of letting him down because he had dramatized this issue for over a period of months.
- M: Well, I got to like him myself.
- B: Oh, yes.
- M: He was so kind and courteous and courtly. (Laughter)
- B: Really a fine man.
- M: He certainly is. Well, that was the end of it for all practical purposes but you didn't know it at the time.
- B: It came up again a couple years later.
- M: It came up again in 1955 and 1956.
- B: There never was any real steam in it after that.
- M: No, there wasn't. But you did have conferences with some ABA [American Bar Association] leaders. Lloyd Wright was one who came by.
- B: Frank Holman.
- M: And Frank Holman. Do you recall anything in particular in those later meetings as to why the negotiations broke down. They thought they had worked out something with you too at one time?

- B: Yes. Well, there were a series of meetings but they were language problems more than anything else because the danger of anything really passing, in fact had evaporated so I viewed negotiations in sort of an unreal atmosphere. Edgar Eisenhower was with Frank Holman and Lloyd Wright. The President was very respectful of the American Bar Association, in fact that's one thing he never did quite understand. They took the position in favor of the Bricker Amendment. Others were pointing out to him that legally and constitutionally it was a bad thing and he never could understand how that happened but he instructed me to make every effort to try and come to an agreement with the American Bar Association group. Some how substitute for the group a workable and satisfactory representative's point of view. So, while we had many meetings, one time we thought we had some language which really was only a statement that, "No treaty in violation to the Constitution would be valid."
- M: The old Section One?
- B: It would be unconstitutional, yes. Some of the American Bar Association group wanted to take that. We thought for a while that Senator Bricker did. And it was quite a reasonable possibility at that time. Section One of the amendment would have been sponsored by Senator Bricker and passed. But he finally came to the conclusion that that was an empty gesture that didn't really accomplish anything.
- M: Well, you think it was because of the split within the Bricker forces, the split within the ABA itself, whether to accept a half loaf or not, that killed that?
- B: Yes, I do.
- M: That was the impression that I . . . that if they had been willing to accept a half loaf at that point, even in 1955 or even maybe perhaps as late as 1956. They could have gotten the Bricker Amendment.
- B: Yes, that is true in my opinion.
- M: After 1956, 1957 I doubt. By 1957 it was probably already too late.
- B: 1955 or 1956 around in there.
- M: Because the prospective votes on the thing were still up to fifty-nine, sixty senators in favor.

B: Yes.

M: Even that late in the game.

B: Yes.

M: Well, I wanted to ask you one question. One of the big issues in the whole Bricker amendment thing was the fight over the Status of Forces Treaty and of course, the Justice Department was involved in the Status of Forces controversy as it was coming up. Some things I've run across kind of indicate to me there was some difficulty within the administration trying to work out a common administration position on what the Status of Forces position of the administration should be. Is there anything that you recall that would shed light on that?

B: I doubt if that is so. The President took the position very early, so stated in a Cabinet meeting, that he favored this and he wanted everybody to favor it. It was a very important issue so far as he was concerned, that it was an administration measure and that he wanted it passed. And I don't recall any difference in opinion within the administration about it. The President's leadership on that was very forceful. There was no organized opposition in the Congress that was serious. And for all those reasons it went through rather smoothly. There was some extremist opposition to it. There were some countries where, under their Judicial system, they'd cut off their arms or their legs or something of that sort. But it really was an extremist position. But except for that type of opposition, it really went very smoothly.

M: Yes, the Bricker Reservation was defeated handsomely in May of 1953. [Actually, July, 1953] Even some of the senators who later voted for the Bricker Amendment, voted against the Reservation. But I came across some interesting correspondence to the effect that, in the Defense Department, some of the lawyers over there said, "Now wait a minute, maybe we are giving away too much because under previous precedents, we did have complete criminal jurisdiction on troops and now under this agreement which is coming up we are agreeing to turn over some jurisdiction that in the past we haven't had to do."

B: Yes. I think you're correct on that--but it was brushed aside. It never gained any significant support even within the administration.

M: That was within the Defense Department?

B: Yes.

M: The Defense Department didn't adopt the position officially?

B: No, they did not. Quite the contrary.

M: That clears that up.

B: I don't think there would have been any opposition to the Status of Forces Agreement if it hadn't been that the Bricker Amendment controversy was very hot at that time. I can see that the Bricker forces might have used that as another way of calling attention to the importance of the Bricker Amendment. Except for that, it had smooth sailing for it and it was something that the President had his heart set on. He was really determined on that. He initiated that, whereas the Bricker Amendment was already in the works and people had all taken sides before he was ever inaugurated, so that's one of the things that made it so hard for him to handle. It wasn't something that he had initiated as part of his administration program. It was a fight that everybody had taken sides on before he was inaugurated.

M: One little thing that may not be as important as some things we've discussed in here: In looking through the Justice Department papers, I was very much interested in seeing the correspondence that you had with Walter White of the NAACP which he was writing the senators to get their position he was passing along information to you. It occurred to me when I was looking at that, that that was a very effective way of mobilizing some lobbies, mobilizing a segment of public opinion, and really, when you come down to it, that's what defeated the thing.

B: Well, that's the way I felt, that that was our best chance of defeating it and we used the New York City Bar Association and groups of that kind.

M: I know Phleger, in the State Department, stayed almost in constant touch with the Committee to Defend the Constitution.

B: Yes.

M: And coordinated the efforts and so forth.

B: That's true.

M: I wondered, with Phleger and some administration people working so closely with the group that was out to defeat it, if Eisenhower knew that much about what was going on down there, or if he was peeved because he was trying to get an amendment, trying to get something satisfactory, a satisfactory compromise. In this group however, no amendment at all, no compromise, whatsoever. You were better off, without anything.

B: Yes of course we were. (Laughter) Well, I think you may have a point there. I know the President felt that a weakness in having the State Department represent him in this fight because first the Dulles speech he made in Louisville during the campaign which led the Bricker forces to think that he would support them throughout and perhaps intransigent opposition to any Bricker Amendment whereas he did want a compromise, get it out of the way. That's why I think he got the Justice Department more into the negotiations with the American Bar Association.

M: Well, in retrospect, would you say there was a difference in say, Eisenhower's personal position and your personal position? Now, of course, I know you loyally supported him. There's complete evidence of that, but your own personal outlook on the thing really was closer to no amendment at all, than his was.

