7179. By Mr. THOMPSON: Petition of 17 residents of Henry County, Ohio, urging favorable action on House Joint Resolution 412, for the relief of the famine-stricken areas of Germany and Austria; to the Committee on Foreign Affairs.

7180. Also, petition of 37 residents of Henry County, Ohio, urging favorable action on House Joint Resolution 412, for the relief of the famine-stricken areas of Germany and Austria; to the Committee on Foreign Affairs.

SENATE.

MONDAY, *February 5, 1923.*

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

Our Father, in Thy good providence we are permitted to assume the duties that require attention. We humbly ask that Thy guidance may be had and that in every phase of life and its responsibilities we may be able to recognize that Thou art our God, willing to aid us in every perplexity, to guide our steps aright, and to lead us finally into Thy presence. We ask in Jesus' name. Amen.

THE JOURNAL.

The reading clerk proceeded to read the Journal of the proceedings of the legislative day of Monday, January 29, 1923, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. Overhue, its enrolling clerk, announced that the House had passed a bill (H. R. 13835) authorizing the Secretary of the Interior to appraise tribal property of Indians, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the House had further insisted upon its disagreement to the amendments of the Senate numbered 10 and 25 to the bill (H. R. 13696) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1924, and for other purposes; agreed to the further conference requested by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. WOOD of Indiana, Mr. WASON, Mr. DICKINSON, Mr. BYRNS of Tennessee, and Mr. GRIFFIN were appointed managers on the part of the House at the further conference.

SENATOR NORRIS ON A MODEL STATE LEGISLATURE.

Mr. JOHNSON. Mr. President, I ask unanimous consent to have printed in the RECORD in 8-point type an article by the junior Senator from Nebraska [Mr. NORRIS], published yesterday in the New York Times, entitled "A model State legislature."

There being no objection, the article was ordered to be printed in the RECORD in 8-point type, as follows:

(By GEORGE W. NORRIS, United States Senator from Nebraska.)

LEGISLATURE SHOULD CONSIST OF ONE BODY.

When our forefathers adopted the Constitution of the United States they provided that the legislative function of government should be composed of a House of Representatives and of a Senate. It would be interesting, but it is not material in the present discussion, to give the reasons why this was done. It is sufficient to know that the Federal Government in this respect was accepted as a model and was followed by all of the States of the Union. The experience of more than 100 years has demonstrated that the two-branch legislature, at least so far as the various States are concerned, has been very unsatisfactory in its results. One of the fundamental requisites that should always exist in any legislature where universal suffrage prevails is to enable the citizen to properly place responsibility either for the success or the failure of legislation.

In every legislature composed of two branches the finishing touches on practically all legislation are made by conference committees. A bill that has passed one branch and then been amended in another one must go to conference for adjustment of the differences between the two houses. These conference committees in all two-branch legislatures are absolutely essential in order that anything may be accomplished. Experience has shown that it is within the privacy of the conference committee room that jokers get into legislation, and that provisions of law demanded even by a majority of both branches of the legislature are sometimes not included in the finished product. When a bill is in conference it is necessary that compromises be made in order to secure any legislation. It very often happens that the most important features of legislation are put into the bills while they are being thus considered. Members of conference committees are often compelled to surrender on important items where no surrender would be even demanded if consideration of the legislation were in the open where a public record could be had of the proceedings. When the bill emerges from conference it is not then subject to amendment. It must be accepted or rejected as a whole. The conference is held in secret. There is no record vote on any proposition decided at the conference. The public is excluded from the deliberations, and the only thing that emerges from the conference is the final agreement.

The individual legislator must then vote upon a conference report without any opportunity of expressing by his vote his opposition to anything that the bill in this form contains. The citizen is deprived entirely of an opportunity to pass a just and fair judgment upon the result. In conference, provisions are often put in and other provisions taken out, where an entirely different result would be obtained if the action took place in the open where a record vote could be had upon all provisions of the bill.

A one-branch legislature would obviate all these difficulties. There would be no way for any member of the legislature to conceal his opposition upon any legislative propositions that come before the body. The citizen would be able to absolutely and without difficulty place responsibility where it properly belonged for every act of the legislature. It would thus be easy to punish those whose records are unsatisfactory and to reward those whose services are meritorious.

It is quite a common thing in a double-branch legislature for one house to shift responsibility for failure upon the other house. Bills are often passed when it is known by those who pass them that the bill is to be killed in the other house, and in like manner bills coming from the other house are pigeonholed in the first one. Responsibility for failure is thus divided, enabling participants in the fraudulent procedure to conceal their own records and to cover up their own tracks.

In a one-branch legislature it would be impossible to thus obscure the record by parliamentary tactics and proceedings that make it impossible for the ordinary citizen to properly judge the record of his representative. It is not only the unworthy legislator that ought to be exposed, but the faithful one ought to be able to make his record clear to his constituents without the necessity of a long and tedious explanation of the various parliamentary predicaments into which existing conditions placed him. A single-branch legislature would simplify the entire record. The ordinary citizen, without becoming a parliamentary expert, could easily satisfy himself as to whether the official conduct of his representative was satisfactory or otherwise. Adroit politicians would be unable to cover up their practices, but every act would be performed in the open, and the record would be simple and easily understood.

LEGISLATURE SHOULD BE SMALL IN NUMBER.

One of the evils of our legislatures is that they are entirely too large. In theory a large legislature is supposed to give a larger and more complete representation of the entire citizenship. In practice, however, it has been demonstrated that a large membership is detrimental to real representation. We should avoid either extreme. A large body of men, in order to accomplish any legislative results, must of necessity surrender many of the individual rights and prerogatives of its members. Members must deny themselves the right in large bodies, on important matters of legislation, to even offer amendments. They must surrender to committees the right to determine procedure. The very size of the bodies sometimes makes it impossible for the necessary and proper deliberation and discussion that should always take place before legislation is enacted. The House of Representatives in Washington illustrates this point. The Members of the House are, as a class, both able and conscientious. They are moved by the highest of motives and are a picked body of fine men. And yet any constructive critic will say that their work is not only incomplete but is very unsatisfactory and often ill considered. This result comes about entirely and solely from the huge size of the body. In order to accomplish anything whatever they are often compelled, in the most vital kind of legislation, by special rule and otherwise, to deprive themselves of the right to offer amendments and of the right to debate and thus point out errors or suggest corrections, and the result is not only disappointing but it brings about all kinds of errors in the final enactment. Members are thus often compelled to vote for bills containing provisions that in their own judgment are absolutely wrong in order to get what, in

their judgment, is right and proper; or they are compelled to vote against bills because, in their judgment, the evil contained is greater than the good. It is true, of course, that in the final passage of a bill through any legislature, members in deciding how they shall vote must weigh the good and the bad and vote as their judgment dictates; but in a smaller body of men there would always have been an opportunity to offer amendments striking out bad provisions and to offer amendments suggesting good ones, so that the record of the member upon all provisions of the bill would clearly appear. If this right were not denied, it would mean better legislation and enable members to keep a correct record of their own positions. It would often occur that if the right to debate and the right to offer amendments had not been denied, bad provisions would be excluded on a roll call and good provisions put in.

The exact number that should be contained in the membership of a State legislative body would undoubtedly vary somewhat with the different States. Having in mind a State about like Nebraska, I should say that the membership should not exceed 20 or 30. This would make it absolutely impossible for any member to cover up his record in any respect or to shift any responsibility. It would enable a citizen to be fully informed upon the record of his representative without the necessity of doing anything more than to read the news while the legislature was in session. Punishment could be meted out to those who deserved it, and the faithful could be properly rewarded. It would give to the State a business administration. It would result in full discussion, complete deliberation, and the highest possible wisdom in the enactment of laws.

SALARIES OF LEGISLATORS SHOULD BE INCREASED.

A State having the kind of legislature I have outlined would be able to increase the salaries of its members. Under existing conditions it is a well-known fact that it is extremly difficult in many instances to secure good men in State legislatures, because the ordinary individual can not afford to leave his business and expend the time necessary to attend the sessions of the legislature. The result is that we not only get a less desirable membership but the good legislator, who is induced to sacrifice himself, must give the greater portion of his time to his private business and never becomes really posted on the propositions that come before the legislature. Existing conditions afford inducements to the dishonest and corrupt, who avail themselves of the opportunity to become candidates for the legislature with a view of recouping themselves after election by their official conduct. There are, of course, many honest and able men who are members of the State legislatures. Undoubtedly, a large majority of them could be thus designated; but it is oftentimes much easier to deceive the honest man than it is to buy the corrupt man. The ordinary farmer or business man who goes to the legislature with the very best of intentions is often deceived by lobbyists and evil influences. He is in attendance upon the legislature but a short time, and devotes the balance of his time to his business or occupation, and it is a physical impossibility, whatever may be his desire, to properly qualify himself for the duties of his office.

A member of the legislature ought to be paid a sufficient salary so that he could devote his time to the duties of his office. This would not only attract better men for the position but it would enable good men to perform better service. He ought to be paid a salary that would command all of his time, and he should, in my judgment, be elected for a term of four years. This term, with the right of the people to recall their representative, would not, in my opinion, be too long.

THE PROPOSED PLAN WOULD BE ECONOMICAL.

The plan I have outlined would not only result in better legislation but it would save money for the taxpayer. If members of such a legislature were paid a salary equal to the salary of other State officials whose entire time is required in the performance of the duties of their offices there would still be, in most cases, a large saving of money on the salary item alone. We would not only get better legislators and not only have the benefit of their entire time but we would do it all with a less cost than under present conditions. Better results for less money would be the outcome.

PARTISANSHIP WOULD BE ELIMINATED.

The members of the legislature should be elected by districts upon a nonpartisan ballot. The business of the legislature of a State is in no sense partisan. The evils that creep into State management and State legislation on account of such positions being coupled up with national questions of politics are exceedingly great. Men are often elected to the State legislature because they happen to be candidates on some particular party ticket, while the duties they are to perform when elected have nothing to do with the national administration or with the welfare or success of any political party. If politics were eliminated, members would be elected according to their qualifications for the State legislature. The State would be similar to a gigantic corporation and the members of the legislature would be members of the board of directors.

Without being handicapped on account of any partisanship matters, they would be able to give the best that was in them for the welfare of the State. Their duties would be mainly of a business nature. How illogical it is to elect a man to the legislature because he believes in a tariff for protection, or because he is a free trader, or because he believes in a Federal subsidy to the national merchant marine or is opposed to such subsidy, or because of his ideas on the League of Nations, or, what is more probable, because he belongs to some political party and will follow that party regardless of what course it takes, when, as a matter of fact, the duties of the office for which he is a candidate have nothing to do, either directly or indirectly, with any of these partisan questions. Why should we not divorce the business of our States entirely and completely from such partisan influences? Why not elect a legislature that shall become a business organization, looking solely after the interests and the welfare of the people of the State? It would not be difficult to have a legislature entirely divorced from partisan politics, and the smaller the membership the more easily would it be possible to make it a business institution entirely independent of partisanship.

THE ELIMINATION OF CORRUPTION IN LEGISLATIVE PROCEEDINGS.

A legislature such as I have outlined would be much more free from corrupt influences than would a two-branch legislature or a legislature composed of a very large number. I know that many people at first blush do not realize the truth of this statement, but I am sure that the candid student, especially one who has had experience with two-branch legislatures, will agree that this is true. The corrupt legislator, or the one who in reality represents some special interest, is always looking for a place and an opportunity to cover up his tracks. The two-branch legislature gives him many opportunities to ply his trade without being found out. He is able to shift the responsibility. Through various parliamentary maneuvers and proceedings, and often through the instrumentality of conference committees, he is able to deceive the honest citizen. If there were no opportunities for this deception he would not be a candidate for the legislature. He would know in advance that he would be a one-termer, and if the recall existed in his State he would probably not serve even one term. But the lobbyist not only deals with corrupt men—he often deceives honest men. In fact, the actual cases of honest men being misled are far more numerous than the purchase of dishonest men.

With the increased salary we would get, to begin with, men who, on the average, would be high class and more difficult to deceive than we do now. The opportunities for deception or corruption would be greatly lessened. The men, therefore, to be deceived would be much less, and the man who would try to practice the deception would be almost powerless, and we would have a legislature that would be untrammeled and to a great extent untempted. A legislature that is known to be incorruptible would be practically free from attempts at corruption. It is said, I know, that a small legislature could be purchased easier than a large one, and that one branch could be more easily deceived than two branches. If the opportunities for deception and the caliber of the membership were the same in both instances, then this statement would be true; but when the possibility of covering up the tracks of those who want to deceive is practically wiped out and when the morale of the membership is raised to the highest possible point of the citizenship of the State, then this argument falls to the ground. Who would say, for instance, that the judges of our various States are corrupt and argue that, therefore, we should have five or six judges instead of one presiding at a trial? And yet if we had the kind of a legislature I have outlined the members would stand as high as the members of our judiciary. They would become as expert in their line as the judges are expert in the construction of laws. Perfection, it is true, would not be attained, but the morale and the standing of our State legislatures would be on the same high plane as our judiciary.

CALL OF THE ROLL.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll to ascertain the presence of a quorum.

The reading clark called the roll, and the following Senators answered to their names:

Ashurst	Glass	McLean	Smoot
Bayard	Gooding	McNary	Spencer
Borah	Hale	Moses	Sterling
Brandegee	Harreld	Nelson	Sutherland
Brookhart	Harris	New	Swanson
Bursum	Harrison	Nicholson	Townsend
Cameron	Heflin	Norbeck	Trammell
Capper	Hitchcock	Norris	Underwood
Caraway	Johnson	Oddie	Wadsworth
Colt	Jones, Wash.	Page	Walsh, Mass.
Couzens	Kendrick	Phipps	Walsh, Mont.
Culberson	Keyes	Pittman	Warren
Curtis	King	Poindexter	Watson
Dillingham	Ladd	Pomerene	Weller
Ernst	Lenroot	Ransdell	Williams
Fernald	Lodge	Reed, Pa.	Willis
Fletcher	McCormick	Robinson	
Frelinghuysen	McCumber	Sheppard	
George	McKellar	Shields	

Mr. UNDERWOOD. I was requested to announce that the junior Senator from South Carolina [Mr. DIAL] is absent because of illness.

Mr. HEFLIN. I wish to announce that the Senator from South Carolina [Mr. SMITH] is absent on official business.

Mr. BROOKHART. I desire to announce that the Senator from Wisconsin [Mr. LA FOLLETTE] is detained at hearings before the Committee on Manufactures.

The VICE PRESIDENT. Seventy-three Senators having answered to their names, a quorum is present.

GERMAN REPARATIONS.

Mr. McCORMICK. Mr. President, since we are likely to consider fully and not infrequently the foreign policy of the country during the remaining days of the present session, I ask unanimous consent to have printed in the RECORD in 8-point type, first, a cable account of M. Poincare's refusal to participate in any economic conference; and, secondly, the British version of Mr. Boyden's now celebrated address to the Reparation Commission delivered on the 9th of January.

There being no objection, the matter was ordered to be printed in the RECORD in 8-point type, as follows:

PARIS, January 31.—An important group of American bankers, among whom was an official of the Bankers' Trust Co., as well as representatives of most of America's largest financial institutions, visited Premier Poincare yesterday with an offer to start a world-wide campaign for an international reparation conference to be held in the United States as soon as possible. The proposal was made in the most friendly manner to France.

Premier Poincare replied at length, giving reasons for his flat refusal to encourage such discussions as long as Germany maintained its present attitude. To discuss reparations now, when financial Germany is in no position to pay anything, the premier asserted, would be playing into the Reich's hand, making the reconstruction of France impossible and giving Germany the victory.

France is now in action—"en pleine action"—he said. German resistance, he declared, was a maneuver carefully planned. Had a two-year moratorium been granted, M. Poincare contended, the world would have faced German economic and military hegemony. This would have been accomplished, in his opinion, through the Reich policy of reducing a part of the population—the bondholders—who are expensive and unproductive, to poverty, while enriching and upbuilding the producers.

These now have attained such a position of wealth and security that they could pay all the taxes necessary for Germany's financial reforms and budgetary stabilization, as well as for the improvement of the mark, he said. Then, with a strong financial position, commanding world credit, with an immense reserve both of men and of raw materials in Russia, the premier says Germany would flatly refuse to take up its reparations payments and would coldly invite France to come and take them if it could. France then would be in a helpless position and would be forced to acquiesce.

REMARKS MADE BY MR. BOYDEN AT REPARATION COMMISSION MEETING, JANUARY 9, 1923.

Mr. Boyden stated that not being one of the official judges, as were his colleagues, it would be easy for him to remain silent, but he preferred to assume his own responsibility in his personal capacity as they had assumed theirs in their official capacity. In English and American courts it was not uncommon for a person of judicial education to sit with the official judges as an "amicus curiæ," who though in fact not a judge expressed his own personal view. Mr. Boyden had endeavored to form an opinion upon the judicial aspect of the situation.

Paragraph 17 of annex 2 referred to default and paragraph 18 referred to voluntary default. Mr. Boyden was in agreement with the decision of the commission that in both cases voluntary default was intended.

What was voluntary default? One excuse for nonperformance would be recognized by all, viz, "force majeure," but in Mr. Boyden's view the expression "voluntary default" included other excuses. It meant the doing or the failure to do something, with the knowledge at the time that the action or the failure to act might reasonably have the effect of resulting in default.

There was in Mr. Boyden's view a very considerable difference between the question then under discussion and the question as it had arisen in connection with deliveries of timber. The demand for timber was a single demand. The main reason for the timber default seemed to consist in the difficulties which arose from the depreciation of the mark. These difficulties were of an extraordinary nature, such as had never before arisen in Germany, and it was easily conceivable that the persons who had to meet them did not at once see how to meet them and did not realize at the time that their failure to do certain things promptly would result in default. Nevertheless, Mr. Boyden was inclined to think that even in connection with wood there had been a voluntary default within the meaning of the treaty. The difference between the timber question and the coal question lay in the fact that the coal requirements were monthly requirements. The Germans, faced with deficits in any month, ought at once to have taken whatever precautions were necessary to see that those difficulties, whatever they had been, were avoided during the next month. They had failed to do this, and the deficits had continued month after month.

One further juridical point arose, to which Sir John Bradbury had referred, in connection with the purpose of paragraph 17. In Sir John Bradbury's opinion the purpose of that paragraph was to enable the commission to appeal to the Governments only when the measures at its command had proved inadequate to enforce obedience. That was a perfectly comprehensible interpretation, and explained in a large part the difference between Sir John Bradbury and his colleagues as to the action to be taken. Mr. Boyden's own reading of paragraph 17 was, however, different. In his view the commission was required to report any voluntary default forthwith, partly for the information of the Governments and partly to enable the Governments to take such action as they thought fit. Mr. Boyden recognized that the previous action of the commission with respect to coal defaults had not been consistent with that interpretation, for the commission had not automatically reported defaults as they had arisen. Although this previous practice did not in his view represent the waiver of a right it was, nevertheless, a practical fact which should be taken into account, particularly by the Governments themselves in whatever action they might take.

From the juridical point of view he was of opinion that the argument put forward by the German delegation to the effect that in private contracts a deficiency of 10 per cent did not constitute a default was of no value. The treaty did not contemplate the application of any such commercial custom to its provisions.

With regard to the letter of March 21 Mr. Boyden considered that the commission did not by its terms abandon its right under the treaty to report a voluntary default. At the time when the letter was drafted he had called the attention of his colleagues to the danger which existed from the language used, which had been quoted. He did not remember exactly what views his colleagues then held, but it might be taken for granted that the language would not have been accepted by certain delegates if they had thought that it eliminated the possibility of reporting a voluntary default.

