

NOMINATION OF BENJAMIN W. HEINEMAN, JR.

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
FIRST SESSION
ON
THE NOMINATION OF
BENJAMIN W. HEINEMAN, JR., TO BE AN ASSISTANT SECRETARY
OF HEALTH, EDUCATION, AND WELFARE FOR PLANNING AND
EVALUATION

APRIL 10, 1979

Printed for the use of the Committee on Finance



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

45-006

HG 96-4

8361-31

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(II)

NOMINATION OF BENJAMIN W. HEINEMAN, JR., TO BE AN ASSISTANT SECRETARY OF HEALTH, EDUCATION, AND WELFARE FOR PLANNING AND EVALUATION

TUESDAY, APRIL 10, 1979

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (chairman of the committee) presiding.

Present: Senators Long, Talmadge, Byrd, Nelson, Bentsen, Matsunaga, Baucus, Boren, Bradley, Dole, Danforth, Chafee, Heinz, Wallop, and Durenberger.

The CHAIRMAN. Gentlemen, the first order of business is the nomination of Benjamin W. Heineman, Jr., to be Assistant Secretary of HEW. Is Mr. Heineman here?

You have a resume of Mr. Heineman's background before you, gentlemen.

[The resume follows:]

RESUME OF BENJAMIN W. HEINEMAN, JR.

I. EMPLOYMENT

Deputy Assistant Secretary for Planning and Evaluation, Department of Health, Education, and Welfare: November 1978 to present. Involved in development of Departmental Policy (budgetary, legislative, regulatory).

Executive Assistant to Secretary Joseph A. Califano, Jr., Department of Health, Education, and Welfare: January 1977 to November 1978. Principal staff aide to the Secretary.

Associate, Williams, Connolly and Califano, Washington, D.C.: July 1975 to December 1976. Constitutional and general litigation.

Staff attorney, Center for Law and Social Policy, Washington, D.C.: January 1973 to June 1975. Test case litigation on behalf of the mentally disabled.

Law clerk to Associate Justice Potter Stewart, United States Supreme Court, Washington, D.C.: August 1971 to July 1972. Program Planner, New York City Budget Bureau; Summer 1969. Reporter, Chicago Sun-Times: 1968. General reporting (winner, Chicago Newspaper Guild, best newsfeature of 1968, with two others).

II. EDUCATION

University of Chicago High School (1961), Harvard College, B.A. (1965), Balliol College, Oxford University, B. Litt. (1967), and Yale Law School, J. D. (1971).

III. ACADEMIC ACTIVITIES/HONORS

Undergraduate: Rhodes Scholar, Illinois (1965-67), Phi Beta Kappa, Magna Cum Laude, Editorial Chairman, Harvard Crimson (1964-65), and Perkins Prize to member of the junior class combining excellence in academic and extra-curricular activities (1964).

Law school: Editor-in-Chief, Yale Law Journal (1970-71), and member, Yale Law Journal (1969-71).

IV. PUBLICATIONS

Books: *The Politics of the Powerless: A Study of the Campaign Against Racial Discrimination.* Oxford University Press and the Institute of Race Relations (London, 1972).

Legal periodicals: "Decentralization in New York City: A Proposal," 8 *Harv. Jnl. on Legis.* 407 (1971) (co-author).

Book review of A. Lester, et al., "Race and Law in Britain" in 82 *Yale L. J.* 1558 (1973).

Book review of S. Lazarus, "The Genteel Populists" in 84 *Yale L. J.* 182 (1974).

Book review of J. Wilkinson, "Serving Justice: A Supreme Court Clerk's View" in 88 *Harv. L. Rev.* 678 (1975).

V. TEACHING

Trends in Recent Political Thought, Seminar, Yale College (1970 and 1971).

VI. MEMBER OF THE BAR

District of Columbia, and U.S. Supreme Court.

VII. OTHER CURRENT ACTIVITIES

Rhodes Scholarship Selection Committee, Maryland-D.C., 1973 to present.

STATEMENT OF BENJAMIN W. HEINEMAN, JR.

The CHAIRMAN. According to this resume, you were editor-in-chief of the *Yale Law Journal*, Mr. Heineman.