B: Yes, that is correct. We carried on the negotiations at his directions trying to get a satisfactory compromise. We would have been very happy to have it voted down and get it over with.

M: But you did make a good faith effort to try to follow the President's directions in that respect.

B: Yes, we did. We explored every angle we could think of to get a compromise.

M: And, as far as you know, Eisenhower did not perceive that any of his own people were working against what he was trying to do?

B: I think the answer to that probably is, that he felt we were a better negotiating team working for a compromise than the State Department was.

M: I see.

B: So that, to that extent you might say that he felt that if there was any chance for a compromise at all, which he wanted, that we could do it for him.

M: Yes, I know if Bricker walked into any of these conferences and if Phleger was there, he just would say this isn't serious at all.

B: Yes.

M: But, when he walked in with you--you both have such high regards for each other.

B: We really tried.

M: Bricker has spoken highly of you to me and this is really interesting. He couldn't stand Dulles though.

B: I think he thought that Dulles had really let him down because I think he thought that Louisville speech was a speech in favor of the Bricker Amendment.

M: You mentioned the Louisville speech, I suppose pages of ink have been written about that Louisville Speech. (Laughter). When you come right down to it, wasn't Dulles playing politics there? Wasn't it a campaign address in 1952? How much did he really believe what he was saying about . . .

B: Well, at that time, the central effort was to be on good terms with everybody in the Republican party regardless of who was going to be nominated. He didn't know whether Taft was going to be nominated or Eisenhower was going to be nominated, and he was being asked by both sides to write a platform on foreign affairs which could be adopted without a big floor fight. His whole effort at that time was to smooth over the controversy within the party, so that there wouldn't be a big row at the convention.

M: So, he wrote a speech in which he spoke on both sides of the issue. Knowingly he was speaking on both sides of the issue, trying not to contradict himself, but actually ending up doing it.

B: Yes, I think that's a good explanation of it, and it was very fruitful. (Laughter) You have to give him credit for it because he did avoid--not that one speech, but his whole effort--did avoid a big row at the 1953 convention between the Eisenhower forces and the Taft forces over a matter that was very important to Eisenhower. He would have turned down the nomination if there had been an

isolationist behind it. The Republican platform because that's the only reason he would run for president, was to prevent the party from taking an isolationist point of view in foreign affairs. That's the thing, I'm convinced, that caused him to run in the first place and he was certainly very strong with me at all points that if there was an isolationist kind of platform but to count him out, even if you had to say it after he was nominated, he would have turned down the nomination. He thought that was his mission, otherwise there was no point in his running for president, he had all the honors there were. So, Dulles deserves a lot of credit, I think, for presenting a platform that could be accepted on all sides. And of course, all it did was further the fight until the Bricker Amendment came along, and that was the first real test. There were other tests too like Bohlen.

M: Oh yes.

B: The Bohlen Confirmation, things of that sort. The party was split, there was no blinking that.

M: Well, as I recall the Bohlen thing, Taft went to the wire with the president. We got that one through. He said to Dulles afterwards, "Now, don't ever do that again." (Laughter)

B: I think that's right. I think that's right. Yes. When people who lived through the Bricker Controversy reflect, he was smart. And I think he would have accomplished what the President wanted to accomplish and that was to get it out of the way and get on with the legislative program.

M: I don't think Taft could have followed the same strategy in 1954 as he did in 1953. In 1953, he was delaying it, but in 1954, they had too many supporters. They would have had to bring it to the floor.

Is there anything that you feel that is not on the public record--because I have looked over the public records from beginning to the end--anything that may not be in the public record that you feel should be a part of the history of the Bricker Amendment?

B: Well, that is really a good question, I think. The only way I could answer it, I think, is to repeat more-or-less what I said before, and that is the feeling on the part of the President that the State Department, which ordinarily would have carried the load completely out of

there at this time, had to be supplemented in order to have this point of view fully represented and getting it up to a satisfactory compromise. I think that probably some people on both sides have felt that the President had a compromise which was weak because it was weak from their standpoint. They knew what they wanted. I think the President was of the mind, . . . there were two groups that were involved here. One was the group that was isolationist and really wanted to cut down the powers of the Presidency and the Federal Government in this area. If they didn't do it, there were going to be more treaties that really were internationalist in their point of view, that the Federal Government would bring more and more subjects into foreign affairs, economic, labor and social problems-- of course, events have proved them to be right in that respect because many of those issues that one hundred years ago were considered completely domestic, have now become international problems. The different agencies in the United Nations have shown that. It was that very sincere feeling that ran through the Republican Party and the Bricker Amendment supporters that this was the time to stop that sort of thing. It was a real isolationist movement, a bona fide one and a sincere one.

M: Bricker makes an interesting distinction in his correspondence, I suppose he did it publicly too, he said, he's not an isolationist, he's a nationalist. There's a difference. (Laughter)

B: Well, it's a distinction without a difference really, when you come right down to it, but I think he did believe that. I think I remember him making that same point, but I think it was a political distinction because "isolationist" is a little tainted but "nationalist" was a good word but really, in essence, they came down to the same thing.

Now that group, the president wanted to oppose but he felt that there was another group in back of the Bricker Amendment which led him to think that there was a chance for a compromise. That other group, largely speaking, would be the people who were still mad at F.D.R. [Franklin Delano Roosevelt] because of what he did at Yalta or things of that sort, and that some demonstration should be made to show that we were going to be nationalists, we were going to stand up to Russia and we were going to eliminate any traces of Communist philosophy in our own government. The Bricker Amendment was used more-or-less as a standard around which people who felt that way could rally. That group did not consciously want to take away

from the President's leadership in foreign affairs. That was the reason that the President, I think, felt that there was a possibility of compromise.

The second group, it was kind of an emotional reaction against the New Deal or something of that sort. The Republicans were now in power. We were going to show them that we were different, and a philosophy of that kind, but it was not a carefully thought out position. When that group came to realize what the consequences were, of passing the Bricker Amendment, they dropped away from it. That, I think, is the real way to analyze this thing and to understand the motives of the President and to understand the decrease in support for the Bricker Amendment.