The argument to which the German delegation attached the most weight was that concerning the needs of Germany, as indicated by her importation of nearly as much coal as she was delivering to the Allies. Legally that argument seemed to him to be applicable not to the question of a voluntary default but to the decision of the commission as to the demands made on Germany.

The argument would have weight if used to show that the commission's decision upon the amount of coal which Germany could supply without undue interference with its industrial requirements was incorrect. But the commission's decision remained a decision unless changed, and Germany's industrial requirements had nothing to do with Germany's obligation to carry out the decision so long as it was not changed.

But having expressed his view of the legal situation Mr. Boyden desired to add that several of the foregoing considera-

tions, particularly Germany's need for coal and her importation of coal from abroad, the previous practice of the commission with respect to coal default, and the commission's letter of March 21, had a practical bearing on the situation which would naturally be taken into account by the Governments after the commission reported a default.

The report by the commission of the wood default seemed to him to be very defective. When reporting a voluntary default it was of the utmost importance for the commission to report the extent of the intention which had entered into that default. The commission was the tribunal which found the accused guilty; punishment would be meted out by another tribunal. It was therefore of the greatest importance that the exact nature of the crime should be reported by the commission, so that the punishment by the Governments might fit the crime. Mr. Boyden agreed with Sir John Bradbury that the word "punishment" was not appropriate and that the real purpose of the provision was constructive. The real point was that the report should be made in such a way as to aid the Governments in adopting methods which should lead to constructive results. But it was of equal importance that the quality of the crime should be made plain in the report, whether the results were to be punitive or constructive. The commission in its report on coal deliveries should set forth not merely the fact of default but also the causes of the default and all extenuating circumstances. It was only upon such a basis that the Governments could fairly perform their duty in the matter.

If Mr. Boyden were asked to express in a few words what Germany had failed to do, he would say that Germany had failed to take those exceptional and rather extraordinary measures month by month which were necessary to cope with the difficulties which the experience of previous months had shown would arise.

It was understandable that Germany's opinion of her own requirements should affect her attitude. Her opinion on this point and the facts on this point were both of great importance in connection with the extent of her culpability. In that connection, it would seem, in fairness to Germany, that the report should emphasize the percentage which expressed the real extent of the default—while the default was important from the financial point of view, as M. Delacroix had explained—the percentage of demand which Germany had not supplied was small, and this must be recognized as proving that Germany had made a very considerable effort in a very difficult matter and had attained a very large measure of success.

Mr. Boyden had hitherto confined himself to the voluntary default on the part of Germany and the reasons which tended to lessen her culpability. If, however, he were making a report, he would go further and would deal with the whole question of the failure of Germany in the execution of her obligations under the treaty, and would explain that the conditions imposed by the treaty had been demonstrated by experience to be impossible and that that impossibility had affected not only Germany's financial situation and her financial obligations to the Allies but also her obligations like those in respect of coal and wood. He would further express the opinion which he had already expressed before the commission, that the continuance of these conditions had already resulted in a great loss of money to the Allies and would result in still further loss so long as they were maintained.

RETURN OF AMERICAN TROOPS FROM GERMANY.

Mr. HARRIS. Mr. President, I submit a concurrent resolution and ask unanimous consent for its immediate consideration.

Mr. CURTIS. Mr. President, may we not have the regular order this morning?

Mr. HARRIS. This is a concurrent resolution authorizing the appointment of a committee of five from the Senate and five from the House to go to Savannah, Ga., to attend the services upon the occasion of the return of the American troops from Germany.

Mr. CURTIS. Very well; I have no objection.

Mr. FRELINGHUYSEN. What are the ceremonies to be at Savannah?

Mr. HARRIS. Upon the occasion of the return of the troops from Germany the city of Savannah is going to have ceremonies there to welcome them.

The concurrent resolution (S. Con. Res. 36) was read, considered by unanimous consent, and agreed to, as follows:

Whereas the U. S. transport *St. Mihiel* is expected to arrive at Savannah, Ga., on or about February 7, 1923, with the last contingent of American troops from Germany: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That a committee of five Senators, to be designated by the President of the Senate, and five Members of the House of Representatives, to be designated by the Speaker, is authorized to represent the Congress at Savannah, Ga., at such ceremonies as may be determined to be proper and appropriate. One-half of the expenses of such committee shall be paid out of the contingent fund of the Senate and one-half shall be paid out of the contingent fund of the House of Representatives.

SALE OF SHIPS BY SHIPPING BOARD (S. DOC. NO. 299).

The VICE PRESIDENT laid before the Senate a communication from the chairman of the United States Shipping Board, reporting, in response to Senate Resolution 421, agreed to on the calendar day of January 27, 1923, relative to ships sold since March 4, 1921, which was referred to the Committee on Commerce.

REINTERMENT OF SOLDIER DEAD.

The VICE PRESIDENT laid before the Senate a communication from the Acting Quartermaster General of the Army, inclosing a list of soldier dead returned from overseas, to be reinterred in the Arlington (Va.) National Cemetery, Thursday, February 8, 1923, at 2.30 p. m., which was ordered to lie on the table for the information of the Senate.

SENATOR FROM MARYLAND.

The VICE PRESIDENT presented the credentials of WILLIAM CABELL BRUCE, chosen a Senator from the State of Maryland for the term beginning March 4, 1923, which were read and ordered to be placed on file, as follows:

THE STATE OF MARYLAND.

To William Cabell Bruce, Esq., of Baltimore, Md., greeting:

Be it known that the people of the State of Maryland, reposing great trust and confidence in your integrity and wisdom, did, on the 7th day of November, 1922, elect you a Member of the Senate of the United States; you are, therefore, to execute the said office justly, honestly, diligently, and faithfully, according to law, and hold the same for a term of six years from the 4th day of March 1923, or until you shall be duly discharged therefrom.

Given under my hand and the great seal of Maryland, at the city of Annapolis, on the 1st day of December, in the year of our Lord 1922.

[SEAL.]

By the governor: ALBERT C. RITCHIE.

PHILIP B. PERLMAN, *Secretary of State.*

SENATOR FROM MONTANA.

Mr. WALSH of Montana. I present the credentials of BURTON K. WHEELER, Senator elect from the State of Montana, which I ask may be read and placed on file.

The credentials were read and ordered to be placed on file, as follows:

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA.

To all to whom these presents shall come, greeting:

Know ye that I, Joseph M. Dixon, Governor of the State of Montana, do hereby certify that at a general election held in the State of Montana on the 7th day of November, A. D. 1922, pursuant to section 531 of the Revised Codes of the said State, BURTON K. WHEELER was duly elected to the office of United States Senator in and for the State of Montana, he having received the highest number of votes for said office as appears from a certified copy of the abstract of votes cast at said election now on file in my office.

And by virtue of the power vested in me by the Constitution, and in pursuance of the laws, I do hereby commission him, the said BURTON K. WHEELER, to be United States Senator, hereby authorizing and empowering him to execute and discharge all and singular the duties appertaining to said office, and enjoy all the privileges and immunities thereof for a period of six years, beginning March 4, 1923.

In testimony whereof I have hereunto subscribed my hand and caused the great seal of the State of Montana to be affixed at Helena, Mont., the 15th day of December, in the year of our Lord 1922, and in the one hundred and forty-seventh year of the independence of the United States of America.

[SEAL.]

By the governor: JOS. M. DIXON.

C. T. STEWART, *Secretary of State.*

PETITIONS AND MEMORIALS.

Mr. CURTIS presented the following concurrent resolution of the Legislature of Kansas, which was referred to the Committee on Interstate Commerce:

Senate Concurrent Resolution No. 6, relating to certain claims of citizens of Kansas against the Government of the United States for losses of cattle on account of Texas fever.

Whereas many citizens of the State of Kansas are interested in claims pending against the Government of the United States which must be allowed by Congress; and

Whereas said claims grew out of losses of live stock infected by Texas fever by reason of the negligence of the Government in allowing the same to be transported in interstate commerce into the State of Kansas without proper inspection and preventive means being used; and

Whereas said claims amounting to more than $225,000 have been recommended to be paid by the Secretary of Agriculture, and proof has been made satisfactory to said Secretary and the committee of Congress of said claims in said amount; and

Whereas Senate bill No. 854 has passed the United States Senate and has been reported favorably by the Committee on Claims of the House of Representatives for passage, and is now on the House Calendar awaiting its turn for action; and

Whereas in the event that said bill fails to be enacted at the present session of Congress a vast amount of time and effort would be necessary to secure the advancement of a like measure to the position now held by said Senate bill No. 854, and there would be lost the effort and expense which has been expended by said citizens of Kansas in prosecuting said claims in the past and grave danger of the failure of said bill at another session of Congress: Be it

Resolved by the Senate of the State of Kansas and the House of Representatives concurring therein, That the Senators of the United States and Representatives in Congress from the State of Kansas are hereby earnestly requested to use their best endeavors to secure consideration of said Senate bill at the present session of Congress, and to secure its enactment into law and the allowance of said claims; be it further

Resolved, That a copy of this resolution be sent to each Senator and Representative in Congress from the State of Kansas.

I hereby certify that the above concurrent resolution originated in the Senate and passed that body January 19, 1923.

BEN S. PAULIN,
President of the Senate.
ARTHUR S. MCKAY,
Secretary of the Senate.

Passed the House January 31, 1923.

CHAS. E. MANN,
Speaker of the House.
LISLE MCELHINNEY,
Chief Clerk of the House.

Approved February 1, 1923.

JONATHAN M. DAVIS, *Governor.*

Mr. WALSH of Montana presented the following memorial of the Legislature of Montana, which was referred to the Committee on Commerce:

Senate Resolution 5, introduced by committee on agriculture.

GREAT LAKES-ST. LAWRENCE WATERWAY PROJECT.

Be is resolved by the Senate of the State of Montana (the House of Representatives concurring therein)—

Whereas the great and natural resources of the State of Montana are as yet undeveloped, and said State is dependent upon agriculture for its prosperity, and agriculture being the fundamental basis for prosperity in all Northwest States; and

Whereas in a large measure, if not entirely, the price of agricultural products is dependent upon foreign markets; and

Whereas the present rates for transportation of such products are too high to be in just proportion to the prices received therefor at terminal markets, and thus a tendency to curtail the production of the staple articles of agriculture needed by all people in all lands; and

Whereas the Great Lakes-St. Lawrence waterway project, if completed and perfected, will furnish to the people of the State of Montana a cheaper method of transportation of their products to foreign markets, thus assuring them a higher revenue for the same: Now, therefore, be it

Resolved by the Senate of the Eighteenth Legislative Assembly of the State of Montana (the House of Representatives concurring therein), That we do hereby memorialize the Congress of the United States, and respectfully urge that Congress take immediate action toward the passage of such laws or law, which will make possible the early completion and perfection of the Great Lakes-St. Lawrence waterway project; be it further

Resolved, That the secretary of the senate send a copy of this resolution to the President of the United States and the President of the Senate, and Speaker of the House of Representatives of the United States, and of North Dakota and Minnesota Legislatures, respectively, also to our Members in Congress.

Mr. WALSH of Montana presented the following memorial of the Legislature of Montana, which was referred to the Committee on Finance:

To His Excellency the President of the United States, the honorable Senators and Representatives in Congress of the United States, and the Director of the United States Veterans' Bureau of Washington, D. C.:

Your memoralists, the members of the Eighteenth Legislative Assembly of the State of Montana, respectfully represent:

Whereas the United States Government has, through its administrative agency, the United States Veterans' Bureau, established at Fort William Henry Harrison, a military reservation near Helena, Mont., a veterans' hospital known as United States Veterans' Bureau Hospital No. 72, for the care and treatment of wounded and disabled veterans of the late war between the United States of America and the Imperial Governments of Germany and Austria-Hungary; and

Whereas said United States Veterans' Bureau Hospital No. 72 has up to this time been used and employed solely as an observation hospital and as a general hospital for the care and treatment of such disabled soldiers and veterans; and

Whereas the said hospital No. 72 at Fort William Henry Harrison is the only establishment within the State of Montana for the hospitalization, care, treatment, and nursing of wounded and disabled soldiers and veterans within the State of Montana, and great cost and expense is occasioned and incurred by sending certain types of patients out of Montana to other hospital units maintained by said bureau in the United States, in particular patients threatened or afflicted with tuberculosis and patients suffering from psychoneurotic diseases and disabilities; and

Whereas veteran patients suffering from said disabilities are now cared for on contract at the Montana State Hospital, at Warm Springs, Mont., and the Montana State Tuberculosis Sanitarium, at Galen, Mont.; and

Whereas the climatic conditions obtaining at and near Fort William Henry Harrison aforesaid make said point peculiarly adapted to the treatment of tuberculosis cases, and likewise well suited, from the standpoint of environment, for the treatment of psychoneurotic diseases; and it is the established opinion of well-informed medical experts that if a tuberculosis patient intends to live and spend his life at altitudes such as are found within the State of Montana, and in areas where climatic conditions are the same as in Montana, said tubercular patients must be cured, if at all, at such altitudes and under such climatic conditions; and

Whereas the State of Montana furnished a larger quota of men, in proportion to actual population, to the military and naval forces of the United States during the late war than any other State, and as a consequence has had returned to it many hundreds of wounded and disabled veterans, there being at the present time in Montana about 500 cases of active tuberculosis and about 900 cases of neurotic disability directly caused by or aggravated by military and naval service; and

Whereas said hospital No. 72 at Fort William Henry Harrison has already been enlarged and fitted at a great expenditure of money to accommodate tubercular and psychoneurotic cases; and both medical and economical considerations urgently persuade to the use of these accommodations for their intended purposes, but said types of cases have scarcely been accepted thereat; and

Whereas every reason and inducement exists for treating and caring for all of Montana's veterans, suffering from any type of disability or wound or wounds, at the said veterans' hospital No. 72 within the State of Montana: Now, therefore, be it

Resolved by the House of the Eighteenth Legislative Assembly of the State of Montana in regular session assembled, That we do hereby memorialize the Director of the United States Veterans' Bureau of Washington, D. C., and respectfully urge upon him that he immediately authorize the full use and employment of the said hospital No. 72, now under his jurisdiction, so that said hospital may, on or before the 1st day of February, 1923, accommodate all the tubercular cases of veterans originating in district 10 and all the psychoneurotic cases of veterans originating in the district 10, and, in general, all and every type of case or disability of Montana veterans, to the end that it may not be necessary to send said veterans, at great expense and at probable injury to their chances for recovery, to other sections of the United States; and be it further

Resolved, That the chief clerk of the house forthwith transmit a copy of this memorial to the President of the United States and to each of the Senators and to each of the Representatives from Montana in the Congress of the United States and to such other persons as the speaker of the house may designate.

CALVIN CRUMBAKER,
Speaker of the House.
JAMES A. SHOEMAKER,
Chief Clerk.

Mr. NELSON presented the following resolution of the House of Representatives of the State of Minnesota, which was referred to the Committee on Banking and Currency:

Resolution.

Be it resolved by the House of Representatives of the State of Minnesota, now in session, That we are of the opinion that branch banking would be especially detrimental to rural banks, and that if the policy of the Comptroller of the Currency in permitting the establishing of branch banks is continued it will become a serious menace to the continuation of the present system of independent banking as practiced in the United States, a system that has contributed very materially to the rapid development of our country; it is further

Resolved, That we are opposed to branch banking for the following reasons:

1. Our present system of independent banking is adequate to the individual bank.
2. The individual bank would lose its identity.
3. Branch banking is monopolistic in its operation and not for the best interests of local communities.
4. That the centralization of the credit power in the hands of the few would result in the destruction of industry and the depopulating of the rural districts.
5. The laws of our State do not permit State banks to operate branches and no national bank should receive privileges not accorded to State institutions; be it further

Resolved, That the State of Minnesota adhere to its present laws prohibiting the transaction of banking business by any bank in this State through branch banks or by means of branch banks, and calls upon the Congress of the United States and the executive officers of the United States Government having in charge the enforcement of the banking laws to adhere to the policy of the State in the transaction of the banking business in this State by national banking associations, to the end that there may be no conflict in this State between the policy and laws of the Federal Government and the policy and laws of the State of Minnesota; and be it further

Resolved, That the attention of the Comptroller of the Currency is hereby called to the fact that national banks are conducting business in part by the establishment and operation of branch banks in the city of their domicile, and we hereby most respectfully call upon the Comptroller of the Currency to cause said banks to desist from the operation of their said branch banks and refrain from the establishment of other or further branch banks; and be it further

Resolved, That we hereby petition the President of the United States to direct the Comptroller of the Currency to cause said branch banks in the State of Minnesota to be suspended and closed and to prosecute or cause to be prosecuted any and all such actions as may be found necessary therefor; and be it further

Resolved, That a copy of this resolution be promptly forwarded to the President of the United States, to the Comptroller of the Currency of the United States, and to each Member of the Congress from the State of Minnesota.

Mr. NELSON presented a petition of sundry Chippewa Indians of White Earth, Minn., praying for the passage of legislation granting a per capita distribution of their individual funds in the Treasury to the Chippewa Indians of Minnesota, which was referred to the Committee on Indian Affairs.

Mr. LODGE presented a resolution adopted by the board of aldermen of the city of Medford, Mass., favoring the passage of legislation placing an embargo on the shipment of coal from the United States to Canada, which was referred to the Committee on Education and Labor.

He also presented a memorial of sundry citizens of Clinton, Worcester, North Adams, Fitchburg, and Leominster, all in the State of Massachusetts, remonstrating against the passage of legislation providing for compulsory Sunday observance in the District of Columbia, which was referred to the Committee on the District of Columbia.

Mr. KEYES presented a resolution adopted at the annual meeting of the Union Congregational Church, of Bartlett,

N. H., favoring an amendment to the Constitution regulating child labor, which was referred to the Committee on the Judiciary.

Mr. LADD presented a petition of sundry citizens of Hurdsfield, N. Dak., praying for the passage of legislation extending immediate aid to the famine-stricken peoples of the German and Austrian Republics, which was referred to the Committee on Appropriations.

Mr. KENDRICK presented a resolution of the Fort McKinney National Farm Loan Association, of Buffalo, Wyo., both approving and disapproving of certain proposed amendments of the Federal farm loan act, which was referred to the Committee on Banking and Currency.

He also presented a resolution of the Lambs Club of Kemmerer, Wyo., favoring the passage of the so-called Towner-Sterling educational bill and the Sterling-Lehlbach reclassification bill, which was referred to the Committee on Education and Labor.

He also presented a communication in the nature of a petition from sundry citizens of Wyoming, praying for the prompt passage of the so-called Sterling-Lehlbach bill providing for reclassification of positions and salaries in the Federal civil service, which was referred to the Committee on Appropriations.

He also presented a resolution adopted by Helen Gould Auxiliary, No. 8, United Spanish War Veterans, of Laramie, Wyo., favoring the passage of legislation extending the benefits of the war risk insurance act to disabled veterans of all wars, which was referred to the Committee on Finance.

He also presented resolutions of Surat Grotto, M. O. V. P. E. R., of Cheyenne, and Casper Lodge, No. 1182, Loyal Order of Moose, of Casper, both in the State of Wyoming, favoring the setting aside of a week to be known as national antinarcotic week, which were referred to the Committee on Finance.

REPORTS OF COMMITTEES.

Mr. McNARY, from the Committee on Manufactures, submitted a report (No. 1087) to accompany the bill (S. 4399) to fix standards for hampers, round stave baskets, and splint baskets for fruits and vegetables, and for other purposes, heretofore reported by him.