Mr. HEINEMAN. Yes, sir.

The CHAIRMAN. Congratulations. That is a distinction I never made in my law school.

Are there any questions, gentlemen?

Senator TALMADGE. Briefly, Mr. Chairman, I have had the pleasure of visiting with Mr. Heineman. I think he is a very able man. I notice one of the responsibilities that he will have is designing a welfare reform program which has been talked about around here for at least 10 years.

The only welfare reform to my knowledge we have had is the work incentive program that this committee initiated and I think that we have saved \$2 for every \$1 that we spend. Do you share that view, Mr. Heineman?

Mr. HEINEMAN. I think it is an effective program. I hope with the new tax credits from last year it will be even more effective.

Senator TALMADGE. You are not in favor of abolishing the WIN program?

Mr. HEINEMAN. No, sir.

Senator TALMADGE. What is your view on the CETA program?

Mr. HEINEMAN. I think we have to work with that, too. I think it is important in welfare reform that we try to put together a combination of cash assistance for those who cannot work and jobs for those who can. That should be our guiding principle in welfare reform, Senator.

Senator TALMADGE. Are there any plans on the part of this administration to train the AFDC recipients other than what we are doing in WIN?

Mr. HEINEMAN. I think that will be the main vehicle, Senator.

Senator TALMADGE. Would you allow recipients to refuse work?

Mr. HEINEMAN. No, sir. I hope in the administration proposal that there will be work requirements.

Senator TALMADGE. Would you set limits on the wages that recipients might receive under the public sector employment?

Mr. HEINEMAN. I think that the wage level issue is not yet determined finally, sir. With respect to public service jobs, I think there would be a strong preference for private employment rather than public employment if at all possible.

Senator TALMADGE. Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Any further questions?

There are one or two items that I would like to ask you. Have you ever read a book called "Welfare" by Martin Anderson?

Mr. HEINEMAN. I have not read it. I have heard about it.

Senator TALMADGE. I think I recommended that to Mr. Heineman.

Mr. HEINEMAN. He discussed it with me when I went to visit him.

The CHAIRMAN. Mr. Anderson makes a couple of points in that book that everybody should be aware of. One is that the census figures on the number of people in poverty leave a lot to be desired. Do you know what he is talking about in that respect?

Mr. HEINEMAN. With respect to different kinds of income—in kind income, insurance income, and that sort of thing, sir?

The CHAIRMAN. That is right. In that book, the author makes the point that the census figures, for one thing, do not consider income in kind from Government welfare-type programs.

For example, we are paying out about \$30 billion a year in programs we call welfare. Now if you spread that money evenly among all of the people who are supposed to be in poverty, some people contend that there would be nobody left in poverty—that is, assuming they would have no other income.

Of course, it is not spread that evenly, but if you assume that all of those people have a little income from some other source, then there is \$30 billion which, if you just analyzed where it is going, that will be enough to lift those people out of poverty.

In addition to that, he points out that those census figures do not take into account shared income. For example, if a man and woman are living under one roof and they are married, the income of the husband is attributed to the wife, at least in part. But if they are not married, then according to those census figures, that man is paying the cost of shelter and the gas bill and the heat bill and the food bill, and none of that is attributed to the female, if she is the housekeeper and he is the wage earner.

Mr. Anderson makes the point that if you take those things into account, the percentage of people in poverty drops very, very far down.

What percentage of people in this country would you estimate to be in poverty, if you take all of those kinds of things into account?

Mr. HEINEMAN. I could not give you a figure today. I think you are absolutely correct. If you count in-kind income and shared income, it could be in the 10- to 15-percent range or less. I would just note, in fact, that the Department is in the process of designing a study which will be launched in the 1980's which will get exactly at this point: shared income and in-kind income.

And it will be done nationally on a year-by-year basis to get precisely at this problem and get some good data on it.

The CHAIRMAN. Mr. Anderson makes the point that the percent of the people in poverty is probably less than 3 percent, if you take these various sources of income and support into account.

Mr. HEINEMAN. I have seen figures of 8 to 10 percent, but I could not speak precisely to the point this morning.

The CHAIRMAN. What credentials does Mr. Anderson have to write such a book?