- M: There's one little memo that President Eisenhower wrote to you in 1955 I believe it was, saying--I don't know if you recall this or not, I get this from the Eisenhower papers--it says, "There is a reason I want the Bricker Amendment that we haven't discussed before and that is, I'm afraid that if I am succeeded by a politically weak administration, they might succeed in putting through an amendment that would be very, very bad indeed."
- B: Yes. I do remember that and I know he did feel that way, and I think he had a reason to feel that way. One of the reasons he could easily come to that conclusion was that people didn't understand the significance of it. It was perfectly obvious that we should adopt the Bricker Amendment. It was a little late when you studied it but you found out why you couldn't and still keep a strong federal government in foreign affairs.
- M: There is, even among moderates and liberals today, a new slight shift of opinion beginning in the 1970's, the standard liberal opinion on the Bricker Amendment was just against it, defeated by isolationists and so forth. But, I think the Vietnam War soured so many. . .
- B: You're absolutely right.
- M: That it's coloring perceptions on things all across the board. And I wrote Fulbright just out of curiosity, Fulbright was one of those who stood against the Bricker Amendment, and I said, "What is your position today? Would you vote for the Bricker Amendment if it came up again today?" And I went through it section by section. "Well, section one is no longer needed, that's obsolete. Section two is obsolete. What about section three: Congress has the right to regulate all executive agreements?"

How do you feel about that today?" And he wrote back with a very interesting letter. A three page letter in which he said that today he'd favor it.

B: That doesn't surprise me. I think almost any variation of the George Amendment certainly and maybe even the Bricker Amendment could have passed in Congress a couple of years ago at the end of the Vietnam War. The fact that Javits passed that legislation that very drastically restricted the power of the President to introduce armed forces into any other country, shows that the George Amendment would have passed in a breeze at the end of the Vietnam War. So these things go in cycles. I think that the reason it would have passed a couple of years ago was that the sentiment was that we would have another Vietnam War unless the Congress clipped the wings of the President.

M: Well, Fulbright said that he didn't impute any greater wisdom to the Congress than to the President but that on matters of importance, where we are at relations to the rest of the world, he thought it was important that both should arrive at an independent position, that the country was safer when both took a stand and that's why he would have Congress regulate, in some way, executive agreements.

B: Well, I think, myself that's wrong. I think that unless the President has the power to make executive agreements if there is a way of working with Congress, because Congress has got the power of the purse and so forth. I think that if the President doesn't have the power to make executive agreements, initiate treaties, then we're right back where we were under the old Articles of Confederation. That's what they thought then, and it didn't work, and that's the reason we have the Constitution which gave these powers to the executive and I think that Javits' legislation is a great mistake and if it ever comes to a point where it will come to the front and be really tested, why any strong executive is going to disregard it. You cannot operate foreign affairs within a committee rule, if you are going to have congressional rules. We tried it in our early days and it didn't work.

M: Well, of course, some people think that what will happen is that in a way this might even strengthen the President more because when you have an emergency situation and the President goes to Congress and says, "I need authorization," he's almost bound to get it, if the country is aroused sufficiently. With that kind

of authorization why, you don't need such resolutions like "Gulf of Tonkin", you have it built in there.

B: I don't happen to agree with that.

M: Of course, it hasn't been tested yet. The way they think it will actually work out, it won't do what the proponent's of the legislation think it will do. It won't really serve as any kind of check because the President is the one that has to make these decisions.

B: I think that's right. One way or another he'll do it. In fact, if he has to defy it, he'll do it in the name of emergency. He'll be supported. It is unrealistic. So, when you say that the Bricker Amendment and the George Amendment might have been adopted, at the end of the Vietnam War, I think they would still hesitate to put them into the constitution but I think it was a brave effort to demonstrate Congressional strength, as you point out, it will not, when the showdown comes, be very effective.

M: Well, I don't want to take anymore of your time. Thank you very much.

END OF INTERVIEW

YOUNGSTOWN STATE UNIVERSITY

ORAL HISTORY PROGRAM

Bricker Amendment Project

Bricker Amendment

O. H. 125

HERBERT BROWNELL

Interviewed

by

Dr. Joseph May

on

November 9, 1977

HERBERT BROWNELL, JR.

Herbert Brownell, Jr. was born in Peru, Nebraska on February 20, 1904. Educated in schools in Nebraska, he entered Yale Law School, receiving his legal degree in 1927. After a number of years in the practice of law, he entered politics in New York State, serving in the state legislature from 1933 to 1937. He managed Thomas E. Dewey's campaign for Governor of New York in 1942 and his presidential campaigns in 1944 and 1948. He played a prominent role in Dwight D. Eisenhower's presidential campaign in 1952.

President Eisenhower appointed Brownell Attorney General of the United States and he served from 1953 to 1958. In that capacity the President relied principally on Brownell in dealing with the Bricker Amendment challenge, rather than relying on Secretary of State John Foster Dulles. The reason for this was that Brownell had established friendly relations with Ohio Senator John W. Bricker dating back to 1944 when Bricker was the Republican vice presidential nominee and Brownell was campaign manager for Governor Dewey, who headed the ticket. Brownell and Bricker retained good personal relations throughout the Bricker Amendment controversy which peaked in 1954.

Despite this personal relationship, efforts at a compromise solution, desired by Eisenhower, came to naught because Brownell, representing the viewpoint of the federal

bureaucracy in the Justice Department and the State Department, could never find a text for the proposed amendment to the Constitution which would satisfy the goals of Senator Bricker and at the same time not have unintended effects which Brownell sought to avoid.

This interview concerns only Brownell's involvement in the Bricker Amendment episode. It should be read in conjunction with an interview with Senator Bricker, also accessioned in the Oral History Collection at Youngstown State University. Reading the two interviews will give the views of the leading participant on each side of the controversy. Further information about the Bricker Amendment can be found in the introduction to the interview with Senator Bricker.

Joseph May

YOUNGSTOWN STATE UNIVERSITY

ORAL HISTORY PROGRAM

Bricker Amendment Project

INTERVIEWEE: HERBERT BROWNELL

INTERVIEWER: Dr. Joseph May

SUBJECT: Bricker Amendment

DATE: November 9, 1977

M: This is an interview with Herbert Brownell for the Youngstown State University Oral History Program by Dr. Joseph May on November 9, 1977.

In fact, that was one of the things that I wanted to ask you about. They have a restriction that if you are to quote or cite from this, you need written permission. And there is one particularly good thing you say, in there, that is very quotable about the importance of the issue. I particularly would like to quote that if it would be all right with you.

B: Well, I checked that over yesterday and it is all right with me to do it.

M: Okay, fine. Well, then, if I could get a letter to that effect, because they require it in writing.