Mr. WALSH of Massachusetts, from the Committee on Education and Labor, to which was referred the bill (S. 4447) to establish standards for anthracite coal shipped in interstate or foreign commerce, reported it without amendment.

Mr. SUTHERLAND, from the Committee on Military Affairs, to which was referred the bill (S. 4464) in reference to a national military park at Yorktown, Va., reported it with amendments and submitted a report (No. 1088) thereon.

ARKANSAS RIVER BRIDGE, ARKANSAS.

Mr. CARAWAY. From the Committee on Commerce, I report back favorably with amendments the bill (S. 4439) to revive and to reenact an act entitled "An act granting the consent of Congress for the construction of a bridge and approaches thereto across the Arkansas River between the cities of Little Rock and Argenta, Ark.," approved October 6, 1917. I ask unanimous consent for the present consideration of the bill.

There being no objection, the bill was considered as in Committee of the Whole.

The amendments were, on page 2, line 1, after the word "authorized," to strike out "may," and in line 2, after the word "approval," to insert "thereof," so as to make the bill read:

Be it enacted, etc., That the act approved October 6, 1917, granting the consent of Congress for the county of Pulaski, in the State of Arkansas, its successors and assigns, to construct a bridge across the Arkansas River at the city of Little Rock on the site now occupied by the free highway bridge constructed by said county in the years 1896 and 1897 be, and the same is hereby, revived and reenacted: *Provided*, That this act shall be null and void unless the actual construction of the bridge hereby authorized be commenced within one year and completed within three years from the date of approval thereof.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The amendments were agreed to.

The bill was reported to the Senate as amended and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to revive and to reenact an act entitled 'An act granting the consent of Congress for the construction of a bridge and approaches thereto across the Arkansas River between the cities of Little Rock and Argenta,' approved October 6, 1917."

ENROLLED BILL PRESENTED.

Mr. SUTHERLAND, from the Committee on Enrolled Bills, reported that on February 3, 1923, they presented to the President of the United States the bill (S. 4390) to amend the last paragraph of section 10 of the Federal reserve act as amended by the act of June 3, 1922.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. McLEAN:

A bill (S. 4477) to amend sections 3, 4, 9, 12, 15, 21, 22, and 25 of the act of Congress approved July 17, 1916, known as the Federal farm loan act; to the Committee on Banking and Currency.

By Mr. GOODING:

A bill (S. 4478) to promote agriculture by stabilizing the price of wheat; to the Committee on Agriculture and Forestry.

By Mr. ROBINSON:

A bill (S. 4479) for the relief of Rose City Cotton Oil Mill and others (with accompanying papers); to the Committee on Claims.

By Mr. WADSWORTH:

A bill (S. 4480) for the relief of John Dzikowicz; to the Committee on Claims.

By Mr. HALE:

A bill (S. 4481) for the relief of Herbert G. Black, owner of the schooner *Oakwoods* (with accompanying papers); to the Committee on Claims.

By Mr. BURSUM:

A bill (S. 4482) granting a pension to Leandra Montoya de Pfeiffer; to the Committee on Pensions.

By Mr. BORAH:

A bill (S. 4483) providing the number of judges which shall concur in holding an act of Congress unconstitutional; to the Committee on the Judiciary.

By Mr. NORBECK:

A bill (S. 4484) granting an increase of pension to Mary E. Zimmerman; to the Committee on Pensions.

By Mr. WADSWORTH:

A bill (S. 4485) conferring jurisdiction upon certain courts of the United States to hear and determine the claim of the owner of the steamship *Almirante* against the United States, and for other purposes; to the Committee on Claims.

BLANCHE WINTERS.

Mr. CURTIS submitted an amendment intended to be proposed by him to the bill (H. R. 11397) to authorize appropriations for the relief of certain officers of the Army of the United States, and for other purposes, which was referred to the Committee on Claims and ordered to be printed.

PENSIONS AND INCREASE OF PENSIONS.

Mr. FLETCHER submitted an amendment intended to be proposed by him to the bill (S. 4305) granting an increase of pension to certain soldiers of the Mexican War and Civil War and their widows and minor children, widows of the War of 1812, Army nurses, and for other purposes, which was referred to the Committee on Pensions and ordered to be printed.

COMMITTEE SERVICE.

On motion of Mr. LODGE, and by unanimous consent, it was—

Ordered, That the senior Senator from Maryland [Mr. FRANCE] be excused from further service as a member of the Committee to Audit and Control the Contingent Expenses of the Senate and that the junior Senator from New Hampshire [Mr. KEYES] be assigned to service thereon.

PURCHASE AND SALE OF FARM PRODUCTS.

Mr. NORRIS. I ask unanimous consent for the reprinting, for the use of the Senate document room, of 1,000 copies of Senate bill 4050, providing for the purchase and sale of farm products, as the same was reported by the Committee on Agriculture and Forestry.

The VICE PRESIDENT. Without objection, it is so ordered.

DEPARTMENT OF JUSTICE.

Mr. WALSH of Montana. Mr. President, in the month of December, 1920, the attention of the Senate was called to certain charges which were made against the Department of Justice in connection with what were known as the "red raids." The matter was referred to the Committee on the Judiciary for investigation and report. It was referred by the committee to a subcommittee, which took testimony for some months. The subcommittee were unable to agree upon the report and were eventually discharged by the order of the full committee. Thereupon, however, I, a member of the subcommittee, submitted a report to the committee, and another report was submitted by

the Senator from South Dakota [Mr. STERLING], also a member of the subcommittee, to which subsequently I replied.

Recently a motion was made before the committee that the report submitted by myself be reported to the Senate as the report of the committee. That motion was defeated by the following vote:

Yeas—BORAH, NORRIS, ASHURST, and WALSH.

Nays—DILLINGHAM, STERLING, ERNST, SHORTRIDGE, OVERMAN, SHIELDS, and NELSON.

Absent and not voting—COLT, BRANDEGEE, CUMMINS, REED of Missouri, and CULBERSON.

Thereupon the committee resolved that no report be made to the Senate upon the subject. I ask unanimous consent that the various reports referred to be printed in the RECORD.

Mr. STERLING. Mr. President, I did not quite understand the request of the Senator from Montana. Does the Senator desire that all the reports submitted to the committee may be printed in the RECORD?

Mr. WALSH of Montana. It is my request that all the reports which were submitted to the committee shall be printed in the RECORD and that the committee be discharged from the further consideration of the subject.

There being no objection, the Committee on the Judiciary was discharged from the further consideration of the subject and the reports were ordered to be printed in the RECORD, as follows:

CHARGES OF ILLEGAL PRACTICES OF THE DEPARTMENT OF JUSTICE.

Mr. WALSH of Montana, from the Subcommittee on the Judiciary, submitted the following report on "Report upon the illegal practices of the United States Department of Justice," made by a committee of lawyers on behalf of the National Popular Government League, and a memorandum describing the personnel of the committee:

The subcommittee, as a part of the duty imposed upon it under the resolution of the Senate (66th Cong., 3d sess., Dec. 10, 1920), pursuant to which it acted, inquired into certain charges of illegal practices made against the Department of Justice in a pamphlet purporting to be a report by a committee of lawyers appointed by the National Popular Government League. For the greater part, the matters complained of relate to the arrest of aliens with a view to their deportation and to the proceedings had to that end. To some extent, at least, the report is founded upon affidavits of the persons arrested and their friends and sympathizers, reciting oppressive or abusive conduct on the part of the officers making the arrest or charged with the enforcement of the law or to the unwholesome character of the quarters in which the prisoners were incarcerated or detained. It was assumed by the committee that charges of such a nature would be met with denials on the part of the officers involved, as they were in many instances, if not in all, those to which specific reference is made in the report.

The committee was not impressed with the view that any good purpose would be subserved by a searching inquiry into the acts of subordinates not appearing to be countenanced or authorized by their superiors, and accordingly made no special effort to follow that line of inquiry. So far as it has been pursued, the committee finds no reason to believe that the prisoners were subjected to any ill treatment or underwent any discomforts not incident to the conditions under which the proceedings were prosecuted, as hereafter detailed. Some of them were of that class that rancorously array themselves against all government and cultivate faultfinding with its ministers as a fine art.

More serious are the accusations touching the general character and conduct of the so-called raids through which most of the arrests were made, of usurpation by the Department of Justice in connection with the same, and of flagrant disregard of the constitutional rights of those against whom they were directed.

Between November 1, 1919, and April 26, 1920, warrants were issued by the Department of Labor for the arrest, with a view to their deportation, of approximately 6,350 aliens who were alleged to be in this country in violation of the law. Approximately 3,000 arrests were made of persons named in such warrants. Others, in considerable number not definitely fixed in the testimony, ascertained speedily to be citizens, were taken into custody in connection with the arrests of the aliens and more or less promptly discharged. (Testimony, pp. 312–783.) The total number of arrests, it is quite likely, exceeded 10,000. Of the 3,000 imprisoned, 762, at the last report before the committee, had been ordered deported, the warrants were canceled by the Secretary of Labor in 1,293 cases, and after some eight months or more approximately 1,000 still awaited final disposition. (Id.)

Most of the arrests were made in the course of the "raids," the most fruitful of which were those directed against the Union of Russian Workers in November, 1919, and against the Communist Party and the Communist Labor Party on January 2, 1920. These were carried out simultaneously in many of the larger cities and industrial centers of the Union—Boston and vicinity, Paterson and the adjacent towns, Buffalo, Detroit, and Chicago. The unusually large haul of January 2, 1920, arose from the apprehension of all persons attending meetings of the proscribed parties being held on the night of that day, the meetings having been called at the particular time at which they were held by the procurement of "under cover" agents of the Department of Justice acting under explicit directions in that respect from Washington. In and about Boston from 600 to 1,200 arrests were made; apparently no accurate record was kept (testimony, p. 55); in Detroit about 800 (testimony, p. 720); in Buffalo 150 (testimony, p. 783).

The proceedings were founded upon the statute of 1918, which subjects to deportation "aliens who are members of or affiliated with an organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law." The organizations referred to were held by the Department of Justice to be within the class thus proscribed and the warrants were issued upon that basis.

In specific instances it was charged further that the alien proceeded against was an anarchist, or that he believed in or advocated the overthrow by force or violence of the Government of the United States, or allegations were made bringing him under some other provision of the statute, but in all or substantially all the cases membership in the proscribed organization was charged, prima facie evidence of that fact was regarded as sufficient ground for holding him, and proof sufficient to establish the fact made a case for deportation. A circular containing instructions from the Department of Justice to the officers under whose immediate direction the "raids" of January 2, 1920, were conducted disclosed that they were directed against all members of the Communist Party and the Communist Labor Party, whether the person proceeded against had brought himself under other provisions of the statute or not.

We forbear from any inquiry and refrain from the expression of any opinion as to whether any of the organizations condemned by the Department of Justice do, in fact, believe in, teach, or advocate the overthrow, by force or violence, of the Government of the United States, as charged. We shall assume for the purpose of this discussion that they do. The Department of Labor must have held, perhaps without mature consideration, that they, each of them, do, since it issued warrants in large numbers founded on that fact alone. Subsequently it ruled, however, that the Communist Labor Party does not fall under the ban of the statute, its conclusion being supported in an opinion by the Assistant Secretary, in which the question was canvassed at length and distinctions deemed important, between its principles and teaching and those of the Communist Party, pointed out. On this important question Anderson, one of the judges of the Circuit Court of Appeals for the First Circuit, and Knox, district judge for the Southern District of New York, reached diametrically opposite conclusions, the former holding that neither of the parties named teaches or advocates the overthrow of the Government by force, the latter that the Communist Party at least does. The Circuit Court of Appeals for the First Circuit has since the above report was prepared held that the Communist Party comes under the ban of the statute reversing the order made by Judge Anderson. The question is now pending on appeal, but, regardless of what may be the ultimate outcome, the Department of Justice is fully justified in the position taken by it with respect to the character of the Communist Party, judged by the standard of the statute, both by the decision of Judge Knox and the informed conclusion of the Department of Labor. Nor is it to be censured for having judged adversely with reference to the Communist Labor Party, seeing that both the Assistant Secretary of Labor and Judge Anderson felt impelled to examine critically the claim of immunity asserted on behalf of its members, so ambiguous were the authoritative expressions of its policy and purposes. The offense of the department, so far as it has been guilty of any offense, to be judged by what follows, does not lie in that direction. The question confronts the investigator at the outset as to the existence of any authority whatever in the Department of Justice in the premises whether any of its acts in connection with these wholesale arrests have the sanction of the law.

The administration of the immigration laws, including all proceedings for the deportation of aliens, is reposed by the acts of Congress not in the Department of Justice but in the Department of Labor. They were, for the greater part, made in response to a popular demand for the protection of labor against ruinous competition from foreign elements accustomed to and content with a standard of living lower than that reasonably demanded and generally enjoyed by the American laboring man. In its inception this legislation was aimed largely at Chinese immigration and the evils of contract labor.

With such an origin and such a purpose it was quite reasonable that Congress should intrust its enforcement to the Department of Labor, and as those dangerous characters whose insidious and destructive activities the newer provisions of the law were intended to meet and overcome almost invariably addressed themselves to the wageworkers, of whose welfare they professed themselves exceptionally solicitous, there appeared to Congress no reason for any change in the policy which had theretofore been pursued. It was, apparently, still believed that the Department of Labor could and would more understandingly and more sympathetically administer the law, welcoming the immigrant coming with honest purpose and regard for the law into the ranks of labor and sternly excluding those whose presence the law declared to be inimical to the interest of those with whom they sought to associate themselves or to the safety of the country. Moreover, the proceedings provided for by the law for determining whether an alien is entitled to enter or to remain in the country after he has entered are not criminal, or even judicial, strictly speaking, in their nature, but administrative. Accordingly, the privileges guaranteed by the Constitution to defendants in criminal proceedings can not be claimed, as a matter of right, by an alien proceeded against under the immigration laws. Such proceedings, accordingly, are beyond the scope of the duties with which the Department of Justice is ordinarily charged—outside of its legitimate sphere—in a field into which Congress has not deemed it wise to require or authorize that department to enter.

Its force is trained in the methods pursued in running down criminals and in bringing them to justice, prone by the experience of their daily lives to judge and to act harshly in respect to those they deem such. The alien resident or sojourner subject to deportation is not by that fact a criminal. None of the six thousand and odd persons for whose arrests warrants were issued during the five months' period following November 1, 1919, had committed any crime for which they were being prosecuted. Some of them may have violated the penal statutes; doubtless they did. Among their number were a few, at least, who were notorious criminals. Of the generality of them more will be said later. But good or bad, they were not being proceeded against because they had committed any crime. They were simply charged with being illegally in the country because of their membership in one or the other of the proscribed organizations and therefore subject to deportation.

Whatever may have been its motives, Congress has vested the officers of the Department of Justice with no power whatever in connection with deportation proceedings, either in making complaints looking to the issuing of warrants or the issuing of the same or in the conduct of the inquiry following. And yet the hearings conducted by your committee disclose that to a very large extent the proceedings looking to and following the issuance of the six thousand and more warrants of arrest referred to were conducted by and under the direction of the Department of Justice. Its agents carried on an extensive campaign for the purpose of ferreting out those identified or alleged to be identified with the Communist Party or the Communist Labor Party. They made or had made the affidavits upon which most of the vast mass of warrants mentioned were issued. In many cases there was no affidavit submitted as a basis for the warrant, the unsworn statement of the agent of the bureau being accepted as sufficient, the theory being that his official oath met the constitutional requirement. These statements, sworn and unsworn, were not delivered to some local representative of the Department of Labor or transmitted to the department itself, as a rule, at least. They were

sent to the Department of Justice and by it transmitted to the Department of Labor with a request that warrants issue. (Testimony, p. 12.)

The course which the warrants took is not made clear in the testimony, but it is clear that they were served, so far as one can speak of their having been served, not by agents of the Department of Labor, as the law contemplates, but by agents of the Department of Justice; indeed by the same agents who made the investigation, and upon whose initiative the warrants were issued. It is not to be understood that in each case the informant actually made the arrest; what is meant is that the Bureau of Investigation, a branch of the Department of Labor, popularly referred to as the Secret Service, made the preliminary inquiry, procured or prepared the necessary affidavit for the warrant, and made or conducted the making of the arrests. It is really only by the most generous construction that it can be said the warrants ever were "served." What was done was substantially as follows: A batch of warrants was sent to an agent of the bureau at a particular place—Boston, Chicago, or Detroit. He secured the cooperation of the local police officers and with their aid the places of meeting—the synchronized meetings having already been arranged for by him or through him, as heretofore stated—the places of meeting were raided. It was assumed or perhaps surmised that the individuals against whom warrants were held residing in the neighborhood of the meetings, respectively, would be among those attending. Possibly, not unlikely, in some instances information more definite in character was in the possession of some of those acting in the premises that the persons whose arrests had been authorized were actually present at the meeting, the warrants for such serving as justification, such as it was, for the invasion of the premises. But regardless of the warrants every person in the room was placed under arrest. They were lined up along the wall after the manner of the making of arrests of desperate criminals or of an old-time stage hold-up and searched.

They were then assembled at some point to determine, among other things, what American citizens had been caught in the net, and who in addition to those for whom warrants were out, among those taken, might be held for deportation. Those who were able to prove citizenship were either discharged or turned over to the local authorities as possible offenders against State statutes. Aliens unable to clear themselves of the unfavorable inference drawn from their presence at the meeting were held and telegraphic warrants for such were asked, of which more hereafter. Meanwhile the place of meeting was thoroughly searched for literature, membership cards, financial and other records, and correspondence. When arrests were made at the homes of any of the persons sought, they too were searched with like purpose, and in any case the residences of the officers of the local lodges or branches were searched pursuant to specific instructions issued from Washington for evidence that might be of value. Search warrants were in some instances sued out to insure the capture of such papers, documents, and records.

The essential lawlessness of the proceedings detailed needs no comment. It will be startling to learn that they were carried out in strict accordance with instructions sent by the Department of Justice to its agents in the field through a circular letter, the extraordinary character of which justifies its incorporation at length in this report. A copy sent to the agent at Boston is as follows:

[Confidential instructions, December 27, 1919.]

Strictly confidential.

DEPARTMENT OF JUSTICE,
BUREAU OF INVESTIGATION,
Washington, December 27, 1919.

GEO. E. KELLEHER, Esq.,
Box 3185, Boston, Mass.

DEAR SIR: I have already transmitted to you two briefs prepared in this department upon the Communist Party of America and the Communist Labor Party, with instructions that these briefs be carefully examined and studied for the purpose of familiarizing yourself and the agents under your direction with the principles and tactics of these two respective organizations.

You have submitted to me affidavits upon various individuals connected with these respective organizations, stating that these persons are aliens and members of the organizations referred to. I have transmitted to the Commissioner General of Immigration the affidavits submitted by you, with the request that warrants of arrest be issued at once. This action is now being taken by the Bureau of Immigration and warrants of arrest are being prepared and will be shortly forwarded to the immigration inspector of your district.

Briefly the arrangements which have been made are that the warrants will be forwarded to the immigration inspector, who will at once communicate with you and advise you of the names of the persons for whom he has received warrants. You should then place under surveillance, where practicable, the persons mentioned and at the appointed time you will be advised by me by wire when to take into custody all persons for whom warrants have been issued.

At the time of the apprehension of these persons every effort should be made by you to definitely establish the fact that the persons arrested are members of either the Communist Party of America or the Communist Labor Party. I have been reliably informed that instructions have been issued from the headquarters of each of these organizations to their members that they are to refuse to answer any questions put to them by any Federal officers and are to destroy all evidence of membership or affiliation with their respective organizations. It is, therefore, of the utmost importance that you at once make every effort to ascertain the location of all of the books and records of these organizations in your territory and that the same be secured at the time of the arrests. As soon as the subjects are apprehended you should endeavor to obtain from them, if possible, admissions that they are members of either of these parties, together with any statement concerning their citizenship status. I can not impress upon you too strongly the necessity of obtaining documentary evidence proving membership.

