OPENING REMARKS OF JUDGE FRANK M. COFFIN
Colloquium on Congressional/Judicial Relations
The Brookings Institution
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Just three years and one month ago today I picked up my chambers telephone to hear Chief Justice Burger say, "I understand, now that you're no longer chief [judge of the First Circuit], that you've a lot of leisure time on your hands." He then asked me to take over the Chair of the Judicial Conference Committee on the Judicial Branch, to replace Judge Irving Kaufman who had been appointed to head up the President's Commission on Organized Crime. I told him that although I had not been a very active member, I felt that the Committee's focus should, in addition to such pressing issues as social security, survivors' annuities, and compensation, include a long range agenda devoted to the increased understanding of and respect for the institution of the judiciary. Subsequently, I both sharpened and broadened the focus to what I thought was possibly the most important long range project we could support -- a study of relations between the Congress and the Judiciary, past, present, and future. The Chief Justice gave his blessing, if we could find the appropriate institutional resource.

Knowing of the pioneering work that Brookings had done in sponsoring the Williamsburg Seminars on the Administration of Justice in which top officials of all three branches convene every year or so to discuss a changing agenda of the most topical issues, I was soon in conversation with Warren Cikins and Robert Katzmann. They were enthusiastically supportive and soon enlisted the critical backing of president MacLaury who realized the intellectual and practical possibilities in providing a quite different forum with a specific focus on one specific set of institutional relations between two branches, involving both research and discussion over time, on the part of a continuing group of experts.

Subsequently, thanks in no small part to Bob Katzmann, with help from members of my Committee, funding had been obtained from the Smith Richardson, Culpeper, and Anderson Foundations. And we were off and running.

After a year of research and writing and planning, we have reached our first milestone, this Colloquium. Everything I have seen and read reinforces our intuition from the beginning, that we had happened on a mother lode that promised rich rewards in both understanding and practical results. First, you, the participants, are as knowledgeable, interested, and representative a small group as I think would be assembled to address our subject. Second, the work of Bob Katzmann in structuring the agenda and in providing papers stimulating our thinking in the areas of each of our three panels insures that our work today will have direction. Third, the papers prepared by historians Marcus and Van Tassel, political scientist Roger Davidson, Congressman Kastenmeier and Congressional staffer Michael Remington, and Oxford Professor Atiyah have already given the reader a richness of background on our subject that I suspect has not been duplicated. I add another resource that we look forward to -- Justice Hans Linde's observations about the legislative-judicial connection in state government. Finally, and most relevantly, we are grateful to the chairmen and panelists whose job it is to distill usable wisdom from all of this research, writing, and talking.

By way of keynote remarks, I would sound six notes that should govern our attitudes and aspirations.

The first is that our goal is modest. As Publius wrote in the 86th Federalist, it does not rise to the level of Constitution-tinkering. We recognize the truth of the adage, "If it ain't broke,

don't fix it." Our mission, rather, is based on the proposition that gears work better if we keep an eye on the oil dipstick.

The second note is that in dealing with Judiciary-Congressional interrelationships, we realize that the broad rubric," separation of powers," is not all holy writ. As Maeva Marcus and Emily Van Tassel tell us so interestingly, much -- even from the beginning -- has just grown, like Topsy.

Our third note is that in grappling with our doctrine of separation of powers we are working with something uniquely American. As Professor Atiyah so well demonstrates, the English model or mosaic suggests that very little borrowing is possible, for theirs is a system of separate types working under executive dominance while ours is a system of more homogeneous types working in a carefully checked, balanced, and separated tripartite system.

Fourthly, not only are our chances of borrowing from abroad minimal, but there exists no rich preserve of lore or wisdom to guide us. Types of relationships and communications have accreted fortuitously over time. Our effort is the first to try to bring systematic analysis to bear.

Our fifth note is an encouraging one: the papers already in our hands suggest that there is indeed "gold in them thar hills," that there do exist concrete possibilities of achieving more effective relationships between the two branches consistent with respecting their separate dignity and independence.

Finally, a note as to the specific objectives of our work today. What do we aspire to have accomplished by the end of the day? I suggest three things. The first is that we want to peel off as many misperceptions and erroneous generalities as possible concerning both Congress and the Judiciary. The second objective is to construct the beginnings of an agenda for practical inquiry and implementation. The third, and by all odds the most realistic and important, is the initiation of an ongoing process. That is, were all our thought and talk to end at nightfall, our Colloquium would wind up gathering dust on the shelf, perhaps as a footnote in some future scholar's Ph.D. thesis. Our hope, therefore, is that the day's proceedings will impress us as having enough relevance and potential to encourage us to continue to exchange ideas, test, criticize, amend, and finally, recommend and promote within an ever-widening constituency.