Mr. Brownell, you were right in the middle of the thick of the thing from the beginning to the end. There's so many questions I can ask you but we only have a limited amount of time, I realize. I have three or four areas I thought I would concentrate on. Just to give you an outline of the whole interview, the first one would be the area of the Knowland Substitute, how it came about. Then second, I'd like to ask you some things about the negotiations with the Bricker forces in December and January of 1953-1954. Then, there's some questions that I'd like to ask about the emergence of the George Substitute, with what happened in that respect. And, then, if we have time, I'd like to find out why the negotiations

in 1955 broke down. I have a good deal of the correspondence on that.

B: We'll have to refer to my records as you ask the questions so I'll get it in the right chronological order.(Laughter)

M: And then if we have time, there's a question about the Status of Forces Agreement that I would like to ask. The problem of reaching an agreement, within the administration on that. So that is the general direction I would like to go. So the first area here on the Knowland Substitute. You had meetings with the Republican Policy Committee in the summer of 1953, and. . . Well, backing up, in April, when you were testifying before the hearings, and summer, of course, several things happened, one of which was: the Judiciary Committee came out with this revised Which clause version.

B: Oh yes.

M: And another thing that happened I gathered was that it seemed like the support for the Bricker Amendment was beginning to build up. Now, was the idea for the Knowland Substitute purely an idea to head off the passage of the more serious Which clause version? Did it come, one hundred percent out of the desire to prevent this, or did President Eisenhower genuinely feel that he wanted. . . in other words, where did the pressure for the Knowland Substitute come from?

B: Well, as I recall it, the Bricker forces were pretty well convinced that the President would not go along on their original draft and so that they maintained that, in the original language, it would not get through the Senate that the President had enough backing to defeat it. That was the main reason that an attempt was made to modify the language--try and get something that would be acceptable to the President. Then there was also a feeling among the Republican Senators that they must support John Bricker who was personally very popular and had fought hard for this for several years. He carried some of the senators with him on a personal basis. So I think the Knowland Substitute was probably for a combination of reasons, both of those reasons.

M: So, in part, it was a need to keep the party together?

B: Yes.

M: For fear of splitting the party at this crucial time when the President's program was before the Congress.

- B: Yes, it was really the first test of the President's strength in foreign affairs as to whether or not he could keep the party on an internationalist course, which is the reason he ran in the first place, and it was a test with the group in the Senate that was really nationalistic or isolationist or whatever you want to call it.
- M: One of the things I found out that was very interesting-- and I got this from Senator Bricker himself . . . Oh, by the way, I'm sorry, I didn't answer the question you asked earlier. I am working on a book on this, hoping to have a full manuscript just on the Bricker Amendment and the controversy.
- B: It needed to be done. I'm glad you're doing it.
- M: Yes. Senator Bricker is giving me access to his papers and several interviews and I have seen the materials in the Eisenhower Library. The Department of Justice papers have been made available to me now and many other sources which I've collected on this. One of the surprises that came out and Senator Bricker was the first one to broach it to me--was that in those first six months in 1953, Senator Taft the majority leader, was working to delay the Bricker Amendment. Bricker was surprised to find this out and I got from several other sources that Taft, behind the scenes, though verbally giving support, very mild support in public, was working to delay the thing on the floor.
- B: I think that's correct.
- M: And I was wondering if you recall how that was worked out. Was that worked out from the President and Taft or did you speak to Taft?
- B: No, I didn't. I think that Taft genuinely wanted to support the President as much as possible and that he did so in this case. When did he die?
- M: Oh, he died in, I believe it was around June in 1953. June or July in 1953, somewhere in there because Knowland was taking over his duties as early as during May.
- B: Well, I know that Knowland was asked somehow by the administration to introduce the Substitute. He didn't write it or compose it himself. It was composed over in the administration, but I haven't gotten the connecting link of how this was done. Do you recall if you asked Knowland to do it or if this was done through the White House Staff?

- B: I think it was done by a group of Senators, Senator Ferguson and Senator Knowland. They wanted to prevent a split between Eisenhower and Bricker for partisan reasons I suppose, largely, and they genuinely felt, as did Senator Bricker, that something had to be done along these lines restricting the treaty-making powers of the President and they wanted to accomplish that if they could without a split in the party.
- M: And Senator Knowland, probably feeling that he had to represent the administration's point of view and probably knowing that Senator Taft's. . . .
- B: That's right, he was trying to get a compromise on language.
- M: Because I think at the beginning, he probably was for the Bricker Amendment the same as anybody else, the other group, the people around Bricker, I don't think there was probably any difference or distinction, so his thinking had to change as he got into it too.
- B: That's true.
- M: But, he didn't consult with Bricker on this. This is the thing, because, not even a day before the Substitute was introduced, Bricker didn't know anything about it.
- B: I think that's correct.
- M: And Bricker just took it as simply an administration ploy, a diversionary tactic, I think is what he called it.
- B: Well, I think it was a group of Senators that really originated that, rather than the administration.
- M: Oh, that early?
- B: Yes.
- M: Well, now that is a new angle. (Laughter)
- B: I, of course, can't prove it but I think I would have known about it if it was an administration move.
- M: You don't think it came out of Phleger's committee to coordinate the response of the agencies to the Bricker Amendment that was headed by Phleger at the White House?
- B: I'm not sure that they got active that soon.

M: They got active early, as early as March of that year and they had about five or six meetings right on through.

B: It's conceivable that they consulted with Knowland and Ferguson on that. If so, I didn't know about it at the time.

M: Well, one of the things that the Bricker people say is that the administration adopted a conscious strategy of delay. And, I'm not sure--I want to get your reaction on this. I can see where they would think this, that when you go into these conferences--going into the second area of my question--your conferences in December and January, there were so many of them, I'm just beginning to get them untangled, what was discussed at each one.

B: That's December of 1953?

M: Right, and January.

B: Well, I think undoubtedly that everybody on the administration side hoped that they could delay it and put it over, at least for another year, that it would die out. I think the delay probably was the first. . .

M: So, you would say there was a deliberate strategy of delay?

B: To prevent a vote, yes.

M: To prevent a vote. Well, this is the way they regarded it.

B: I think that's what Taft was trying to do.