Particular efforts should be made to apprehend all of the officers of either of these two parties if they are aliens; the residences of such officers should be searched in every instance for literature, membership cards, records, and correspondence. The meeting rooms should be thoroughly searched and an effort made to locate the charter of the Communist Party of America or the Communist Labor Party under which the local organization operates, as well as the membership and financial records which, if not found in the meeting rooms of the organization, will probably be found in the house of the recording and financial secretaries, respectively. All literature, books, papers, and anything hanging on the walls should be gathered up; the ceilings and partitions should be sounded for hiding places. After obtaining any documentary evidence the same should be wrapped up in packages and marked thereon the location of the place and the name of the persons obtaining the evidence and the contents of each package.

Violence toward any aliens should be scrupulously avoided. Immediately upon apprehending an alien he should be thoroughly searched. If found in groups in meeting rooms, they should be lined up against the wall and there searched, particular attention being given to finding the membership book, in which connection the search of the pockets will not be sufficient. In no instance should money or other valuables be taken from the aliens. All documentary evidence taken from an alien should be placed in an individual envelope provided for the purpose, which envelope should be marked showing the contents contained in the same, whether they were found in the possession of the alien or in his room, and if in the latter the address of the house should be given as well as the name of the alien and the officer who obtained the evidence. A duplicate record should be kept of all evidence thus obtained. At the time of the transfer of the alien to the immigration inspector, you should also turn over to the immigration inspector the original evidence obtained in the particular case, plainly marked, so that there may be no complaint by the immigration officers as to the manner in which evidence has been collected by the agents of this bureau.

I have made mention above that the meeting places and residences of the members should be thoroughly searched. I leave it entirely to your discretion as to the method by which you should gain access to such places. If, due to the local conditions in your territory, you find that it is absolutely necessary for you to obtain a search warrant for the premises, you should communicate with the local authorities a few hours before the time for the arrests is set and request a warrant to search the premises.

Under no conditions are you to take into your confidence the local police authorities or the State authorities prior to the making of the arrests. It is not the intention nor the desire of this office that American citizens, members of the two organizations, be arrested at this time. If, however, there are taken into custody any American citizens, through error, and who are members of the Communist Party of America or the Communist Labor Party, you should immediately refer their cases to the local authorities.

It may be necessary in order to successfully make the arrests that you obtain the assistance of the local authorities at the time of the arrests. This action should not be taken unless it is absolutely necessary; but I well appreciate that where a large number of arrests are to be made it may be impossible for the same to be made by special agents of this department, in which event you are authorized to request the assistance of the local police authorities. Such assistance should not be requested until a few hours before the time set for the arrests, in order that no "leak" may occur. It is to be distinctly understood that the arrests made are being made under the direction and supervision of the Department of Justice.

For your own personal information, I have to advise you that the tentative date fixed for the arrests of the communists is Friday evening, January 2, 1920. This date may be changed, due to the fact that all of the immigration warrants may not be issued by that time. You will, however, be advised by telegraph as to the exact date and hour when the arrests are to be made.

If possible, you should arrange with your under-cover informants to have meetings of the Communist Party and the Communist Labor Party held on the night set. I have been informed by some of the bureau officers that such arrangements will be made. This, of course, would facilitate the making of the arrests.

On the evening of the arrests this office will be open the entire night, and I desire that you communicate by long distance to Mr. Hoover any matters of vital importance or interest which may arise during the course of the arrests. You will possibly be given from 7 o'clock in the evening until 7 o'clock in the morning to conclude the arrests and examinations. As pointed out previously, the grounds for deportation in these cases will be based solely upon membership in the Communist Party of America or the Communist Labor Party, and for that reason it will not be necessary for you to go in detail into the particular activities of the persons apprehended. It is, however, desirable that wherever possible you should obtain additional evidence upon the individuals, particularly those who are leaders and officers in the local organizations. The immigration inspector will be under instructions to cooperate with you fully, and I likewise desire that you cooperate in the same manner with the immigration inspector at the time of the arrests, as well as following the arrests. At the hearings before the immigration inspector you should render any and all reasonable assistance to the immigration authorities, both in the way of offering your services to them and the services of any of your stenographic force. It is of utmost necessity that these cases be expedited and disposed of at the earliest possible moment, and for that reason stenographic assistance and any assistance necessary should be rendered by you to the immigration inspectors. An excellent spirit of cooperation exists between the Commissioner General of Immigration and this department in Washington and I desire that the same spirit of cooperation between the field officers of this bureau and the field officers of the Bureau of Immigration also exist.

I desire that the morning following the arrests you should forward to this office by special delivery, marked for the "Attention of Mr. Hoover," a complete list of the names of the persons arrested, with an indication of residence, organization to which they belong, and whether or not they were included in the original list of warrants. In cases where arrests are made of persons not covered by warrants, you should at once request the local immigration authorities for warrants in all such cases, and you should also communicate with this office at the same time. I desire also that the morning following the arrests that you communicate in detail by telegram, "Attention of Mr. Hoover," the results of the arrests made, giving the total number of persons of each organization taken into custody, together with a statement of any interesting evidence secured.

The above cover the general instructions to be followed in these arrests, and the same will be supplemented by telegraphic instructions at the proper time.

Very truly yours,

FRANK BURKE,
Assistant Director and Chief.

(Hearings, p. 12.)

The arrests having been made, a preliminary examination took place before an officer of the Department of Labor, the prisoner not having been permitted in the meantime to confer with counsel, and being unrepresented by such at the inquiry. He was interrogated orally and called upon to make answers to a questionnaire intended to draw from him admissions of his alienage and membership in one of the proscribed parties. By direction a representative of the Bureau of Investigation attended these hearings. The nature of the assistance rendered by him may be gathered from testimony given by Frank R. Stone, agent in charge (Bureau of Investigation) at Newark, N. J.

"Attorney General PALMER. Just describe very briefly, Mr. Stone, the process by which this original hearing was arrived at and conducted.

"Mr. STONE. There was an immigration inspector, a Mr. Fader, and Mr. Dauschitz, who were present at the preliminary questions under the warrant. The questions, however, were propounded by me.

"Attorney General PALMER. You mean the questionnaire was read by you?

"Mr. STONE. Read by me.

"Senator STERLING. You say the immigration inspector was present. Was the examination conducted under his direction or supervision?

"Mr. STONE. His supervision; yes, sir. He made formal service of the warrant, and asked me as a matter of cooperation to ask the questions, because of my long experience as an immigration inspector and law officer in the Immigration Service. * * *

"Senator WALSH of Montana. Did you submit any of the matters to the inspector himself as to whether the man should be held or should not be held?

"Mr. STONE. The inspector sat alongside of me. We are old colleagues. We worked at Ellis Island together for years and he used to be my interpreter. The reason I selected him was that he was a man that understands, reads, and writes many languages, and I selected him because not only would I be safe as to a thorough immigration man but I would have a thorough translator so that I would not have to depend on broken English." (Testimony, pp. 563, 567.)

Those held upon the preliminary inquiry were then transferred to a more permanent place of detention. Thereafter the evidence upon which was determined the case of each prisoner thus held was taken before a representative of the Department of Labor, by whom it was transmitted to that department which, in due course, upon consideration of the same, made its order either of deportation or discharge, the prisoner being accorded the right to counsel at such hearing. To some inhuman aspects of these proceedings attention will be invited later. For the present it is asserted as indisputable that—

1. The agents of the Bureau of Investigation of the Department of Justice have no authority to make arrests in deportation proceedings, if, indeed, they have authority to make arrests at all.

2. The agents of the Department of Labor have no authority to make an arrest looking to deportation without a warrant.

3. The issuance of a warrant upon the unsworn statement of an agent of the Bureau of Investigation is a plain violation of the fourth amendment to the Constitution of the United States.

4. There is no authority in the law for the conduct of a search in deportation proceedings, either of the residence of the alien or of the meeting places of societies condemned by the immigration laws or for the seizure of books, records, or papers of either.

5. There is no authority in the law for the issuance of a search warrant in deportation proceedings at all.

6. There is no authority in the law for the issuance of a search warrant to seize books or papers to be used as evidence, even of the commission of a crime, much less to establish a case in deportation proceedings.

1. It is unnecessary to inquire whether under any circumstances, except such as justify any person in acting, agents of the Bureau of Investigation have authority to make arrests. It is generally understood that they are investigators merely, gathering information which they submit to the officers charged with the prosecution of crime and the arrests of criminals or those accused of crime. No pretense is made that in virtue of the office they hold they have any right to make arrests in deportation proceedings. It is in effect conceded that they have not. The Attorney General being interrogated on that point declined to answer further than to say that they had authority to do what they did, which he asserts was "as a matter of fact to assist the immigration inspector in taking into custody persons for whom the immigration inspector had warrants." (Hearings, p. 635.) If this statement is altogether disingenuous it exhibits a delusion on his part.

Multitudes were arrested for whom no warrant was out. The instructions contemplated that there were to be. The participation of the immigration inspector or of any official of the Department of Labor "in the raids" approached, if it did not reach, the vanishing point. The theory advanced by the Attorney General is altogether incompatible with the circular letter quoted above, issued by his authority, containing instructions for the conduct of the officers directing the raids. The whole instrument is at war with that idea, but the extracts set out below particularly refute it. The letter from which these extracts are made was transmitted to George E. Kelleher, an agent of the Bureau of Investigation at Boston. The chief of that bureau having by it told Kelleher that he, the chief, having submitted affidavits from Kelleher to the Commissioner of Immigration, upon which he, the chief, had asked warrants which would be transmitted to the inspector who would inform Kelleher of their receipt, the latter would be advised when to proceed, and thereupon he, Kelleher, on the telegraphic order, not of the Department of Labor, but of the Chief of the Bureau of Investigation, was not to aid or cooperate with the inspector in making the arrests, but himself "to take into custody all persons for whom warrants have been issued."

"It may be necessary for you," the instructions continue, "to obtain the assistance of the local authorities," not to have the inspector procure such assistance. Finally, setting all doubt at rest, the instructions admonish the agents that "it is to be distinctly understood that the arrests are being made under the direction and supervision of the Department of Justice." This remarkable declaration prompts some curious speculation. By whom was it to be so understood? What steps were to be taken to make it so understood? Was it to be so understood by the immigration inspector should he in any wise attempt to control the conduct of those making the arrests? Was it to be so understood by the parties arrested possibly to impress them with the futility of making any attempt to evade the sleepless eye of the Government Secret Service, or was it to be so understood by the public through interviews given to the press, and, if so, to what end? From those instructions it was evidently expected that the inspector should sit in his office with the warrants while the actual arrests were being made by the agents of the Department of Justice and those whom they should call to their assistance. And that is just what was done. From the testimony of Mr. Kelleher before the committee the following is taken:

"I observe here that Judge Anderson says that you testified that you had under your direction that night something like 300 men.

"Mr. KELLEHER. Indirectly, I might say.

"Senator WALSH of Montana. Yes.

"Senator KING. You mean 300——

"Mr. KELLEHER. That included the police department.

"Senator WALSH of Montana (reading)—

"'Kelleher said he had from 300 to 500 men. This may fairly be assumed to be a moderate estimate.'

"Now, just how did you allow yourself so much latitude as that, from 300 to 500 men?

"Mr. KELLEHER. It is the merest guess at best, for the simple reason that in one town they might have a police force of 3 men or they might have a police force of 100 men. There would be no way for me to tell, being called upon the stand without any previous preparation.

"Senator WALSH of Montana. They were all acting under your direction?

"Mr. KELLEHER. Yes; but so many points were covered that it is impossible to tell exactly.

"Senator KING. They were not officials of the department, but they were police officers?

"Mr. KELLEHER. Yes; in certain places there were police officials as well as Department of Justice officials.

"Senator WALSH of Montana. Just how many Department of Labor officers were there that night in the territory?

"Mr. KELLEHER. I could not say. I should say possibly half a dozen.

"Senator WALSH of Montana. And how many arrests were actually made?

"Mr. KELLEHER. I believe that the record shows about 600.

"Senator WALSH of Montana. So that arrests made by the officers of the Department of Labor obviously included only a very small proportion of the 600?

"Mr. KELLEHER. Yes.

"Senator WALSH of Montana. The other arrests were made by whom?

"Mr. KELLEHER. By Department of Justice men in cooperation with police officers." (Hearings, pp. 493–494.)

The frankness of this witness, who is a lawyer, is to be extolled. Witness the following:

"Senator WALSH of Montana. By virtue of what law does an agent of the Department of Justice make an arrest in a deportation case?

"Mr. KELLEHER. I do not know of any law." (Hearings, p. 494.)

To get the full import of the foregoing it must be understood that simultaneously raids were made in the following cities and towns, all under the direction of Mr. Kelleher, namely: Boston, Chelsea, Brockton, Bridgewater, Norwood, Worcester, Springfield, Chicopee, Holyoke, Gardner, Fitchburg, Lowell, Lawrence, Haverhill, all in Massachusetts; Nashua, Manchester, Derry, Portsmouth, Claremont, Lincoln, all in New Hampshire. (Hearings, p. 54.)

2. The number of persons arrested for whom no warrants were out can not be determined. There is no record of the total number taken into custody. In the Boston district estimates vary from 600 to 1,200. (Hearings, p. 55.) But after the weeding-out process on the preliminary inquiry, the release of citizens or others with reference to whom the evidence was too shadowy to justify detention, if there was any evidence, 100 telegraphic warrants were applied for.

The law tolerates arrest without a warrant on a charge of crime or, under some circumstances, upon suspicion of the commission of a crime. The rule is that no arrest may be made without a warrant. Exceptions have been developed in the course of the ages arising from necessity and to prevent escapes. In the case of heinous crimes greater latitude is allowed. In misdemeanors arrest without a warrant is not sanctioned except the perpetrator be caught in the act or perhaps upon hot pursuit. This is the common law, the law which derives its force from the custom of centuries.

A constitutional guaranty that no warrant shall issue but upon probable cause, supported by oath or affirmation, would be an absurdity if general arrests could be made without warrant, or if a warrant for one person would afford justification for taking 2 or for 400 could sanction the arrest of 600.

Arrest without warrant rests upon the common law, but there is no common law touching arrest for deportation. It is purely statutory in its origin and the statute neither authorizes nor contemplates an arrest except by virtue of a warrant. It will bear repetition that there was no charge of crime, either felony or misdemeanor, against any of those caught in the raids. It should be said in palliation of the evident disregard of the law and the Constitution on the part of the department in connection with these arrests without a warrant, that the course followed had the sanction in part of a practice of some years standing at least, pursued by the Department of Labor and crystallized into a rule promulgated by it for the guidance of its agents, as follows:

"Application for warrant of arrest: * * * Telegraphic application may be resorted to only in case of necessity, or when some substantial interest of the Government would be subserved thereby, and must state (a) that the usual written application is being forwarded by mail, and (b) the substance of the facts and proof therein contained. The code supplied by the department should be used whenever practicable." (Rules of May 1, 1917, of Bureau of Immigration, pp. 71–72.)

The procedure in accordance with this rule is detailed by Mr. Kelleher in his testimony. (Hearings, p. 496.)

Manifestly no sworn statement could be before the department until the arrival of the affidavits and the warrant sent by wire is wholly without the support required by the fourth amendment, of the existence of which both departments seemed to be entirely oblivious. It remains, however, as it is to be hoped, in its pristine vigor as follows:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Apparently the Department of Labor realized that a warrant of some kind on some foundation was requisite for arrest or to justify detention. The rule implies that an arrest without a warrant, in anticipation of the arrival of a telegraphic warrant, would not be justifiable, and the record does not disclose that such authority was ever assumed by its agents or such a course sanctioned by the department. Arrest without any warrant appears to have been an innovation inaugurated by the Department of Justice. Instead of correcting the obviously illegal practice of issuing telegraphic warrants, it took a further step away from the standard prescribed by the Constitution. Some vague notion seems to have prevailed that none of the constitutional guaranties of liberty are available to aliens in deportation proceedings, and ill-considered remarks to that effect may be found in the opinions of some judges. (In re Chin Wah, 182 Fed. 256.)

It is, of course, true that one can not claim in deportation proceedings any of the rights secured by the fifth amendment save those of transcendent importance guaranteed by the last two clauses thereof, not because he is an alien, but because of the nature of the proceedings. It reads as follows:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, ex-

cept in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

Every right to which it refers, except as above noted, relates, as is plainly apparent, to proceedings in criminal actions, and deportation proceedings, it may be justifiable to repeat, are not criminal in their nature at all.

So the sixth amendment by its plain terms applies to criminal cases, and the rights guaranteed by it can not be claimed in deportation proceedings. It is as follows:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The clause preceding that with which the fifth amendment concludes, "Nor (shall any person) be deprived of life, liberty, or property without due process of law," is obviously not so restricted. One can not be deprived of his life, his liberty, or his property by any procedure, however it may be classified, civil, criminal, or anomalous, without due process of law. Accordingly, it has been authoritatively held that deportation proceedings must be in conformity with "due process of law." (Whitfield *v.* Hanges, 222 Fed. 745, and cases cited; The Japanese Immigrant case, 189 U. S. 86–100; Truax *v.* Raich, 239 U. S. 33–39.)

Nor is there any room for contending that the word "person" in the clause in question does not include aliens. They may claim equally with citizens all the rights guaranteed by the amendment under consideration. An indictment or presentment is essential in proceedings against an alien whenever it is requisite against a citizen. He may, under the same circumstances, plead former jeopardy; he can not be compelled in any criminal case to be a witness against himself.

So it is equally apparent that the fourth amendment, above quoted, is general in its application. It applies to arrest in civil cases as well as in criminal actions. Referring to this amendment, the Supreme Court said, in Weeks *v.* United States (232 U. S. 392), "This protection reaches all alike, whether accused of crime or not." Whatever the nature of the proceeding, no warrant may issue but upon probable cause supported by oath or affirmation.

Amendment VIII, as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted," is equally general in its requirement as to bail. The disregard of the constitutional guaranty, both in the case of the original arrest without a warrant and in the detention of prisoners so taken under the pretended authority of the so-called "telegraphic warrants" is flagrant.

3. More elaborate attention than might seem to be warranted has been given above to the pertinent amendments to the Constitution because of their bearing on other features of the proceedings now to be considered.

A lawyer practicing in the District, formerly employed in the Department of Labor, told the committee that he had examined the papers in the department upon which a large number of the warrants had been issued and that "dozens of them were not signed and were unsworn." This statement was neither supported by the production of the papers so denounced nor, on the other hand, was it refuted in any way. It can readily be believed, however, in view of the testimony given by Mr. Abercrombie, by whom, as acting head of the department, most of the vast mass of warrants were issued, that it was impossible to give more than the most perfunctory examination to the papers accompanying the applications in view of their number and the other pressing duties devolving upon him in the absence of both the head of the department and his assailant.

But that is unimportant, because it is conceded that when the charge against the person for whom a warrant was made consisted of a written statement by an agent of the Bureau of Investigation, as was the case in many if not most instances, no verification was made, it being contended that none was required, the position being taken that the official oath of the agent fulfilled the constitutional requirement. Indeed, the rule of the Department of Labor, from which an extract has heretofore been made, provided that in such case the oath or affirmation may be dispensed with. No support can be found for any such doctrine in the comment of any writer of repute on the Constitution or in any adjudicated case so far as your committee can learn, and the history of the times in which the amendment had its origin refutes the notion advanced.

