

Addendum

In view of the urgency of the matter, I had to rely on Mr. Roberts' statement that the recess of the Senate lasted from January 3 to January 21, i.e., for 18 days. On January 22nd, while preparing this memorandum, I discovered that the recess of the Senate lasted only from January 7 to January 21, i.e., for 14 days. While 14 days is an extremely short period, it is felt that Attorney General Daugherty's opinion of August 21, 1921, 33 Op. Att'y Gen. 20, 24-25 (1921) would support the conclusion that the President has the power to make an appointment during a recess of the Senate lasting only fourteen days. See, Appendix.

The White House subsequently has advised us that the proposed recess appointments had been made on January 21, 1985, at 9:30 a.m.