M: Yes. There was a very colorful phrase that Chuck Webb, who was Senator Bricker's assistant, had in one of his private letters. In describing this later, he said that they were "Negotiations in the Panmunjom style."
(Laughter)

B: That had developed later I think. I think undoubtedly that it was true. I think Senator Bricker thought that this would be probably the first important piece of legislation, call it legislation, or the first important product of the Congress in the Eisenhower administration. As I remember it, it was Resolution Number One. It was signed by a very large number of senators who were co-sponsoring it. And I think, when Eisenhower was elected, they just assumed that this would breeze through. It

could easily have come to a quick vote in the Senate and if it had, it probably would have passed. So that I'm sure that there was an effort to delay it until the full implications of it could be explained and public opinion aroused and public debate started, Bar Associations, and the law schools and things of that sort.

M: I get from several sources here, that President Eisenhower's position was a little bit different even from the Cabinet and certainly the State Department and Justice Department personnel below you. I gather that he really did want a compromise agreement.

B: Oh yes. It was very much on his mind. He realized that if there was a split within the party right at that particular time. . . As I recall it, the . . . yes, I think I'm right in saying that a split at that time in the party on foreign affairs would have been very serious and that he'd like to get this behind him because his . . . it could be done properly, so that he could get on to things that were more on his mind.

M: Yes, right. Did you feel, that in a way sometimes he was leaning on the Justice and State Departments to try to come up with something that . . .

B: Oh yes.

M: Really leaning, "We've got to get this . . .?"

B: Time after time he told me to get it out of the way.

M: Well, one source said that Eisenhower came into the room at one of these meetings and one of the groups was there and he said, "Now, you stay here until you come up with something." (Laughter) Or words to that effect.

B: He felt that it was holding up action on his legislative program and until he got it out of the way, he wasn't going to get action on a number of other important matters that he thought were, well, more important. He thought, I think, that this was a dispute over language that could be settled without compromising on principle and that it was really a quarrel of lawyers over language.

M: And he always thought that right on through didn't he, to a certain extent, because I know that he would never . . . If you convinced him that this would cut down on executive authority--any given draft that was being studied at the time--would cut down on executive authority,

I know he was determined he would not allow that to happen.

B: That's right.

M: So I suppose, in a way, Phleger and Ranken and some of the others who were fighting this [the Bricker Amendment] in the bureaucracy below had their work cut out for them. If they could convince the President that any given phrase and so forth, cut down on executive authority, then they had blocked the President from giving public support.

B: I think that's right, that's a good analysis.

M: Well fine, because every draft that was put up to him, it seemed like there was always some way that this could be interpreted which it would be.

B: That's true. You ask a layman to read over the Fourteenth Amendment and how can he possibly get all the implications that are involved there unless he knows the Supreme Court decisions over the period of one hundred years that interpret it and he wouldn't get the slightest idea of some of the implications by reading the language. And that was at the heart of the Bricker debate. You'd look at some language and it sounded fine but then when you really dug into it and applied the cases to it, you find out that it did decrease executive authority to the point where you almost went back to the old Confederation days, before the Constitution was adopted, where we didn't have any power in the Presidency to deal with foreign affairs.

M: Well, at the end of January--this is one of the crucial, January and February is the really crucial part of the whole thing--Eisenhower appeared to ^{be} getting very frustrated. The inability of arriving at any kind of satisfactory compromise and he was a little peeved at Bricker because Bricker wouldn't accept something he thought he should be able to accept. And so he began working on a nation-wide television address and that thing went through eleven drafts. I've got copies of each of the eleven drafts. (Laughter) You probably worked on it yourself.

B: Could be. My assistants did, anyway.

M: Yes. And the President must have spent hours and hours working on those drafts getting it right for a nation-wide television address. And he was talking in private about the Which clause, now mind you, if the Which clause passes, he was going to give Dulles a leave of absence as the

Secretary of State so he can go and testify before the state legislatures to defeat the thing. And then, right at the end, he's getting ready to do this, right at the end, the whole thing gets shelved and he doesn't make the address at all and I don't have any hard facts on why that television address was shelved. I have some theories but, do you have any facts?

B: No.

M: (Laughter)

B: My theory would be, my theory would be that he found out he didn't need to give it, that it was going to be defeated.

M: Well, that's one theory. Now, there's this theory. Knowland had been pressing IKE [President Eisenhower] to come out with the position. I gather Knowland wanted to take any kind of position for his guidance, that Eisenhower was just kind of close-mouthed on this. He felt like he was walking in a mine field. And so Ike wrote Knowland this famous letter, January 25, 1954: "I am unalterably opposed to the Bricker Amendment as reported by the Senate Judiciary Committee." Now, I found out yesterday--in research at Columbia University-- Knowland said he was under the impression that he was authorized to release that letter. However, I have also come across correspondence from Eisenhower to you, saying, "Did I authorize him? I don't recall saying anything about it." I don't know if you recall that memo from Eisenhower or not?

B: No.

M: I think it said, "Did I say anything stupid this morning that might give him the impression that I authorized him to release the letter?" I have his memo to you but I don't have any reply that you sent. So, whether the letter was really authorized, Eisenhower wasn't under the impression that it was authorized.

B: I don't recall that incident.

M: Well, he was surprised it was released.

B: Yes, yes.

M: And he said he wouldn't have used Bricker's name if he had known it was going to be released. So, you don't recall how that thing got out? Well, all right.

B: No, I don't.

M: Then Knowland kept pressing him for a statement of support for one of these other new compromises, the Leadership Compromise and the George Substitute. I've got very interesting correspondence, another letter from Knowland. Two drafts of the letter went out to Eisenhower. One of them said, "The Leadership agreement is all right. I won't object to it." The other draft was the exact opposite saying that "No draft should be accepted without more prolonged study." Two inconsistent letters from the President. And, what happened was, he didn't sign either one of them. Now, what I was wondering was, if you could shed any light on how it was that Eisenhower backed off from making any further statement on this because he was being pressed in all directions to make a further commitment one way or the other.

B: When?

M: Right after the beginning of February, right when the George Amendment came up.

B: Well, I can see why the President didn't sign either one. I don't actually remember the incident but he was being pressed by some of the senators, like Senator George, to stay out of the fight all together.

M: Well, yes, that's what George wanted to do, kind of benevolent neutrality. I gather Knowland thought that Eisenhower had agreed not to fight the George Amendment.

B: Well, I'm sure that there was great pressure on Eisenhower not to fight the George Amendment. They took the tack there that essentially it didn't involve the treaty power and that it was a matter of the Senate to decide. The President felt that he wasn't a part of the process of submitting constitutional amendments. And the President obviously didn't want to get into an unnecessary fight with Senator George. I would think that that was the reason that he didn't make any unnecessary statements. He tried to limit his personal participation in the thing as much as possible and let Dulles, myself and others carry the fight against the amendment.