In the troublous period preceding the Revolution warrants of arrest were issued upon the mere demand or statement of officers of the Crown and on equally frail support writs of assistance were sued out authorizing searches for goods alleged to be smuggled.

These were among the acts of oppression which brought on the war. It was at this very practice that the amendment in question was aimed. The rule may have come into existence in consequence of the mistaken notion that the fourth amendment carried no guaranty to aliens or that it applied to criminal proceedings only, or its authors may have become confused in consequence of the ruling of some courts to the effect that when the affidavit upon which a warrant is issued is made by the regular prosecuting officer, he may verify it on information and belief. It has never been held, as stated, that the oath or affirmation required by the Constitution may be dispensed with, but only that in view of the official oath he has taken, the public prosecutor may verify a formal charge made by him in his official capacity on information and belief. Other cases insist that in every case the oath or affirmation must be made by one who speaks as of his own knowledge. It is unnecessary to canvass those varying views. None of them supports the rule to which the Department of Justice gave its sanction so repeatedly in connection with the arrests under inquiry.

On the related question of the necessity and form of the verification of an information, not as the basis of a warrant but as a foundation for a prosecution, there is likewise some diversity of opinion. Conflicting decisions on that subject may have contributed to the view on which the rule is founded. A note in which they are canvassed is appended to the case of Weeks *v.* United States (54 L. R. A. (N. S.) 657). The distinction between an information or a complaint as the foundation for a prosecution and as a basis for a warrant is therein pointed out, and the doctrine unequivocally declared that under the fourth amendment and similar constitutional provisions no warrant can issue unless the charge is verified, no matter who makes it, an official or a private person.

4. That part of the circular of instructions to agents of the Bureau of Investigation making the arrests relating to searches is here repeated:

"Particular efforts should be made to apprehend all of the officers of either of these two parties if they are aliens; the residence of such officers should be searched in every instance for literature, membership cards, records, and correspondence. The meeting rooms should be thoroughly searched and an effort made to locate the charter of the Communist Party of America or the Communist Labor Party, under which the local organization operates, as well as the membership and financial records, which, if not found in the meeting rooms of the organization, will probably be found in the house of the recording and financial secretaries, respectively. All literature, books, papers, and anything hanging on the walls should be gathered up; the ceilings and partitions should be sounded for hiding places. After obtaining any documentary evidence, the same should be wrapped up in packages and marked thereon the location of the place and the name of the persons obtaining the evidence and the contents of each package.

"I have made mention above that the meeting places and residences of the members should be thoroughly searched. I leave it entirely to your discretion as to the method by which you should gain access to such places. If, due to the local conditions in your territory, you find that it is absolutely necessary for you to obtain a search warrant for the premises, you should communicate with the local authorities a few hours before the time for the arrests is set and request a warrant to search the premises."

It is difficult to conceive how one bred to the law could ever have promulgated such an order. As heretofore stated, deportation proceedings are purely statutory. There is no applicable common law. Justification must be found in the statute for whatever is done. The statute authorizes the issuance of a warrant and necessarily the arrest of the person against whom it runs. Doubtless it authorizes, as would an ordinary warrant of arrest, the search of the person of the prisoner. That is all. To rifle his drawers, peer into his private papers, walk off with his books and any documents that the invading officers may choose to carry away, is not only without the slightest sanction in the law, but is an offensive tyranny having, it is hoped, few precedents in our history.

It was vigorously and deservedly denounced by the Supreme Court in Weeks *v.* United States, heretofore cited, decided February 24, 1914, in which the court, referring to similar acts, said inter alia:

"If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the fourth amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land. The United States marshal could only have invaded the house of the accused when armed with a warrant issued as required by the Constitution, upon sworn information and describing with reasonable particularity the thing for which the search was to be made. Instead, he acted without sanction of law, doubtless prompted by the desire to bring further proof to the aid of the Government, and under color of his office undertook to make a seizure of private papers in direct violation of the constitutional prohibition against such action. Under such circumstances, without sworn information and particular description, not even an order of court would have justified such procedure; much less was it within the authority of the United States marshal to thus invade the house and privacy of the accused." (232 U. S. 393.)

Whether similar conduct directed against even a proscribed organization or one believed by the Attorney General to be such is an offense less grave need not engage our attention. It is equally lawless. Some pretense is made that private houses were not searched except by the consent of the occupant and that often the prisoner would himself aid in the search. Consent given with the dread representative of the great Government secret service, who was charged to make known at the door the character in which he was acting, by a startled householder, presumably an alien, possibly unfamiliar with the language of his interlocutors and unfamiliar with his rights, affords little condonation for the acts hereby condemned. But what is more important, the instructions directed that the course pursued be followed with or without the consent of those whose premises were invaded. If the arresting officers neglected to search in every instance where they otherwise should have made search, had consent not been withheld, they would have violated the command emanating from the Department of Justice. So imperative were their instructions with respect to making search that they were not even to arm themselves with a search warrant unless it was "absolutely" necessary, in which case they were to secure the writ.

5. But a search warrant in deportation proceedings is a thing unknown to the law. It is under all ordinary circumstances and under all ordinary and usual statutes an auxiliary remedy in criminal proceedings only. Such is the character of the statute upon the pretended authority of which search warrants were issued in connection with the arrests under consideration. It is a unit in the fascicle of laws constituting separate chapters of the so-called espionage act, which takes its name from the initial chapter thereof. It is perfectly apparent upon every feature of the statute that it contemplated the institution or pendency of criminal proceedings. So obvious is this that at the hearing the Attorney General, upon the prompting of one of his own subordinates, made some attempt to justify the suing out of the search warrants upon the theory that the members of the Communist Party "were guilty or might be held guilty of a conspiracy under section 6 of the Criminal Code," "and that such property as was used in the commission of that conspiracy was properly covered by the search-warrant clause of the espionage act." (Hearings, p. 24.)

Section 6 referred to reads as follows:

"If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $5,000 or imprisoned not more than six years, or both."

The features of the search warrant law relied upon are as follows:

"SEC. 2. A search warrant may be issued under this title upon either of the following grounds:

"2. When the property was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

"3. When the property, or any paper, is possessed, controlled, or used in violation of section 22 of this title; in which case it may be taken on the warrant from the person violating said section, or from any person in whose possession it may be, or from any house or other place in which it is concealed.

"SEC. 22. Whoever in aid of any foreign Government shall knowingly and willfully have possession of or control over any property or papers designed or intended for use or which is used as the means of violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than $1,000 or imprisoned not more than two years, or both."

It is sufficient to say that no proceedings were ever instituted under section 6 of the Criminal Code, presumably because the department was convinced none such could be maintained. It would be unjust to believe that it willfully omitted to enforce the criminal law having evidence sufficient to justify the belief that it had been violated.

It will be noted that the statute authorizes the seizure of property which was used as the means of committing a felony or which was designed or intended for use or was used in aid of a foreign Government in violating a penal statute or any right of the United States under any treaty of the law of nations. Some copies of affidavits used as the basis for search warrants and of the writs are found in the record. (Hearings, pp. 772–773.)

They disclose that the claim was made that the papers to be seized were to be used "as the means of committing a felony," namely, a conspiracy in violation of section 6 of the Criminal Code. In one of the affidavits it is averred that the affiant has good reason to believe and does believe that such a conspiracy is being committed upon and by the use of a certain pamphlet or leaflet entitled "Communist Labor," by divers other books or pamphlets, by mailing lists, and solicitations for funds or membership. On this was issued a warrant reciting such belief on the part of the commissioner and his statement as to the place where the things described were to be found, followed by this command:

"You are therefore hereby commanded, in the name of the President of the United States, to enter said premises, with the necessary and proper assistance, and there diligently to investigate and search into concerning said conspiracy, and to report and act concerning the same as required of you by law, and this warrant may be served at any time of the day or night." (Hearings, p. 773.)

It seems doubtful whether the author of these papers ever read the fourth amendment, directing that the warrants shall particularly describe the things to be seized, or that he ever acquainted himself with the elementary principle that it does not constitute "probable cause" that one believes a crime to have been committed even though he asserts that he has reason for his belief. The issuance of a warrant is a judicial or quasi judicial function. Proof must be submitted to the officer who issues it sufficient to justify a belief on his part. He has nothing before him when he has only the statement that some one else believes that a crime has been committed without a single fact upon which such belief is founded.

In Veeder *v.* United States (252 Fed., 418), the Circuit Court of Appeals for the Seventh Circuit said:

"No search warrant shall be issued unless the judge has first been furnished with facts under oath—not suspicions, beliefs, or surmises—but facts which, when the law is properly applied to them, tend to establish the necessary legal conclusion, or facts which, when the law is properly applied to them, tend to establish probable cause for believing that the legal conclusion is right. * * * If the sworn accusation is based on fiction, the accuser must take the chance of punishment for perjury. Hence the necessity of a sworn statement of facts, because one can not be convicted of perjury for having a belief, though the belief be utterly unfounded in fact and law."

But why dissimulate? The things seized were taken not because they were "the means of committing a felony"; they were taken that they might be used as evidence of membership in and of the teachings of the Communist Party or the Communist Labor Party, with a view to securing orders of deportation. Commendable candor would compel a frank admission to that effect, in view of the instructions given to those suing them out, to search the meeting places and residences of the officers of either of the parties named for "literature, membership cards, records, and correspondence." The very same paragraph continues:

"All literature, books, papers, and anything hanging on the walls should be gathered up; the ceilings and partitions should be sounded for hiding places. After obtaining any documentary evidence the same should be wrapped up in packages and marked thereon the location of the place and the names of the persons obtaining the evidence and the contents of each package."

There is room for the contention, though it would be a strained contention, that circulars or pamphlets intended to arouse individuals to overthrow the Government by force or violence are things "used" or at least to be used "in the commission of a felony." But what can one say in justification on such a ground of the seizure of membership cards, financial records, "all literature, books, papers, and anything hanging on the walls"?

The search was not made to secure articles "used in the commission of a felony" as, for instance, a counterfeiter's or burglar's outfit, gambling instruments, guns assembled in an effort to transport them to another country in violation of the neutrality laws, or contraband liquor held in disregard of the prohibition laws. There was the less excuse for setting up the shallow pretense upon which these search warrants were issued, in view of the fact that the Supreme Court had solemnly warned the department of its futility and its error in the Weeks case, the principles of which it had occasion again to declare in Silverthorne *v.* United States (251 U. S. 385), decided January 26, 1920, and of the failure of a similar attempt to seize and hold papers and documents, announced by the court in Veeder *v.* United States (supra), a decision dating from March 9, 1918.

In Gould *v.* United States (255 U. S. 298) the questions here considered were under review, and the doctrine was again announced that a search warrant can not lawfully issue for books and papers that they may be used in evidence. The attempt to do so again met the condemnation of the court in that case.

The statute in question was enacted pursuant to a suggestion from the Department of Justice before the declaration of war that legislation along various lines was requisite to meet extraordinary conditions then prevailing, the particular occasion for a search warrant statute being that the officers of the Federal Government might be clothed with authority to enter premises along the Mexican border in which there might be concealed guns and munitions of war to be surreptitiously transferred to the other side in violation of the Executive proclamation, to be eventually used, should hostilities then threatened break out, against our own men.

A draft of a bill was sent down which, with material modifications, became Title XI of the espionage act. That draft, in express terms, would, had it been enacted, have authorized search for and seizure of books, papers, and documents being evidence of the commission of crime. But the Judiciary Committee refused to sanction such a statute, because in the opinion of some members at least, such a search would be unreasonable within the meaning of the fourth amendment and be violative of the sixth amendment because, in effect, compelling the accused in criminal prosecutions to be a witness against himself. The department finding itself unable to get from Congress the authority it sought in respect to searches to secure evidence, sought to attain its end by a palpable subterfuge.

Nor are the foregoing the only particulars in which the law was wrenched to suit the purposes of those who were, in a peculiar way, constituted its guardians.

1. Bail was fixed, as a rule, at $1,000, in some cases as high as $10,000, in some as low as $500. The result was that the more prominent among those arrested, the more influential and perhaps the more dangerous in the cases of whom $10,000 may not have been too high, secured bail, while the poor, ignorant, deluded, comparatively harmless foreigner, with a large family to support and only his daily wage to meet their daily wants, found it utterly impossible to secure a bond of $1,000 or even $500. The period of their incarceration will be adverted to later. In the vast majority of the cases the bail was excessive. The Attorney General contents himself by saying that the bail was fixed by the inspector, an officer of the Department of Labor, but the participation of the Department of Justice in the proceedings was too active to permit of such easy exculpation. Both departments must share in what has every appearance of a design to keep the prisoners in jail rather than to insure their appearance to answer any order that might be entered.

2. The work of making the arrests in the Boston district was carried out under the supervision of one George E. Kelleher, heretofore referred to, agent of the Bureau of Investigation, particularly commended by the Attorney General. He is a man of intelligence and training, a graduate of Brown University and the Georgetown Law School. He sent out to those under him a set of instructions, appearing in a note at hearings, pages 53 and 54, in which is summarized those contained in the circular letter herein quoted at length from the bureau, but which contained a supplementary feature to be noticed. He claims that the draft here first mentioned was sent out before the receipt of the letter from the bureau, and that the latter, when received, displaced it. That seems quite unlikely in view of the identity of the language used in the two instruments. But that is unimportant, as the reference to it is made only to disclose the state of mind actuating those who carried on these "raids." Among other things Mr. Kelleher's subordinates are directed:

"8. If a person claims American citizenship, he must produce documentary evidence of same. If native born, through birth records. If naturalized, through producing for agent copy of naturalization papers. Be sure that these papers are final papers, containing words "and is hereby admitted to become a citizen of the United States." (Hearings, p. 54.)

The writer recalls that during the war a similar rule was in force concerning applications for passports. A gentleman 80 years of age, born in the State of New York, a veteran of the Civil War, past commander of the Grand Army of the Republic of the State of Montana, who had resided in that State since its birth and in the Territory since the pioneer days, who had repeatedly served as a member of the legislature of the State of which he was an honored citizen, and who sought a passport, intending to visit the Orient, found himself utterly unable to meet the requirements of the rule.

It has been held that the law indulges the presumption that every resident of this country is a citizen thereof. At least it casts upon anyone asserting the contrary the burden of establishing the fact.

By express provision of the statute this presumption is unavoidable to an oriental who is required to produce the proper certificate when his right to remain in the country is challenged by the department officials. The rule issued by Kelleher in his official capacity is harsh enough as to a naturalized citizen. His papers may not be readily available. It is rare that they are preserved with the care with which currency or bills receivable are guarded. The ordinary citizen of foreign birth seldom, if ever, has occasion to adduce them. In the case of the native-born citizen it would be exceptional that its requirements could be met except after no inconsiderable delay.

In the case of one for whom a warrant has been issued, it is to be presumed that an affidavit was filed as a basis for the warrant in which his alienage is averred. It was perhaps not intended that on the preliminary inquiry a searching investigation should be carried on to ascertain the truth of the charge in that respect. The instruction dealt primarily with those cases in which no warrant had been issued, applied to persons as to whom no one had charged alienage. The prisoner had simply been taken in one of the raids, was present at a meeting of one of the proscribed parties. This was deemed sufficient to subject him to the suspicion not only of being a member of the party and an alien, but gave rise on the issue of alienage to a rebuttable presumption against him of which he could free himself only by the proof called for by the rule here questioned.

In at least one case some 40 or more, a large number of whom were citizens, were gathered in under the mistaken belief on the part of the officers that they were raiding a communist meeting. As a matter of fact the gathering was assembled to consider the subject of organizing a cooperative baking association. (Hearings, p. 58.) An apparently trustworthy witness who, as a newspaper reporter inquired into the facts of the "raid" in Detroit at the time of its occurrence, told on information so gathered that everyone in the House of the Masses, even those eating in the restaurant, students attending the classes conducted under the authority of the society owning the building, merrymakers at a ball in progress, and even the orchestra

playing thereat—a corps of musicians commonly employed about the city—were arrested. (Hearings, p. 712.)

The House of the Masses was the headquarters of the Socialist Party. When it split, a condition hereafter to be explained, the wing which became the Communist Party secured control of the building, but a suit was in progress to settle the question of the right to possession as between the two warring wings. The files of the Department of Labor disclose that in not a few cases the only evidence connecting the prisoner with any of the proscribed parties was attendance at a school conducted under its auspices. (Hearings, p. 328.) Quite naturally no inconsiderable number of those arrested were, in fact, citizens. A witness of high character, in no manner associated with one of the proscribed parties, estimates that about one-half- of those taken in Detroit, in all about 1,000, were citizens. (Hearings, p. 728.) But it is not unlikely that in the number estimated by him to have been citizens were included a considerable number of aliens who succeeded in convincing the examining officers of their innocent character.

3. On the issue of membership the appearance of the name of the prisoner on what purported to be a roll of members was regarded as sufficient evidence that he was such. (Hearings, pp. 359, 360, 361.) Even if these purported rolls were identified as such, and they were not, according to the testimony, the recitals thereof would be the merest hearsay, particularly in the absence of evidence that they were kept in accordance with some rule or long-established custom of the society. Even official records must be identified as such before they can be admitted in evidence. When one reflects on how easily, considering the ardor of partisan enthusiasts, particularly on the eve of a campaign, the name of a citizen may be mistakenly enrolled as a member of a Democratic club or a Republican club, the proposal to subject a man to perpetual exile, whatever may be his obligations to his family or others, on such evidence, is shocking.

4. Neither the law nor the Constitution guarantees to the individual proceeded against in deportation proceedings the right to counsel, though the result may be of graver import to him than a conviction of crime. The law makes no provision for counsel for the accused and the constitutional guaranty in that respect extends to criminal prosecutions only. But an impelling sense of justice constrained the officials of the Department of Labor long since to establish a rule giving to the accused in deportation cases the right to be heard by counsel. Prior to December 30, 1919, and since March, 1919, the rule read as follows:

"At the beginning of the hearing under the warrant of arrest the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued, and shall be apprised that he may be represented by counsel. The alien shall be required then and there to state whether he desires counsel or waives the same, and his reply shall be entered on the record." (Hearings, p. 174.)

On December 30, 1919, while the 3,000 warrants issued in contemplation of the raids of January 2 were outstanding, all of such warrants bearing date December 27, 1919, in the absence of the Secretary and the Assistant Secretary of Labor, the solicitor of the department, one John W. Abercrombie, Acting Secretary, promulgated a new rule reading as follows:

"Preferably at the beginning of the hearing under the warrant of arrest, or, at any rate, as soon as such hearing has proceeded sufficiently in the development of the facts to protect the Government interests, the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued, and shall be apprised that thereafter he may be represented by counsel." (Hearings, p. 176.)

Under the new rule none of those with whose arrest this report is concerned were accorded the right of counsel at what is called the preliminary hearing, at which evidence was adduced against him and every effort made to draw from him, by both oral examination and written interrogatories, admissions of culpability.

When Secretary Wilson, who was absent on account of the serious illness of his wife, returned on January 27, 1920, he revoked the order of the Acting Secretary and restored the rule as it was prior to December 30, 1919, but too late, of course, to affect the cases of those taken in the raids of January 2, 1920.

5. Many of the accused, perhaps most of them, were unable to speak English and the services of an interpreter was consequently required. Not infrequently some agent of the Department of Justice acted. Such an agent conducted the initial investigation and made the report on which the proceedings were instituted; subscribed, if he did not swear to the charge, made the arrest, prosecuted at the preliminary hearing, and translated the testimony adduced. The same individual may not have acted in each capacity, but the injustice is but little mitigated by that fact. They were all moved by a common professional pride to hold as many of the prisoners as possible. It would have been humiliating to the entire force to see a very large percentage of the prisoners released, and the more there were discharged the more intense would become the desire to make a case against the remainder.