Mr. HEINEMAN. Mr. Anderson?

The CHAIRMAN. Martin Anderson.

Mr. HEINEMAN. I believe he has a background as a welfare administrator, if I am not mistaken. I am not sure about his credentials.

As I say, Senator Talmadge recommended that I look at the book; I have not had a chance to yet.

The CHAIRMAN. He is presently with the Hoover Institution out in California. He was with Arthur Burns in the White House at the time when the family assistance plan was recommended and, as he points out in his book, there were fatal mistakes in that family assistance plan which could not stand thoughtful analysis.

He pointed out how the administration witnesses came apart under cross-examination for the very reasons he and Arthur Burns pointed out to begin with.

I would hope that you do not come up here recommending the same thing that the other people recommended, unless you are in a position to defend yourselves against the kind of cross-examination that they could not defend themselves against.

It is permissible to make a mistake; that is human. But former Treasury Secretary Eill Simon refers to what he calls Katz's law. Katz's law says that when you take a problem and you have exhausted every possible way to solve it that will not work, you are finally left with the one method that might work.

Bill Simon says on some occasions in this Federal Government we try something that will not work two or three times before we finally try the only alternative that will work.

Senator HEINZ. Is that a codicil to Murphy's law, Katz's codicil?

In the first instance, if something can go wrong, it will, but if you try everything else and it does, then one will not?

The CHAIRMAN. The idea is that after you have tried everything that will not work, eventually you are left with the only alternative that might work. It seems to me as though the answer to the welfare problem is that you must not pay able-bodied people for doing absolutely nothing.

I do not think you can make it work any other way. You ought to pay them for doing something, marginal though it may be.

The idea of paying somebody to do something is much better than paying people for doing nothing. At least you ought to have them doing something.

I would suggest when you read Mr. Anderson's book that you study the parts of it that talk about the disincentives to go to work, because you are going over there in the department to help with the program that can well be accused of providing more disincentives for people to turn to and improve their condition than it provides in incentives. If

you can help us to put together a program that pays people to do something rather than do nothing, I think that you will have made a major contribution.

When President Nixon came out with his family assistance plan, I went down and talked to him. I said, you know, you have a great plan as President; there is only one thing wrong with it. Instead of paying all of those people to do nothing, you ought to pay them to do something, just anything. You should just not pay them for doing absolutely nothing.

Well, it turned out that that was the one proposal that the Department absolutely could not stand. It just set the bureaucracy on fire down there—the thought that you might pay somebody to do something, rather than hand out money to do nothing.

All the verbiage of this administration sounds like the verbiage of the Nixon administration. They talk about putting people to work doing something—but they fought as hard as they knew how to fight the concept of paying people to do something useful. The language I used was that they should “do their first decent act.”

All the verbiage that gets sent up here looks like what we have in mind, but the actual legislative proposals do not. You will make a real contribution if you help put together something down there where you are going to be which will pay people to do something useful. It is only a matter of being kind to growing children, pay their parents to do something useful rather than pay them to do something absolutely useless. You should not pay them just to sit there and do nothing and provide disincentives to people when they do go to work.

You might be able to bring a program up here that could succeed. I certainly wish you luck.

Mr. HEINEMAN. Thank you very much. I think any administration proposal will contain more than mere verbiage about work.

The CHAIRMAN. All this background shows you have a bright mind, but I really tremble when I think of what you are going to be exposed to when you move inside that bureaucracy.

That is all the questions I have. Any further questions, gentlemen?

Senator NELSON. Mr. Chairman, let me say I only know Mr. Heineman casually, although friends of mine who do know him speak very highly of him and say that he is endowed with the same kind of intellectual quality and character and dedication to public service as his father, whom I have known for 30 years. Ben's father is a man of great distinction, and so I would guess that his son is, too.

And, of course, it is a good appointment, because his father comes from Wausaw, Wis.

The CHAIRMAN. Thank you very much, Mr. Heineman. Senator Moynihan wanted to be here when we voted on this nomination so we cannot vote at this point. We appreciate having you here, and we will vote at the first opportunity.

[Whereupon, at 10:25 a.m. the committee proceeded to other business.]