M: So he didn't object to you fighting the George Amendment?

B: No, no. Senator George did. (Laughter) He had the famous press conference.

- M: That "queer attorney general" statement. (Laughter)
- B: Because I had no business mixing in the Senate considerations of Constitutional Amendments.
- M: I'd wondered if George said that, because he felt a little bit--the word is, I don't want to use an emotionally loaded word but it's the only one that comes to mind--double-crossed here. But, Knowland says, "there was a misunderstanding" in later years. He said in an interview that "there obviously was a misunderstanding." I was under the impression that the President would not come out against this and based upon that, I got Senator Bricker to drop the Which clause and accept the leadership thing. And I checked the votes on it and he did. Bricker and the Bricker forces abandoned the Which clause. Of course, he might as well, it would have been beaten anyway.
- B: Yes, yes. By that time.
- M: By that time. So, now, I was put in this terribly embarrassing situation of saying to Bricker, "If you drop the Which clause, and go over to the George Amendment, the administration won't oppose it." And then what happens? Eisenhower says, or indicates in some way--although he wouldn't sign that letter that would have made it public--Eisenhower indicated to them, or they thought he indicated to them that he was going to stay out of it.
- B: Well, that should account for Senator George's statement.
- M: Yes. And then what happens: all the full lobbying effort of the White House hits Capitol Hill to defeat the George Amendment.
- B: Yes. Well, that sounds like a very logical explanation to me because I never knew that Knowland did that. I imagine Senator George thought in effect, "What's going on here? I'm getting two stories." That isn't the way it came out. I think the way it came out was that the journalists had devised it to have a good story but Senator George and I always got along very well.
- M: Oh you mean that "queer attorney general" statement?
- B: Yes, yes. I think he probably meant it. I think your analysis is probably right. He thought it was a queer thing that Senator Knowland would come to him and purporting to represent the administration's viewpoint

and then I'd come to him with the opposite, purporting to represent the administration's viewpoint. I think that's probably the correct analysis of why he made that statement.

- M: But the whole White House lobbying effort did go into it at the last minute to defeat. . . And by the way, it was successful. But it also was the reason why Knowland said he decided, in view of the thing--he voted "No" on the George Amendment the first time it came up--and that's why, where he made his famous speech going back to the back of the Senate and said, "I'm voting as a Senator" and switched and voted in favor of it because he felt he owed George something.
- B: Well, throughout, there was a lot of Senatorial politics involved, a matter of prestige. To the Senators it was almost as important as what the Constitutional Amendment said. I felt that that was always a factor. They say that Senator Bricker was so well liked that a lot of senators kind of hated to vote against him. They felt they were sort of letting him down because he had dramatized this issue for over a period of months.
- M: Well, I got to like him myself.
- B: Oh, yes.
- M: He was so kind and courteous and courtly. (Laughter)
- B: Really a fine man.
- M: He certainly is. Well, that was the end of it for all practical purposes but you didn't know it at the time.
- B: It came up again a couple years later.
- M: It came up again in 1955 and 1956.
- B: There never was any real steam in it after that.
- M: No, there wasn't. But you did have conferences with some ABA [American Bar Association] leaders. Lloyd Wright was one who came by.
- B: Frank Holman.
- M: And Frank Holman. Do you recall anything in particular in those later meetings as to why the negotiations broke down. They thought they had worked out something with you too at one time?

- B: Yes. Well, there were a series of meetings but they were language problems more than anything else because the danger of anything really passing, in fact had evaporated so I viewed negotiations in sort of an unreal atmosphere. Edgar Eisenhower was with Frank Holman and Lloyd Wright. The President was very respectful of the American Bar Association, in fact that's one thing he never did quite understand. They took the position in favor of the Bricker Amendment. Others were pointing out to him that legally and constitutionally it was a bad thing and he never could understand how that happened but he instructed me to make every effort to try and come to an agreement with the American Bar Association group. Some how substitute for the group a workable and satisfactory representative's point of view. So, while we had many meetings, one time we thought we had some language which really was only a statement that, "No treaty in violation to the Constitution would be valid."
- M: The old Section One?
- B: It would be unconstitutional, yes. Some of the American Bar Association group wanted to take that. We thought for a while that Senator Bricker did. And it was quite a reasonable possibility at that time. Section One of the amendment would have been sponsored by Senator Bricker and passed. But he finally came to the conclusion that that was an empty gesture that didn't really accomplish anything.
- M: Well, you think it was because of the split within the Bricker forces, the split within the ABA itself, whether to accept a half loaf or not, that killed that?
- B: Yes, I do.
- M: That was the impression that I . . . that if they had been willing to accept a half loaf at that point, even in 1955 or even maybe perhaps as late as 1956. They could have gotten the Bricker Amendment.
- B: Yes, that is true in my opinion.
- M: After 1956, 1957 I doubt. By 1957 it was probably already too late.
- B: 1955 or 1956 around in there.
- M: Because the prospective votes on the thing were still up to fifty-nine, sixty senators in favor.

B: Yes.

M: Even that late in the game.

B: Yes.

M: Well, I wanted to ask you one question. One of the big issues in the whole Bricker amendment thing was the fight over the Status of Forces Treaty and of course, the Justice Department was involved in the Status of Forces controversy as it was coming up. Some things I've run across kind of indicate to me there was some difficulty within the administration trying to work out a common administration position on what the Status of Forces position of the administration should be. Is there anything that you recall that would shed light on that?

B: I doubt if that is so. The President took the position very early, so stated in a Cabinet meeting, that he favored this and he wanted everybody to favor it. It was a very important issue so far as he was concerned, that it was an administration measure and that he wanted it passed. And I don't recall any difference in opinion within the administration about it. The President's leadership on that was very forceful. There was no organized opposition in the Congress that was serious. And for all those reasons it went through rather smoothly. There was some extremist opposition to it. There were some countries where, under their Judicial system, they'd cut off their arms or their legs or something of that sort. But it really was an extremist position. But except for that type of opposition, it really went very smoothly.