But if the rights guaranteed by the Constitution and accorded by the law of the land, heretofore regarded as peculiarly sacred and inviolable, were recklessly denied the victims of the "raids" made under review, the dictates of enlightened humanity were no less ruthlessly disregarded in connection therewith. Viewed from that standpoint, it is not unjust to speak of the affair as an unmitigated outrage.

No provision was made, at least no adequate provision, to take care of the thousands of persons taken into custody in these "raids" while the sifting process was going on and the department was endeavoring to identify those for whom warrants had been issued, those for whom telegraphic warrants were to be asked, and those who, because they were citizens, or, because lacking admissions, sufficient evidence even of the meager and inconsequential character deemed adequate was not at hand, were entitled to be discharged without further inquiry.

In Detroit this process consumed a week or more, 12 inspectors working continuously. (Hearings, p. 707.) The jails and detention houses of the great cities and industrial centers in which the raids were conducted were not sufficiently capacious to hold any such number of prisoners in addition to those brought in regularly for offenses giving rise to arrest. This condition was, of course, to be anticipated. In Detroit the prisoners were herded to the number of about 800 in the corridor on the top floor of the Federal Building, the total area of which was 4,872 square feet.

The conditions had better be told in the language of the assistant custodian of the building:

"On the night of January 2, Mr. Barkey, of the Department of Justice, special agent in Detroit, came to my office in the Federal Building. It was 4 o'clock, and he asked me if he could use the fifth-floor corridor of the Federal Building for the purpose of confining alleged radicals. He said he was going to make a little raid that night, and he would like to use the fifth-floor corridor, because the local jails were all full. There was no other place to put them.

"I said to him we would be glad to cooperate with him if that was the case. When he said he was going to make a raid, as I looked at raids, or as I had heard of raids, they had usually been about 25 or 30 men, probably never to exceed that many.

"Next morning when I came to the office they had, I understand—and I believe it is true; it would seem true, at least, by observation—400 men in this corridor; and within the next two or three days this number had increased, it was common knowledge, to 800 men in this fifth-floor corridor.

"Senator STERLING. How large was this corridor?

"Mr. GARRED. This corridor had a total area of 448 square feet. If you are interested, I have prepared a sketch of this corridor, showing the dimensions and facilities [handing paper to the chairman]. This had no outside windows. The only light they had was through an open court in the center, over which was a skylight. They had one toilet—one water-closet—and these men were lined up, probably 40 and 50 in the line, awaiting their turn to use this toilet. Some of them were unable to wait, and urinated in the corner room, back in the corner where it was a little dark. Before long—before many days—the stench was quite unbearable in some parts of this corridor and room.

"Senator STERLING. You say 'before many days.' Were the entire 800 kept there for days? Were they not released from time to time?

"Mr. GARRED. They were released from time to time, after probably the third day; I could not state definitely, but I am pretty sure it was at least three days they were kept there. The whole 800 were not there at the start. There were 400, and then they increased this number as they made subsequent raids; and probably at the end of the third day they had 800; and from then on it commenced to decrease as they examined them." (Hearings, p. 706.)

"Senator STERLING. Preliminary examinations were going on there all the time, you understand?

"Mr. GARRED. Yes.

"Senator STERLING. And as the result of these preliminary examinations men were being released from time to time?

"Mr. GARRED. Yes. They also had access to the roof. There are two stairways, one at each end of the corridor, and some of them went up on the roof for toilet purposes.

"Senator WALSH of Montana. They had air there?

"Mr. GARRED. Yes.

"Senator STERLING. Is there a toilet on the roof?

"Mr. GARRED. No; they went up there, though, and it was a flat roof.

"Senator STERLING. And they used the roof?

"Mr. GARRED. Yes. They had hot and cold water over a slop sink adjacent to this toilet.

"As to food, the friends of these men brought in sandwiches and apples and milk, etc., in suit cases and boxes and bags, and they got food. As to some of those who had no friends, I do not know what they got. I guess, probably, they divided up. I went through this corridor two or three times—walked through—to see conditions." (Hearings, p. 707.)

"They had no bedding of any kind except newspapers and over coats and clothing, and 110 awnings that we had there. We had 110 awnings stored in this attic space which we would have removed if we had known there were going to be so many in this corridor, and these men pulled the canvas off of those awnings, off of the frames, and used the canvas for bedding.

"Senator STERLING. How was it as to the air; was it reasonably good air?

"Mr. GARRED. As I stated, there were no outside windows.

"Senator STERLING. No outside windows; and how about the ventilation?

"Mr. GARRED. The ventilation was poor, because this was the top floor of the building, and all of the impure air from the other corridors came up there. This skylight space is open down to the first floor, from the second floor up, and of course all of the warm air and heat would go to the ceiling, and it was quite hot up there and rather close.

"Senator STERLING. This was in the wintertime?

"Mr. GARRED. The 2d of January; yes.

"Senator WALSH of Montana. How long did that condition continue, Mr. Garred?

"Mr. GARRED. Which condition are you speaking of?

"Senator WALSH of Montana. The condition you have spoken of; the occupancy of the corridor?

"Mr. GARRED. They were confined there from the night of January 2 to the forenoon of January 8, or some time during the 8th, I believe, before they were all removed." (Hearings, p. 707.)

"Senator STERLING. And you mean except as they were from time to time released on examination?

"Mr. GARRED. Yes; some of them were there only two or three days, and perhaps not as long as that, some of them. They started to examine them, I believe, on the second day." (Hearings, p. 708.)

"Mr. GARRED. We protested about keeping them there so long without having the proper conveniences for men—human beings—and Mr. Barkey, the special agent in charge, told us that he was doing everything within his power to remove them as soon as possible. Fort Wayne had not been opened up to them at that time, I understand. There was some difficulty in getting Fort Wayne—in getting the War Department to let them use Fort Wayne—and he said they were negotiating and trying to get that, and as soon as they got that they would be able to handle them much faster." (Hearings, p. 708.)

"Mr. GARRED. The post-office building was only a temporary accommodation for them until they could make arrangements elsewhere, and some of them went to the county jail and some to the municipal-court building and other places." (Hearings, p. 709.)

"Senator WALSH of Montana. Who was in charge of these men while they were incarcerated at the Federal building?

"Mr. GARRED. Mr. Barkey. Of course, there were guards at each end of this corridor, and it was screened off with gates at the fourth floor, under Mr. Barkey's supervision, I believe." (Hearings, p. 709.)

The local jails to which the prisoners who were held to await a more formal examination were so densely crowded that the sanitary conditions became so insufferable as to induce the city council to spread upon its records a solemn protest and demand that the prisoners be removed, asserting that their further detention therein was a menace to the health of the city. The resolution is set out in the record. (Hearings, p. 698.)

Thus prompted, the prisoners were removed to the Fort Wayne Barracks outside the city or in its suburbs. Of the 1,000 or more men arrested in Detroit 128 only were ordered deported on the final hearing before the Department of Labor. Just how many were detained for the more formal inquiry does not appear. The plight of those eventually held, and particularly of their families, aroused the sympathetic interests of the humane people of the city in which they had taken up their residence, for when the order was made, either because ships were not available for their transport or it was impossible because of conditions there prevailing to deliver them in the countries from which they came, they continued in confinement at the Fort Wayne Barracks. A committee consisting of four eminent business men and an Episcopal bishop was appointed, which, with the approval of the Assistant Secretary of Labor, undertook to review the cases for the purpose of making recommendations touching the disposition of those held. It called to its assistance three high-class lawyers, each of whom had a creditable war record. These lawyers examined the records upon which the prisoners were held and reported to the committee their conclusions. Thus aided the committee paroled 100, the department paroled 9 more, 3 were released on bond, and 8 it found so dangerous or so deserving of deportation that they were left at the barracks.

It may be the fact, doubtless it is the fact, that conditions for some reason were worse in Detroit than elsewhere. But they were scarcely less shocking at Deer Island, where were concentrated the prisoners taken in the Boston district, as appears from the following recital in the opinion filed by Judge Anderson in Skeffington *v.* Colyer:

"[10] At Deer Island the conditions were unfit and chaotic. No adequate preparations had been made to receive and care for so large a number of people. Some of the steam pipes were burst or disconnected. The place was cold; the weather was severe. The cells were not properly equipped with sanitary appliances. There was no adequate number of guards or officials to take a census of and properly care for so many. For several days the arrested aliens were held practically incommunicado. There was dire confusion of authority as between the immigration forces and the Department of Justice forces and the city officials who had charge of the prison. Most of this confusion and the resultant hardship to the arrested aliens was probably unintentional; it is now material only as it bears upon the question of due process of law, shortly to be discussed. Undoubtedly it did have some additional terrorizing effect upon the aliens. Inevitably the atmosphere of lawless disregard of the rights and feelings of these aliens as human beings affected, consciously or unconsciously, the inspectors who shortly began at Deer Island the hearings, the basis of the records involving the determination of their right to remain in this country.

"In the early days of Deer Island one alien committed suicide by throwing himself from the fifth floor and dashing his brains out in the corridor below in the presence of other horrified aliens. One was committed as insane; others were driven nearly, if not quite, to the verge of insanity." (Hearings, p. 59.)

At Newark the inspectors worked all night and until 2 or 3 o'clock the next day, ordering those to Ellis Island whom they deemed it justifiable to hold. (Hearings, p. 565.) At Boston the period of detention, while the weeding-out process was in progress, was from a few hours to two or three days. (Hearings, p. 56.)

It is to be borne in mind that among those thus detained for periods varying from a few hours in the dead of night to a week were some who, when the opportunity came in the regular course of the inquiry, were able to satisfy the inquisitors of their citizenship. Regrettable as it may be, there are individuals enjoying American citizenship even as a birthright who are numbered among the members of the Communist Party. Many such must have been gathered in. Moreover, some who were unquestionably innocent were taken.

Reference has heretofore been made to the arrest of a group of 39 at Lynn, Mass., assembled to confer about organizing a cooperative bakery, a considerable number of them, about one-half, according to Judge Anderson, being citizens. Thirty-eight of those arrested were discharged the next day. (Hearings, pp. 783, 58.)

One of the gentlemen serving on the Detroit committee gave the following testimony:

"To illustrate the dilemma that the American citizen was in, I was known to those people as a person who was a sort of arbiter, and was considered as a sort of friend of both sides, and I was not looked upon as an enemy of the proletariat, and a young man who with his wife had been of considerable assistance to me in these public meetings I was carrying on to educate the foreigners, came to my office, in my business place, one morning in a very much excited state of mind. His name is Adolph Meyer. He lives at 74 Medbury Avenue, Detroit. He told me this story, that he was attending a lecture, which was not a forbidden lecture by any means, and the hall was surrounded and everyone in the hall was taken and imprisoned, amongst them himself. When he did not come home, his wife, who was a young woman, began to worry about midnight, but she did not know where to inquire for him, and was in a great state of mind until she learned about this raid, and long before 5 o'clock in the morning she was taken to one of the buildings. She had no way of knowing what jail he was in, but finally she found him, along toward daylight, and was permitted to talk to him through the bars, and he was released the next morning.

"Senator STERLING. What hall was that and what was the purpose of the raid?

"Mr. INGRAM. It was raided for the purpose of taking people who were said to be members of the Communist Labor Party.

"Senator STERLING. It was the hall where they assembled, a hall that was the meeting place for that party?

"Mr. INGRAM. No; I think it was a public hall where some one was giving a public address; but it was assumed to be one of that kind of people, and that was why they were raided.

"Senator STERLING. Do you know whether that hall was a common meeting place for the members of the Communist Party?

"Mr. INGRAM. I do not know, but I do not think it was. I was not given to understand that it was. He said it was a public hall. I think he told me the hall, but I do not remember it. He wanted to know what could be done. Naturally he thought he had some remedy. I said that nothing could be done, that it was a mistake, and to forget it.

"Senator STERLING. Did he claim to be a citizen?

"Mr. INGRAM. He is a citizen.

"Senator STERLING. And he had been arrested?

"Mr. INGRAM. He had been detained all night, but they let him out just as soon as they found that he was a citizen. There is no question about his citizenship. There is no question about his being a law-abiding citizen. He is a skilled mechanic, and was working for Mr. Ford at that time. He is in business for himself now.

"Senator STERLING. He is a German, is he?

"Mr. INGRAM. I do not know. It is a German name. He does not appear to be a German, so far as his language is concerned. He is an educated man. He is in one of the best parts of the residential section of Detroit." (Hearings, pp. 728–729.)

Of the anxieties aroused in the families of those arrested, of the eager search of wives for unreturning husbands, of their pilgrimage from one place of concentration to another in their quest, hoping perhaps that no worse fate had befallen their loved ones than that they had been caught in the raids, of the distress occasioned and the want induced by the incarceration of the breadwinners of so many households, it is unnecessary that the hearings should tell, as they do. Such incidents and conditions were miserable concomitants of the proceedings.

This aspect of the affair never seems to have addressed itself to the conscience or the heart of the Attorney General. He coolly declared that it was no part of the business of the Department of Justice to look after the families of those who commit crimes or render themselves subject to arrest. But he overlooks the fact that none of those whose arrest he authroized were proceeded against upon any theory that they had committed any crime; that many of them, because of their citizenship or because they were obviously innocent, if aliens, would be entitled to their discharge without delay and that delay must necessarily ensue, considering the number to be taken, and that even among those held a large number would eventually be released for want of evidence to justify deportation or because their innocence was established. It seems quite likely from the meager records kept that at least one-half of those taken were discharged upon the preliminary inquiry.

Questioned about the amount of the bail in which the prisoners were held, the Attorney General indifferently remarked that bail was fixed by the Department of Labor, the intimation being conveyed that having regard to the line which separated the jurisdiction of the Department of Justice from that of the Department of Labor, the subject of bail came exclusively within the field of the latter. The trouble with that theory is that the law intrusts the whole subject to the department last named, and any line such as that suggested is purely arbitrary. Moreover, it is at war with the idea that the two departments were "cooperating." We must assume, from the stand taken by the Attorney General, that they were not "cooperating" in respect to bail. Apparently the view taken by him is that his department was called upon to perform functions analogous to those it discharges in connection with the prosecution of crime, the officials of the Department of Labor standing in the same relation as the judges of courts in criminal proceedings.

But everyone conversant with the administration of justice knows that, ordinarily, the most perfect "cooperation" prevails between the district attorney and the judge in respect to bail in criminal cases. The amount is ordinarily suggested by the prosecuting officer or fixed by the judge after conference with him, and an intimation from him that bail ought to be reduced is rarely disregarded.

Having made the wholesale arrests with the deplorable consequences to which reference has been made, falling upon the guilty and the innocent alike, the Department of Justice can not escape its share of the responsibility for not making diligent inquiry as to whether multitudes of those held should not be admitted to bail in some nominal sum or allowed to go on their own recognizance. Even after orders of deportation had gone against them the Detroit committee "paroled" nearly half of those held at the Fort Wayne Barracks without, it would appear, the loss of a man.

The Attorney General assured the committee that he had never heard of the horrible conditions prevailing in the Detroit jail and other detention quarters or of the action of the city council with reference thereto, though the metropolitan newspapers carried articles detailing them, the publication of which contributed to the public sentiment resulting in the appointment of the revisory committee referred to. It remains questionable whether his innocence is exculpatory or an aggravation of the wrong done through his official conduct, as it must be judged in the light of the humane view of our times touching the treatment due even to convicts.

Some advance has been made in that regard—

> Since man first pent his fellow men
> Like brutes within an iron den.

It will be interesting to know about the character of the men and something about the women taken and held in these "raids," over 10,000 in all, and particularly about those eventually ordered deported.

That some of them were dangerous characters, agitators, with abnormal or corrupt minds, trouble makers, enemies of law and order in every country, contemplating an Arcadia to be reached through turbulence and disorder, ready to "wade through slaughter to a throne" supported by what they call "the proletariat" is quite likely. Doubtless the nine eventually held at the Fort Wayne Barracks after the local committee did its work, out of the thousand or more arrested in Detroit, were of that class, richly deserving deportation, but entitled nevertheless to the observance of the formalities required by the law in the proceedings against them, less tenderly regarded by it than persons accused of crime, however, heinous.

In the more or less hysterical state of mind that prevailed when the raids were in progress and which to some extent still persists, it was popularly believed that all those taken were of that class—that they were all "red." It was quite natural that persons more or less remotely or feebly sympathetic with such should attend the hearings of the committee, as they did, so that the inquiry became known to the newspaper reporters as the "red" hearings. Indeed, anyone who challenged the proceeding, either from a legal or a humanitarian standpoint, laid himself open to the suspicion of being to some extent incarnadine. As a matter of fact, the great majority of those arrested, yea, even of those ordered deported, were perfectly harmless, deluded individuals, many of them unable to speak a word of English, with little or no comprehension of the principles or the purposes of the political party of which upon one consideration or another they had become nominal members, offenders against the letter but not the spirit of the law.

In a report on cases submitted to him, speaking from the record, one of the lawyers called to aid the Detroit reviewing committee says:

"The evidence in these cases tends to show a technical membership in a Communist Party organization, but utterly fails to show the character of the membership. No attention is given to the social, racial, and educational factors involved, and no attempt is made to determine whether the man is a member of a certain organization simply because of the restaurant facilities and the classes in reading and writing, or because he is interested in the political doctrines which it repre-

sents. It does not appear that the men are at all cognizant of the political doctrines of the organization." (Hearings, p. 701.)

Another of the lawyers commented similarly. (Hearings, p. 702.)

It is not difficult to accept these views when it is remembered that learned judges have differed on the question of whether the literature of the Communist Party does or does not propose the policy of destroying or advocate the destruction of the Government by force, so ambiguous, possibly, or at least so inconclusive, is the language of the documents. The two departments concerned entertained varying ideas touching the attitude of the Communist Labor Party in that regard. This may seem strange to some people, but the writer has long held the view, and expressed it on the floor of the Senate, that the I. W. W. advocates the destruction of the Government by force, but neither of the departments referred to appear to agree with him, or they would have proceeded, presumably, against its alien devotees as they did against those alleged to be members of the parties against whom the raids in question were directed.

Many of those arrested were householders, and not a few had accumulated considerable property. Instances were not rare in which the victims were the fathers of families, including a number of children born in America, while, sad to relate, not a few had enviable war records, having served in the grand Army of that country whose Government they were accused of proposing to overthrow by force and violence. (See hearings, pp. 313–380.) For, be it remembered, these things were not done during the war, when official acts questionable in character at other times, might be held excusable, if not justifiable or defensible. A year and more had elapsed since the armistice at the time of these raids. Among those taken were skilled mechanics. Altogether, save for the class first named, they were the raw material out of which the American public school has made and will make in the first generation native to our soil our sturdiest manhood and the peers in devotion to this country and its ideals of any of its citizens.

Mr. Barkley, the Detroit newspaper man heretofore mentioned, said of those apprehended in that city:

"They seemed to be simple men, not, perhaps, very highly educated. They were clean. Most of them were fairly well dressed for workingmen, not dirty-looking fellows. They did not look like what we have been led to believe Bolsheviks look like—that is, when they were taken in there. After four or five days, of course, they had all grown a pretty good crop of beard. They were not permitted to shave, and they slept in their clothes.

"Senator WALSH of Montana. Did they look like good, decent, reputable workingmen, or did they look like what you might call tramps and general rounders?

"Mr. BARKLEY. No; they were reputable workingmen. Their families were very well clothed. In fact, one of the papers stated about some well-dressed women who had incited these men. It was their wives and families who had come in there. Some of them were making good money—up to $10 and $12 a day. They were skilled workmen." (Hearings, pp. 718–719.)

He tells about one of the victims, one Walter B. Reps, as follows:

"He was born in Poland 34 years ago and married there and came to the United States in 1913. He was a small man, neatly dressed and sturdy, with work-calloused hands and an intelligent, kindly expression. He had been an industrious workman. He had learned his trade as a cabinetmaker in Poland, and when he reached the United States he came to Detroit and went to work at once in a furniture factory. Later he left this factory to work for the Ford Motor Co., where he was employed at the time of his arrest. In order to become more expert in mechanics and English, he attended a school conducted four nights a week in a Polish educational society's hall. In 1917 he bought a little house, paying $1,000 down and $75 every two months. He continued to go to night school and placed his children, now 5 and 7 years old, respectively, in the public schools. He had been a member of the Socialist Party in Poland, and as all his associates in Detroit were members of the Detroit Polish branch of the same party in this country he also joined here.

"When the Detroit Polish branch switched its allegiance from the Socialist Party to the Communist Party last fall he believed, as did his fellow members, that the switch meant merely a change in name, inasmuch as the membership group remained the same. That was the basis or ground for his arrest. He told me that he was arrested on the evening of January 2, when he and a dozen others were studying an English lesson at their hall, No. 1648 Central Avenue." (Hearings, p. 716.)

It was of this class of men Mr. Ingram, one of the Detroit committee, said:

"The hardship was incurred in the raiding rather than in custody. They did worry those young men who were ignorant of what was going on and uncertain as to what their future would be. That got some of them in that bad mental condition. They went crazy in some cases."

It should be said in explanation of a feature of the testimony of Mr. Barkley above that in the month of September, 1919, a convention of the Socialist Party was held in the city of Chicago at which a split occurred, the more radical wing, if that is the proper expression, taking the name of the Communist Party, the rank and file, as is usual in such cases, following their leaders, as a rule, in remaining with the old or joining with the new party.

Mr. Ingram read to the subcommittee the report of his revisory committee, constituted as heretofore stated, in which was set out that it was impressed with the fact that in the case of many (mostly young men still in their twenties) it was obvious they were of apparent simplicity and good will, innocent of political or social bias of any kind, having no idea or only very vague ones regarding the Communist Party and its declarations, for membership in which they were sentenced to deportation.

He added:

"It would have excited the sympathies of this committee to have seen that so many of these young men were absolutely naive. They were entirely innocent of any political consciousness."

And then he tells of one of these young men who "went crazy." Further on the report referred to says:

"The men seemed to be of excellent physique, remarkably free from social or any other disease, simple, straightforward in manner, and with few exceptions they seemed to possess mechanical skill in trades much needed in this country. Most of them disclaim any intention of violating the laws of this country or to commit acts of violence. For the most part they are impressed with the inequities of our system of distribution, and believe that a general discussion will lead to improvements of the economic system. Their impressions are, for the most part, infantile, and in general their discussions gave a valuable outlet to any feelings of resentment. Most of the men, however, did not join in the tabooed political parties on account of the principles, but largely on account of the language, races, social, and business association. The clubhouse was in most cases a convenient hang out, and only the smallest number was prepared to make any serious sacrifices for political or economic causes.

"Young men knowing only their mother tongue spurred to brave the risks of a strange land and language by their ambition to better their wordly position, they quickly yielded to the educational inducements of the institutions recommended by persons of their own race and speaking their own language. Thus they were lured by the prospect of not only learning the language of the people with whom they must now live, but by the further inducement of acquiring the education necessary to discharge the duties of citizenship in a land to which they were strangers." (Hearings, p. 740.)

During this long detention at the barracks they were eager students, Mr. Ingram tells us:

"Up there in the barracks I do not not think there has ever been a time in the daytime but what 75 per cent of those prisoners were ranged around tables with a teacher and were studying. There were three subjects that they were particularly interested in. One was arithmetic, as they had an idea that arithmetic was the gateway to a business career; and then they were studying about government, and were studying the English language. There was some one of their class that was teaching them. It was interesting to see how they were teaching them in that adult way." (Hearings, p. 740.)

Mr. Butzel, a Detroit lawyer who was active in promoting the organization of the revisory committee, said:

"I want to make this plain. I was interested socially in this, and I wanted particularly to know how these people got into this thing, and I wanted to try to get the psychological backing of it. It was highly significant that there was not found in the whole crowd a single case of gonorrhea or of syphilis. There were a great many Tolstoyians, absolutely noresistant, believing in no form of government and in no form of attack on government, who were followers of the Christ in the most literal way. There were a surprising number of skilled workmen; and the men who could not be classified as skilled were of the highest type of unskilled workmen, who had had some machinery experience. In ordinary times, if there was no political matter involved here, they were of the type that we should have imported from Russia; because we were very busy then, although we are not so now.

"Senator STERLING. You speak of Tolstoyians. Were any of them apprehended and held?

"Mr. BUTZEL. Yes.

"Senator STERLING. Were they held for deportation, many of them?

"Mr. BUTZEL. Yes; they had joined the Socialist Party and had been transferred to the Communist Party, and therefore they were held. They were technical members of the party.

"The Ukrainians who were members seemed to have joined the party principally for eating purposes, because the restaurant there was about the only place where they could get strict Ukrainian food and cooking; and if you wanted to eat there you joined and paid and got the meal. That was not quite so true of the other groups." (Hearings, pp. 703–704.)

The first raid was directed against the Union of Russian Workers which, according to a well-informed witness, had an inside and an outside council; the latter unexceptionable in its professions, the former advocating the overthrow of the Government by force. The witness referred to, W. W. Sibray, is immigration inspector at Pittsburgh. He said in an official report:

"It may be interesting to note that approximately 90 per cent of the number of the Russian workers taken into custody by this office entered the United States in 1913 and 1914. Most of them were of the ignorant peasant type and were unable to read and write. Americanization work practically ceased with the beginning of the war in 1914. These ignorant Russian workers were therefore cast adrift, with no effort on the part of our own people to teach and inculcate in them the spirit of Americanism. Of the number arrested four had families in this country. The rest of them left their families in Russia. After Russia made peace with Germany and the Allies declared a general blockade of the Russian ports these men were unable to communicate with or hear from their families. They had not been here long enough to learn to speak English, and their only associates were their own people. The worry and suspense as to the fate of their families in Russia was such as to place them in a proper frame of mind to seize upon any pretext offered to oppose the policy of our Government, and when organizers for the Union of Russian Workers presented themselves they quite readily became members of the organization. The majority of them, however, insisted that their only thought was to have the ports opened and be permitted to return to their native land." (Hearings, p. 749.)

There was incorporated in the record a pamphlet written by one Constantine M. Panunzio, a minister of the Methodist Episcopal Church, and published by the Federation of the Churches of Christ in America, giving the result of a study made by the author of the records in 200 of these deportation cases and of an investigation conducted by him into the affair of the raids, in the course of which he visited many of the jails in which the prisoners were confined, and talked to and studied them. There are some inaccuracies in the report touching the disclosures of the record, arising from the fact that the author is not a lawyer. But as a whole it must impress the just mind by its temperate and highly judicial character. Among the interesting facts disclosed are those related in the folowing extract:

"Of the 200 cases whose records were examined, 7 were women and 1 was a minor. Ten nationalities were represented in the list. One hundred and forty-eight, or 74 per cent, were Russians. Next in number came the Poles, with 19, or 9.5 per cent; the Lithuanians, with 9, or 4.5 per cent; the Austrians, with 8, or 4 per cent; the Croatians, with 6, or 3 per cent. There were also 3 Germans, 2 Yugo-Slavs, 2 Hungarians, 1 Italian, 1 Bulgarian, and 1 Hollander. (Hearings, p. 312.)

"The war record of the alien was frequently omitted. However, 37 are recorded as having purchased Liberty bonds and 24 as having bought thrift stamps or contributed to some patriotic fund. Two of the alleged radicals who were arrested and held for deportation had actually served in the United States Army. In the case of Steve Kerekoff (warrant No. 54860/156), a certified copy of his honorable discharge from the Army was introduced in the alien's defense. When questioned as to the organization of which he was a member he replied, "The American Legion." His personal effects consisted of a suit case and an Army uniform. (Hearings, p. 313.)

"In connection with the prison investigations four ex-soldiers were found at Detroit among those being held on a charge of belief in the overthrow by force of the United States Government. These men were Poles, and each had received his honorable discharge from the Army. One had served 17 months in France and had been discharged because of

disability. He had made application for citizenship while in France and remarked to the investigator: 'They did not kill me in France; they get me here.' A second had served 12 months at the front, and the other two had been in service 5 months each. Two of them had experienced difficulty in finding work after leaving the Army; one had been out of work for five months. Still another man said when interviewed that he had tried to join the Army, but had been rejected. He had volunteered for Government service and had his badge and certificate to prove this.

"Occupationally these persons represented the average run of immigrants in America. They were steel and brass workers, carpenters, painters, printers, restaurant waiters, teamsters, mechanics, shoemakers, and manual laborers. In over half of the cases no reference is found to the economic status of those studies. In only 19 of the records is it stated that the individual had no money. On the other hand, 45 persons were found to have sums ranging from a few dollars to $2,000. The money was usually in a savings bank, but one man kept his savings in a Prince Albert tobacco box, and one stated that his wife was his savings bank.

"A number had interests in various kinds of business. One man had an interest in an ice and coal business; one owned stock in a mining concern, and another in a motor-truck company. One man owned an automobile, two persons owned a home, nearly paid for, while two others owned grocery businesses worth $2,000 and $7,000, respectively. Another man referred to his having lost $1,700 in a business enterprise. The prison investigations showed similarly a considerable range in economic status.

"Four men stated that they had lost all they had since being arrested; one of these had given power of attorney to a fellow countryman who had taken all the money and disappeared.

"A personal testimony: It may be added that in some cases, both in the prison investigations and in the examination of the records, employers, social-service agents, pastors, and even a deputy sheriff, immigration inspectors, and Department of Justice agents spoke well of the men. In the case of four persons, a representative of the Ford plant in Detroit, where they had been employed, stated that he had always considered the men good workmen. An official physician at a certain detention station in a letter to the author, dated May 11, 1920, sums up the opinion of many persons who came into personal contact with the alleged radicals. This physician had had personal charge of all the aliens while they were being held pending their hearing or their deportation. I quote from his letter:

"'Most of them impressed me as rather ordinary foreign workmen, a grade above altogether unskilled labor, of fair intelligence. A few had more intelligence and some were quite pleasant. A few also were obstinate, unreasonable, grouchy, and generally unpleasant. The few with whom I talked had fairly radical ideas of social change, advanced with varying degrees of skill. I never was able to corner anyone into an admission of a program of violence. None of the men pressed his views upon me until approached, and then only as a matter of statement. They quite resented some clerk's error in referring to them as anarchists. Order was kept fairly easily. The radicals chose their own committees, through whom they dealt with the authorities. They made rules for their own conduct.

"'They complained occasionally of their food and the sanitation of their quarters; most of these complaints had at least some ground. I never heard of any violence against their guards or attempt at it.

"'In general, a few of these people I should not care to have around me at all; they are a general nuisance. Most of them seem harmless.'" (Hearings, p. 314.)

It is not to be understood that it is contended that those who did not conscientiously embrace the principles of the Communist Party, knowing that it contemplated the overthrow of the Government by force, though they had in form become members of it, were not technically subject to deportation. We forbear entering upon this delicate question of law involved. Assistant Secretary of Labor Post, acting for his chief, held that something more must be shown than that the accused was technically a member of the proscribed party, or at least that if it appeared that he did not understand that the purpose of the organization was thus to overthrow our Government, he should be released. His view seems to have been quite like that of the Detroit committee and the lawyers upon whose recommendation it "paroled" many of those ordered deported. On this point, as well as upon the character of the Communist Labor Party as an organization affected by the deportation statute, a controversy arose between the Assistant Secretary of Labor and the Attorney General. But we unhesitatingly condemn the making simultaneously of thousands of arrests, including many such persons and multitudes of others who by no stretch of the statute were amenable to deportation, with not only the dire attendant consequences heretofore adverted to but with the result that the Department of Labor was so overwhelmed with the work of taking the testimony and reviewing cases that it was months before a final determination was arrived at; in many of them, the prisoners meanwhile, the innocent and the guilty, at least those not able to secure the excessive bail fixed, rotting in jail, and no relief at hand from the close confinement even when the order of deportation was made for most of those found subject thereto.

The following is quoted from the Panunzio report, which purports to speak from the records on file in the Department of Labor:

"Ignatz Maritzka (warrant No. 54860/734) was arrested on January 3, 1920. The warrant for his arrest was issued on January 16. Bond to the amount of $1,000 was asked, which the alien was unable to furnish. Absence of evidence led to the cancellation of the warrant of this alien on April 1, 1920. He was therefore detained for a period of 88 days.

"Sam Kot (warrant No. 54860/787) was arrested on or about January 15, 1920. His warrant was issued on January 17. The testimony and evidence presented at the hearing were such that the warrant was ordered canceled on April 14. Since bail was set at $1,000 and the alien was unable to furnish it, he was held from the time of his arrest until after April 14. He was therefore detained for a period of 90 days.

"Ivan Dudinsky (warrant No. 54810/346) was arrested on or about January 3, 1920. His warrant was issued on December 29, 1919. Bond to the amount of $10,000 was asked, which alien was unable to furnish. Efforts were made to have the bail reduced, but without success. The case was closed on March 12 and ordered reopened on March 22. On April 12 bail was reduced to $1,000, which was furnished, and the alien was released on or about that date. He was therefore detained for a period of 101 days. The alien had tuberculosis at the time.

"Wasil Lalajo (warrant 54709/190) was arrested on November 7, 1919, on warrant dated November 6. Bond was required to the amount of $1,000, which he was unable to furnish. A hearing was held on November 9, and the inspector made the following summary of findings:

"'Two of the special agents who have investigated Lalajo's case strongly recommend that the warrant be canceled. In fact, they wanted me to release this alien last night, but owing to the fact that the warrant calls for a bond I did not feel like doing it without authority from the department. I recommend that the work in this case be canceled and that the department notify the inspector in charge at Cleveland by telegraph that this alien can return to work and to support his family.'

"This statement was dated November 9, 1919. When the alien was visited in the Youngstown jail on April 8, 1920, five months, less one day, from the date of this recommendation, Lalajo was still being detained. All warrant proceedings against this alien were canceled 11 days later, and if he was released immediately upon the cancellation of proceedings he had been detained for a period of 162 days. His wife and children were meanwhile reported to be destitute and suffering." (Hearings, p. 337.)

Not infrequently after the accused had been held or was out on bail for two or three months, the Department of Justice which assumed the rôle of prosecutor, announced, as the record shows, that it had no evidence to sustain the charge or that the only evidence it had came from its confidential informants or "under-cover men," whose identity it was deemed inadvisable to expose.

Attention has been called to the fact that about one-half of those arrested were discharged upon the preliminary inquiry. Subsequently the same ratio is noticeable in the number of those released on the final hearing. From the 200 records examined by Panunzio it appears that in 98 cases the warrants were ordered canceled, in 78 orders of deportation were issued, the remainder being disposed of in various ways. (Hearings, p. 324.)

The Department of Justice procured the issuance of the warrants, made the arrests, acted as prosecutor before the inspectors before whom the preliminary inquiry was conducted, and having swamped the Department of Labor with the cases running into the thousands, the Attorney General nonchalantly asserts that he is not responsible for delays in that branch of the service.

Even if the wisdom of the policy of a rigid enforcement of the law against every individual ascertained to be a member of one of the proscribed parties, whatever the degree of his culpability be admitted, the course pursued of arresting thousands of them simultaneously is indefensible. It has usually been considered wise, in the case of riot and other outbreaks of a mob participated in by great numbers of people, to apprehend and try the leaders and inciters of the lawlessness, exercising some forbearance toward those who were induced unreflectingly to join or who were deluded into joining the movement. Such was the course pursued in the "Gordon riots" and in the "whisky insurrection." The Government of the United States did not hold or try for treason every soldier of the Confederacy who surrendered at Appomattox. Evidently the propriety of following that course must have addressed itself to the Attorney General, for he reported to Congress in connection with his testimony before the House committee in support of the estimate for his department in the spring of 1920, that it had caused the arrest for deportation of the "officers" of the Russian Workers and the "leaders" of the Communist and Communist Labor Parties. Had he gone more into detail, the committee could not have failed to appreciate the humorous element in the issuing of six thousand-odd warrants to arrest only the "officers" and "leaders" of the organizations named.

But if a stern sense of duty impelled the Attorney General to proceed against every alien falling even technically under the ban of the statute, there was no occasion for precipitation in making the arrests. Conceding that the purpose of the proscribed parties was, as charged, to overthrow the Government of the United States by force, there is not the slightest evidence furnished by any of the "raids," nor has evidence from any source been adduced of any intent presently to carry out such purpose. No military organization seems to have existed, no guns or munitions of war were captured, none were assembled so far as appears, no plans for a military movement were disclosed. At best or at worst, the leaders in the movement seem to have contemplated that at some indefinite time in the future, near or remote, depending upon a concatenation of circumstances, a situation would arise offering an opportunity to accomplish their ends through a display of force which would then be made.

Those foremost in the advocacy of this course, even those mildly advocating it, as distinguished from those who merely accepted the doctrine they taught, could have been arrested in an orderly way, given a hearing in an atmosphere less surcharged with hysteria than must have prevailed under the conditions herein outlined, the proceedings being dignified and safeguarded from error by the application of those principles which have ennobled the administration of justice in England and America, in contrast to that of the countries from which most of those directly affected came. Unfortunately, the course taken could not have impressed them with the view that any just claim could be made to superiority in our system. It is quite likely that by the time it became convenient to arrest the less guilty most of them would have abandoned their affiliation with the proscribed party, so that there would be no occasion to prosecute.

It is appreciated that such a course would not have placed the Government in the possession of the documentary evidence it secured in the raids, tending to establish the lawless character of the organization proscribed or the membership of particular individuals in it. It is perfectly evident that to secure such evidence was the prime purpose with which the raids were made, but the searches and seizures were, as demonstrated, the lawless acts of a mob. The law does not tolerate the procurement of evidence by such means. The wise men who framed our Constitution and who had some experience with arbitrary government were convinced that such means were inconsistent with the spirit of liberty, and on the whole subversive of justice. They believed in the doctrine that "every man's house is his castle," and determined to make the law of the Republic they were establishing at least as liberal as that of the parent country, because of the protection of which the most eloquent orator of the day said:

"The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement."

Those who conceived the procedure here criticized were oblivious of the letter and wholly unappreciative of the spirit of the Bill of

Rights. It should be said, for what extenuation there may be in it, that the practice of making such unlawful searches and seizures is not without precedent in the department. It is an abuse of modern growth which repeated condemnation by the Supreme Court has been ineffective to stay. (Silverthorne *v.* United States, 251 U. S. 385; Weeks *v.* United States, 232 U. S. 383.)

It was singularly unfortunate that the campaign, for such it may appropriately be termed, against the proscribed organizations should have synchronized with the steel strike of 1919–20, popularly represented as a revolutionary movement contemplating the overthrow of the Government in line with the plans, real or supposed, of the parties against whose members the proceedings here reviewed were directed.