M: Yes, the Bricker Reservation was defeated handsomely in May of 1953. [Actually, July, 1953] Even some of the senators who later voted for the Bricker Amendment, voted against the Reservation. But I came across some interesting correspondence to the effect that, in the Defense Department, some of the lawyers over there said, "Now wait a minute, maybe we are giving away too much because under previous precedents, we did have complete criminal jurisdiction on troops and now under this agreement which is coming up we are agreeing to turn over some jurisdiction that in the past we haven't had to do."

B: Yes. I think you're correct on that--but it was brushed aside. It never gained any significant support even within the administration.

M: That was within the Defense Department?

B: Yes.

M: The Defense Department didn't adopt the position officially?

B: No, they did not. Quite the contrary.

M: That clears that up.

B: I don't think there would have been any opposition to the Status of Forces Agreement if it hadn't been that the Bricker Amendment controversy was very hot at that time. I can see that the Bricker forces might have used that as another way of calling attention to the importance of the Bricker Amendment. Except for that, it had smooth sailing for it and it was something that the President had his heart set on. He was really determined on that. He initiated that, whereas the Bricker Amendment was already in the works and people had all taken sides before he was ever inaugurated, so that's one of the things that made it so hard for him to handle. It wasn't something that he had initiated as part of his administration program. It was a fight that everybody had taken sides on before he was inaugurated.

M: One little thing that may not be as important as some things we've discussed in here: In looking through the Justice Department papers, I was very much interested in seeing the correspondence that you had with Walter White of the NAACP which he was writing the senators to get their position he was passing along information to you. It occurred to me when I was looking at that, that that was a very effective way of mobilizing some lobbies, mobilizing a segment of public opinion, and really, when you come down to it, that's what defeated the thing.

B: Well, that's the way I felt, that that was our best chance of defeating it and we used the New York City Bar Association and groups of that kind.

M: I know Phleger, in the State Department, stayed almost in constant touch with the Committee to Defend the Constitution.

B: Yes.

M: And coordinated the efforts and so forth.

- B: That's true.
- M: I wondered, with Phleger and some administration people working so closely with the group that was out to defeat it, if Eisenhower knew that much about what was going on down there, or if he was peeved because he was trying to get an amendment, trying to get something satisfactory, a satisfactory compromise. In this group however, no amendment at all, no compromise, whatsoever. You were better off, without anything.
- B: Yes of course we were. (Laughter) Well, I think you may have a point there. I know the President felt that a weakness in having the State Department represent him in this fight because first the Dulles speech he made in Louisville during the campaign which led the Bricker forces to think that he would support them throughout and perhaps intransigent opposition to any Bricker Amendment whereas he did want a compromise, get it out of the way. That's why I think he got the Justice Department more into the negotiations with the American Bar Association.
- M: Well, in retrospect, would you say there was a difference in say, Eisenhower's personal position and your personal position? Now, of course, I know you loyally supported him. There's complete evidence of that, but your own personal outlook on the thing really was closer to no amendment at all, than his was.
- B: Yes, that is correct. We carried on the negotiations at his directions trying to get a satisfactory compromise. We would have been very happy to have it voted down and get it over with.
- M: But you did make a good faith effort to try to follow the President's directions in that respect.
- B: Yes, we did. We explored every angle we could think of to get a compromise.
- M: And, as far as you know, Eisenhower did not perceive that any of his own people were working against what he was trying to do?
- B: I think the answer to that probably is, that he felt we were a better negotiating team working for a compromise than the State Department was.
- M: I see.

- B: So that, to that extent you might say that he felt that if there was any chance for a compromise at all, which he wanted, that we could do it for him.
- M: Yes, I know if Bricker walked into any of these conferences and if Phleger was there, he just would say this isn't serious at all.
- B: Yes.
- M: But, when he walked in with you--you both have such high regards for each other.
- B: We really tried.
- M: Bricker has spoken highly of you to me and this is really interesting. He couldn't stand Dulles though.
- B: I think he thought that Dulles had really let him down because I think he thought that Louisville speech was a speech in favor of the Bricker Amendment.
- M: You mentioned the Louisville speech, I suppose pages of ink have been written about that Louisville Speech. (Laughter). When you come right down to it, wasn't Dulles playing politics there? Wasn't it a campaign address in 1952? How much did he really believe what he was saying about . . .
- B: Well, at that time, the central effort was to be on good terms with everybody in the Republican party regardless of who was going to be nominated. He didn't know whether Taft was going to be nominated or Eisenhower was going to be nominated, and he was being asked by both sides to write a platform on foreign affairs which could be adopted without a big floor fight. His whole effort at that time was to smooth over the controversy within the party, so that there wouldn't be a big row at the convention.
- M: So, he wrote a speech in which he spoke on both sides of the issue. Knowingly he was speaking on both sides of the issue, trying not to contradict himself, but actually ending up doing it.
- B: Yes, I think that's a good explanation of it, and it was very fruitful. (Laughter) You have to give him credit for it because he did avoid--not that one speech, but his whole effort--did avoid a big row at the 1953 convention between the Eisenhower forces and the Taft forces over a matter that was very important to Eisenhower. He would have turned down the nomination if there had been an

isolationist behind it. The Republican platform because that's the only reason he would run for president, was to prevent the party from taking an isolationist point of view in foreign affairs. That's the thing, I'm convinced, that caused him to run in the first place and he was certainly very strong with me at all points that if there was an isolationist kind of platform but to count him out, even if you had to say it after he was nominated, he would have turned down the nomination. He thought that was his mission, otherwise there was no point in his running for president, he had all the honors there were. So, Dulles deserves a lot of credit, I think, for presenting a platform that could be accepted on all sides. And of course, all it did was further the fight until the Bricker Amendment came along, and that was the first real test. There were other tests too like Bohlen.

M: Oh yes.

B: The Bohlen Confirmation, things of that sort. The party was split, there was no blinking that.

M: Well, as I recall the Bohlen thing, Taft went to the wire with the president. We got that one through. He said to Dulles afterwards, "Now, don't ever do that again." (Laughter)

B: I think that's right. I think that's right. Yes. When people who lived through the Bricker Controversy reflect, he was smart. And I think he would have accomplished what the President wanted to accomplish and that was to get it out of the way and get on with the legislative program.

M: I don't think Taft could have followed the same strategy in 1954 as he did in 1953. In 1953, he was delaying it, but in 1954, they had too many supporters. They would have had to bring it to the floor.

Is there anything that you feel that is not on the public record--because I have looked over the public records from beginning to the end--anything that may not be in the public record that you feel should be a part of the history of the Bricker Amendment?

B: Well, that is really a good question, I think. The only way I could answer it, I think, is to repeat more-or-less what I said before, and that is the feeling on the part of the President that the State Department, which ordinarily would have carried the load completely out of

there at this time, had to be supplemented in order to have this point of view fully represented and getting it up to a satisfactory compromise. I think that probably some people on both sides have felt that the President had a compromise which was weak because it was weak from their standpoint. They knew what they wanted. I think the President was of the mind, . . . there were two groups that were involved here. One was the group that was isolationist and really wanted to cut down the powers of the Presidency and the Federal Government in this area. If they didn't do it, there were going to be more treaties that really were internationalist in their point of view, that the Federal Government would bring more and more subjects into foreign affairs, economic, labor and social problems--of course, events have proved them to be right in that respect because many of those issues that one hundred years ago were considered completely domestic, have now become international problems. The different agencies in the United Nations have shown that. It was that very sincere feeling that ran through the Republican Party and the Bricker Amendment supporters that this was the time to stop that sort of thing. It was a real isolationist movement, a bona fide one and a sincere one.

M: Bricker makes an interesting distinction in his correspondence, I suppose he did it publicly too, he said, he's not an isolationist, he's a nationalist. There's a difference. (Laughter)

B: Well, it's a distinction without a difference really, when you come right down to it, but I think he did believe that. I think I remember him making that same point, but I think it was a political distinction because "isolationist" is a little tainted but "nationalist" was a good word but really, in essence, they came down to the same thing.

Now that group, the president wanted to oppose but he felt that there was another group in back of the Bricker Amendment which led him to think that there was a chance for a compromise. That other group, largely speaking, would be the people who were still mad at F.D.R. [Franklin Delano Roosevelt] because of what he did at Yalta or things of that sort, and that some demonstration should be made to show that we were going to be nationalists, we were going to stand up to Russia and we were going to eliminate any traces of Communist philosophy in our own government. The Bricker Amendment was used more-or-less as a standard around which people who felt that way could rally. That group did not consciously want to take away

from the President's leadership in foreign affairs. That was the reason that the President, I think, felt that there was a possibility of compromise.

The second group, it was kind of an emotional reaction against the New Deal or something of that sort. The Republicans were now in power. We were going to show them that we were different, and a philosophy of that kind, but it was not a carefully thought out position. When that group came to realize what the consequences were, of passing the Bricker Amendment, they dropped away from it. That, I think, is the real way to analyze this thing and to understand the motives of the President and to understand the decrease in support for the Bricker Amendment.

- M: There's one little memo that President Eisenhower wrote to you in 1955 I believe it was, saying--I don't know if you recall this or not, I get this from the Eisenhower papers--it says, "There is a reason I want the Bricker Amendment that we haven't discussed before and that is, I'm afraid that if I am succeeded by a politically weak administration, they might succeed in putting through an amendment that would be very, very bad indeed."
- B: Yes. I do remember that and I know he did feel that way, and I think he had a reason to feel that way. One of the reasons he could easily come to that conclusion was that people didn't understand the significance of it. It was perfectly obvious that we should adopt the Bricker Amendment. It was a little late when you studied it but you found out why you couldn't and still keep a strong federal government in foreign affairs.
- M: There is, even among moderates and liberals today, a new slight shift of opinion beginning in the 1970's, the standard liberal opinion on the Bricker Amendment was just against it, defeated by isolationists and so forth. But, I think the Vietnam War soured so many. . .
- B: You're absolutely right.
- M: That it's coloring perceptions on things all across the board. And I wrote Fulbright just out of curiosity, Fulbright was one of those who stood against the Bricker Amendment, and I said, "What is your position today? Would you vote for the Bricker Amendment if it came up again today?" And I went through it section by section. "Well, section one is no longer needed, that's obsolete. Section two is obsolete. What about section three: Congress has the right to regulate all executive agreements?"

How do you feel about that today?" And he wrote back with a very interesting letter. A three page letter in which he said that today he'd favor it.

- B: That doesn't surprise me. I think almost any variation of the George Amendment certainly and maybe even the Bricker Amendment could have passed in Congress a couple of years ago at the end of the Vietnam War. The fact that Javits passed that legislation that very drastically restricted the power of the President to introduce armed forces into any other country, shows that the George Amendment would have passed in a breeze at the end of the Vietnam War. So these things go in cycles. I think that the reason it would have passed a couple of years ago was that the sentiment was that we would have another Vietnam War unless the Congress clipped the wings of the President.
- M: Well, Fulbright said that he didn't impute any greater wisdom to the Congress than to the President but that on matters of importance, where we are at relations to the rest of the world, he thought it was important that both should arrive at an independent position, that the country was safer when both took a stand and that's why he would have Congress regulate, in some way, executive agreements.
- B: Well, I think, myself that's wrong. I think that unless the President has the power to make executive agreements if there is a way of working with Congress, because Congress has got the power of the purse and so forth. I think that if the President doesn't have the power to make executive agreements, initiate treaties, then we're right back where we were under the old Articles of Confederation. That's what they thought then, and it didn't work, and that's the reason we have the Constitution which gave these powers to the executive and I think that Javits' legislation is a great mistake and if it ever comes to a point where it will come to the front and be really tested, why any strong executive is going to disregard it. You cannot operate foreign affairs within a committee rule, if you are going to have congressional rules. We tried it in our early days and it didn't work.
- M: Well, of course, some people think that what will happen is that in a way this might even strengthen the President more because when you have an emergency situation and the President goes to Congress and says, "I need authorization," he's almost bound to get it, if the country is aroused sufficiently. With that kind

of authorization why, you don't need such resolutions like "Gulf of Tonkin", you have it built in there.

B: I don't happen to agree with that.

M: Of course, it hasn't been tested yet. The way they think it will actually work out, it won't do what the proponent's of the legislation think it will do. It won't really serve as any kind of check because the President is the one that has to make these decisions.

B: I think that's right. One way or another he'll do it. In fact, if he has to defy it, he'll do it in the name of emergency. He'll be supported. It is unrealistic. So, when you say that the Bricker Amendment and the George Amendment might have been adopted, at the end of the Vietnam War, I think they would still hesitate to put them into the constitution but I think it was a brave effort to demonstrate Congressional strength, as you point out, it will not, when the showdown comes, be very effective.

M: Well, I don't want to take anymore of your time. Thank you very much.

END OF INTERVIEW