This view of that strike, industriously inculcated by the press, according to the report of the Interchurch World Movement on the strike, was, it is there asserted, wholly erroneous. Its investigators declared that the strike was the old-fashioned strike brought about by unduly long hours, inadequate pay, and untoward conditions, inaugurated to secure relief on those lines and for no other purpose and waged in old-fashioned way. The recent announcement of the United States Steel Co. that it has abandoned, or is about to abandon, the 12-hour day, to which, the report referred to says, approximately one-half of its employees, 69,000 in all, were subject, affords support to the conclusion therein reached.

It is quite likely that the leaders in the organizations proceeded against became officiously or otherwise prominent in the strike. It is a part of their plan to foment disturbances of that character. They profess to be the only true friends of labor, and to offer the only practical program for the relief of the wageworkers.

When they were arrested and their followers from the ranks of the strikers were jailed by the hundred, it was quite reasonable that the great body of those honestly in the movement to secure shorter hours and better wages should have reached the conclusion that the Government had taken sides with their employers in an effort to break the strike and even that the arrests were made to that end.

The participation in the deportation proceedings under inquiry on the part of the Department of Justice was a deliberate usurpation. Congress declined to give to the Department of Labor as liberal an appropriation for the conduct of such proceedings as is desired, but made a generous appropriation to the Department of Justice amounting to $1,000,000, according to former Acting Secretary of Labor Abercrombie, which was utilized to that end. The only $1,000,000 appropriation to the Department of Justice, available at the time in question, and therefore, the one which must have been referred to, was the usual appropriation for the "Detection and prosecution of crimes." The Attorney General when he appeared on March 18, 1920, before the House committee to ask for a similar appropriation for the fiscal year ending June 30, 1921, quite frankly told that it was out of the fund referred to that the expenses of the deportation proceedings referred to were met (hearings, p. 614), though it was reiterated, quite justifiably, during the hearing this committee, that the proceedings were not criminal in their nature and that the accused were consequently not entitled to the rights accorded to those accused of crime.

Some correspondence relating to this subject between a member of this committee and the Comptroller of the Treasury is set out:

UNITED STATES SENATE,
COMMITTEE ON DISPOSITION OF USELESS PAPERS
IN THE EXECUTIVE DEPARTMENTS,
April 25, 1921.

Hon. W. W. WARWICK,
Comptroller of the Treasury,
Treasury Department, Washington, D. C.

DEAR MR. WARWICK: From some testimony given by Mr. Abercrombie, formerly Acting Secretary of Labor, before a subcommittee of the Committee on the Judiciary of the Senate, the following is quoted:

"Mr. Chairman and gentlemen, you will recall that in response to a widespread demand Congress made an appropriation of $1,000,000, or approximately $1,000,000, or perhaps more than a million dollars, to the Department of Justice to be used for the purpose of detecting and prosecuting the so-called "Reds." The Department of Labor, through the Bureau of Immigration, had requested Congress to make an appropriation of some $500,000—my recollection is that it was $600,000—to be used by the Department of Labor through the Bureau of Immigration for a like purpose.

"The request of the Department of Labor was not granted. As a result, the Department of Justice had something like $1,000,000 for that purpose, while the authority to arrest, try, and deport aliens was in the Department of Labor. That department was greatly embarrassed by its inability to function adequately on account of lack of funds. The country was wild on the subject of the suppression of anarchy, every newspaper was full of it, and in response to that popular demand Congress gave this appropriation to the Department of Justice."

Will you have the kindness to advise me to what appropriation to the Department of Justice Mr. Abercrombie refers, if you are able from his statement to specify? The committee was inquiring into the acts of the Department of Justice in making arrests through the Bureau or Division of Investigation of persons believed to be subject to deportation, with a view to the rendition of appropriate orders for deportation by the Department of Labor. Can you furnish me with a statement of the expenditures made by the Department of Justice in that behalf and give me a reference to the authority for the making of the same?

Very truly yours,

T. J. WALSH.

—

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, April 27, 1921.

Hon. THOMAS J. WALSH,
United States Senate.

DEAR SENATOR: I have your letter of April 25, 1921, referring to testimony given by Mr. Abercrombie, formerly Acting Secretary of Labor, before a subcommittee of the Senate Committee on the Judiciary to the effect that Congress made an appropriation of approximately $1,000,000 or more to the Department of Justice for the purpose of detecting and prosecuting the so-called "Reds."

I find no such appropriation upon the books of the Treasury Department, or in any of the laws of Congress. For many years the Department of Justice has had annual appropriations for "Detection and prosecution of crimes" generally, but has never had a special appropriation for detecting and prosecuting aliens who are subject to deportation under section 2 of the act of October 16, 1918 (40 Stat., 1012), entitled "An act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes."

Annual appropriations of the Department of Labor under the head of Immigration Service have carried provisions for the expense of enforcing this statute. (Act of July 19, 1919, 41 Stat., 221; act of March 6, 1920, 41 Stat., 518; act of June 5, 1920, 41 Stat., 936.)

Agents of the Department of Justice who were employed under the appropriation "Detection and prosecution of crimes" incurred expenses in connection with the apprehension, arrest, and hearing before immigration officials of aliens who were alleged to be of the classes subject to deportation under this statute. The Department of Labor refused to reimburse the Department of Justice for these expenses from its appropriation on the ground that the services had been rendered by these agents without request or authority from the Department of Labor. The expenses were paid by the disbursing clerk of the Department of Justice from the appropriation for detection and prosecution of crimes. In a decision dated June 26, 1920, the Comptroller of the Treasury approved credit of these payments in the account of the disbursing clerk for reasons stated in the decision, a copy of which is inclosed for your information.

The expenses thus incurred and paid by the Department of Justice have not been segregated and set apart from other expenditures under this appropriation, so the aggregate amount thereof can not readily be ascertained and reported to you by this office. I am informed by the Department of Justice that such payments have aggregated approximately $55,000. That is probably a fairly correct estimate. If that statement is not sufficiently accurate for your purposes, the accounts and vouchers covering the payments are on file in the office of the Auditor for the State and Other Departments, who can examine them in detail and report as accurately as may be the sum total of these payments. The vouchers, however, are for salaries and expenses, and do not indicate the particular work on which each employee was engaged.

Probably the $1,000,000 appropriation to which Mr. Abercrombie referred is that made by Congress in the deficiency appropriation act of November 4, 1919 (41 Stats., 337), for "Detection and prosecution of crime." The regular appropriation for that fiscal year (1920) was made in the act of July 19, 1919 (41 Stats., 207), in the sum of $1,600,000. For the current fiscal year (1921) the appropriation is $2,000,000, in the act of June 5, 1920 (41 Stats., 921).

The hearings before the committees of Congress no doubt will show the reasons given by the Attorney General for asking the $1,000,000 appropriation.

Sincerely yours,

W. W. WARWICK, *Comptroller.*

—

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, June 26, 1920.

The Auditor for the State and Other Departments submitted for approval, disapproval, or modification his decision of June 8, 1920, to the effect that certain payments made by the disbursing clerk of the Department of Justice on account of expenses incurred by agents of the Department of Justice in connection with the apprehension, arrest, and hearing before immigration authorities of aliens who were alleged to be of the classes subject to arrest and deportation by the immigration authorities under the provisions of section 2 of the act of October 16, 1918 (40 Stats. 1012), may lawfully be credited to the disbursing clerk under the appropriation for "Detection and prosecution of crimes," from which the payments were made.

It appears that the apprehension and arrest of these aliens by agents of the Department of Justice grew out of activities of that department in connection with the enforcement of criminal laws relating to aliens and were made voluntarily without request of the Department of Labor. Administration of section 2 of the act of October 16, 1918, is made by the terms of the section placed in the Department of Labor, and it is not, strictly speaking, a criminal statute. However, I am of the opinion that the circumstances of the case justify an allowance of credit to the disbursing clerk for these payments. While there may be some doubt as to the propriety of the use of the appropriation for detection and prosecution of crimes for expenses of this character, the expense now in question seems to have grown out of or to have been connected with other lawful activities of these agents and was ordered by the Attorney General to be paid from this appropriation. The services were rendered and the expenses incurred without request or authority from the Department of Labor, and therefore are not properly chargeable to the appropriation of that department.

The auditor's decision that credit for the payments which have been made may be given under the appropriation for detection and prosecution of crimes is approved.

W. W. WARWICK, *Comptroller.*

It will be noted that the Department of Labor, despite the claim of "cooperation," insist that "the services rendered by" the "agents" of the Department of Justice, herein considered, were so rendered "without request or authority" from the former.

The most charitable view to take of the affair is that the Attorney General was in no ordinary frame of mind because of the dastardly effort, partly successful, to dynamite his house in the summer of 1919, and like attempts upon the lives of other public or prominent men.

It is refreshing to note that the transactions reviewed have not been suffered to pass without emphatic condemnation from the bar, supplementary to the arraignment found in the pamphlet the publication of which gave rise to the inquiry, among the sponsors for which is the dean of the law school of perhaps the foremost university in America.

Ex-Senator Beveridge challenged the legality and the justice of the procedure in an address delivered before the American Bar Association. (Hearings, p. 86.)

John Lord O'Brian, late Assistant Attorney General of the United States in charge of the criminal business of the department during the war, a vigorous prosecutor and an able lawyer, reviewed the deportation cases in an address before the Maryland State Bar Association and unsparingly denounced the course pursued. (Hearings, p. 781.)

Secretary Hughes, at the time the foremost figure at the bar in America, at the Harvard Law School centennial declared the proceedings here reviewed to "savor of the worst practices of tyranny."

Hon. Francis Fisher Kane, United States district attorney for the eastern district of Pennsylvania, a personal and political friend of the Attorney General, resigned his office because he could not conscientiously carry out the policy of the department concerning deportations.

Had any degree of trust or confidence been reposed in the ability, judgment, and discretion of the several district attorneys in the matters herein dilated upon, there probably would have been little occasion for criticism.

The transactions reviewed justify the fears the founders of our Government quite generally entertained of a highly centralized government. This country is too large to warrant the belief that a satisfactory administration of the criminal law can be had under detailed directions from the city of Washington, or that the Department of Justice can handle successfully from the same center analogous deportation proceedings in remote and populous centers. It will be remembered that the officers charged with the duty of making the arrests were not admonished to confer with the local district attorney, or report to him, but to report to Mr. Hoover in Washington by wire. The policy exemplified in the transactions under consideration is gaining continually in strength until the United States district attorney is being reduced to the status of a mere clerk, while the force of the Department of Justice continues to grow, that explicit directions may be given him in almost every case he is called upon to institute or try.

In view of the revelations made by the inquiry, the result of which is here reported, it is recommended:

1. That that part of the act of October 16, 1918, which makes aliens subject to deportation who are "members of or affiliated with any organization that entertains a belief in, teaches or advocates the overthrow of force or violence of the Government of the United States be repealed, or that it be amended so as to afford a locus penelcutia, by virtue of which one who has not himself taught that doctrine or been otherwise instrumental in propagating it, upon proof before a Federal court that he never consciously embraced it or had in good faith renounced it, may avert deportation. Those who believe in such a policy or inculcate such belief would still be liable under the statute.

2. The Department of Labor should be directed to revise its rules so as to make them conform to the plain mandate of the Constitution.

3. The issuance of warrants in deportation proceedings by judges and court commissioners should be authorized so there may be no occasion for resort to the device of telegraphic warrants.

4. The right to have counsel from the time of the arrest in proceedings for deportation should be guaranteed by law.

5. A limit should be fixed on the time during which one arrested in deportation proceedings may be held in jail to await a determination by the Department of Labor, the period of delay occasioned by him not to be included.

CHARGES OF ILLEGAL PRACTICES OF THE DEPARTMENT OF JUSTICE.

Mr. STERLING, from the subcommittee of the Committee on the Judiciary, submitted the following report:

On the 10th day of December, 1920, there was referred to the Senate Committee on the Judiciary for investigation and report the "Report upon the illegal practices of the United States Department of Justice," prepared by a self-constituted committee of lawyers in May, 1920, under the auspices of the National Popular Government League. The report was signed by the following-named lawyers:

R. G. Brown, Memphis, Tenn.
Zechariah Chafee, jr., Cambridge, Mass.
Felix Frankfurter, Cambridge, Mass.
Ernst Freund, Chicago, Ill.
Swinburne Hale, New York City.
Francis Fisher Kane, Philadelphia, Pa.
Alfred S. Niles, Baltimore, Md.
Roscoe Pound, Cambridge, Mass.
Jackson H. Ralston, Washington, D. C.
David Wallerstein, Philadelphia, Pa.
Frank P. Walsh, New York City.
Tyrell Williams, St. Louis, Mo.

The report is addressed "To the American people," and the opening paragraph of the report is indicative of the general tenor of the charges made therein against certain practices of the Department of Justice. It reads:

"For more than six months we, the undersigned lawyers, whose sworn duty it is to uphold the Constitution and laws of the United States, have seen with growing apprehension the continued violation of that Constitution and breaking of those laws by the Department of Justice of the United States Government."

The report alleges that the illegal practices charged against the department were committed under the guise of a campaign for the suppression of radical activities conducted by the office of the Attorney General, whose agents throughout the country acted under express instructions from Washington; that in this campaign many of the constitutional guaranties relating to personal liberty and property were ignored and constitutional rights violated. Among other things it is charged that these illegal practices of the department included: (1) A violation of the eighth amendment of the Constitution, which provides that—

"excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

It is alleged that "punishments of the utmost cruelty and heretofore unthinkable in America have become usual"; "that great numbers of persons arrested, both aliens and citizens, have been threatened, beaten with blackjacks, struck with fists, jailed under abominable conditions, or actually tortured."

Certain exhibits annexed to the report are referred to as proof. To these and other exhibits some consideration will be given further on in this report.

(2) A violation of the fourth amendment to the Constitution, which provides:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

It is alleged that many hundreds of persons have been arrested without warrant or pretense of warrant; that mass raids and mass arrests were made without warrant as a result of both oral and written instructions from Washington; that in "countless cases" the homes, offices, and gathering places of persons suspected of radical affiliations have been invaded and property seized and removed, without pretense of search warrant, for use by the Department of Justice, and that property which could not be removed or which was of no use to the department "was intentionally smashed and destroyed."

As proof of these charges further exhibits are referred to, and of which more later.

In this same connection, it is charged that the department made use of under-cover, provocative agents, "agents provocateurs," for the purpose not only of informing upon but of instigating acts which might be declared criminal.

(3) A violation of that part of the fifth amendment to the Constitution, which provides that—

"no person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law."

In this connection, the report calls special attention to the Cannone case, as shown by Exhibit 9 annexed to the report, and in which case the committee of lawyers charges that the agents of the department "committed assault, forgery, and perjury."

In addition to these very serious charges of illegal and unconstitutional practices on the part of the Department of Justice and its agents, the Attorney General is charged with "deliberate misuse of his office and a deliberate squandering of funds intrusted to him by Congress in carrying on a propaganda against radicals through the public press for the purpose of prejudicing the public in favor of his actions."

In proof of this charge, reference is made to Exhibits 17 and 18, annexed to the report.

The report apparently in conclusion seeks to minimize the results of the efforts of the Attorney General against the so-called red menace, in making the statement that prior to January 1, 1920, there were actually deported 263 persons; that since January 1, 1920, there have been actually deported only 18 persons; and that since January 1, 1920 (and up to the time of making the report, of course), there have been ordered deported an additional 529 persons, making a total of only 810 persons actually deported and ordered deported since the beginning of the campaign instituted by the Department of Justice some time prior to January 1, 1920.

It will thus be seen that the charges made against the Department of Justice and the Attorney General are of a very serious character. They, in effect, say that the sacred rights of citizens and residents under the Constitution and laws, and the principles which govern our free institutions, have been ruthlessly violated by that department, and that the Attorney General himself is largely resonsible for such violation.

But, under the principles invoked by those who charge these illegal practices committed by or under the direction of the Attorney General, it is but fair and just that that official and the Department of Justice, of which he was the head, should have the right to be heard, either by way of complete defense or in mitigation of any of the charges made. It is proposed, therefore, to call attention to the law applicable to the exclusion and deportation of aliens and to the decisions by the courts construing the law, and also briefly to review the evidence submitted in support of the charges of the committee of lawyers, hereinbefore summarized, as well as those portions of the evidence submitted to the subcommittee of the Committee on the Judiciary, charged with the conduct of the investigation, which are deemed at all relevant to the issues.

In the first place, it should be noted that the arrests and seizures complained of were made in cooperation with the Department of Labor in two distinct campaigns, or "raids," against different classes of aliens: The first, the raid against the Union of Russian Workers, of November 7, 1919; and the second, that of January 2, 1920, directed mainly against the members of the Communist Party and of the Communist Labor Party, membership in which organizations was deemed sufficient to subject the alien to deportation under the provisions of the act approved October 16, 1918. Sections 1 and 2 of this act are as follows:

"That aliens who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property, shall be excluded from admission into the United States.

"SEC. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section 1 of this act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States."

It was believed that the principles and constitutions of such organizations taught or advocated the overthrow of the Government by force and violence. It had been so held by the Secretary of Labor, whose decision upon the question is, under the law, final. (See sec. 19, immigration act of Feb. 5, 1917; Fong Yue Ting *v.* United States, 149 U. S. 698.)

No form of procedure is prescribed by the act of October 16, 1918, beyond this, namely, that any alien who is a member of any one of the classes enumerated in section 1 of the act shall, "upon the warrant of the Secretary of Labor be taken into custody and deported in the manner provided in the immigration act of February 5, 1917."

The act of February 5, 1917, is scarcely more explicit in regard to procedure in deportation cases. Section 19 provides that—

"At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; * * * any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy or the overthrow by force or violence of the Government of the United States, or of all forms of law, or the assassination of public officials; * * * shall, upon warrant of the Secretary of Labor, be taken into custody and deported."

Aside from the proceedings before the special board of inquiry, provided for in the act of February 5, 1917, and which are not pertinent to the issues here involved, the only other reference in the act relating to procedure which may be construed to refer to procedure in cases like those in controversy is a provision relative to immigrant inspectors, found in section 16 of that act, as follows:

"Said inspectors shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and where such action may be necessary to make a written record of such evidence; and any person to whom such oath has been administered, under the pro-

visions of this act, who shall knowingly or willfully give false evidence or swear to any false statement in any way affecting or in relation to the right of any alien to admission, or readmission to, or to pass through, or to reside in the United States shall be deemed guilty, etc."

The further provision is made that—

"Any commissioner of immigration or inspector in charge shall also have power to require by subpœna the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any court of the United States."

But with these as apparently the only provisions of the statute governing the power of the Secretary of Labor relative to deportation and the issuance of warrants therefor, and the power of immigration inspectors and the proceedings they are authorized to conduct, the Secretary of Labor promulgated a system of regulations and rules governing arrests of aliens for deportation and the hearings upon such arrests. The particular rule bearing upon the questions here involved is rule 22, with its various subdivisions. We quote such parts of the rule as are pertinent.

RULE 22. ARREST AND DEPORTATION ON WARRANT.

"Subdivision 1 of this rule simply enumerates the different classes of aliens subject to deportation as provided by section 19 of the immigration act of February 5, 1917.

SUBDIVISION 2. INVESTIGATION AND REPORT OF CASES.

"Officers shall make thorough investigation of all cases when they are credibly informed or have reason to believe that a specified alien in the United States is subject to arrest and deportation on warrant. All such cases, by whomsoever discovered, shall be reported to the immigration officer stationed nearest the place where the alien is found to be.

SUBDIVISION 3. APPLICATION FOR WARRANT OF ARREST.

"The application must state facts showing prima facie that the alien comes within one or more of the classes subject to deportation after entry; and, except in cases in which the burden of proof is upon the alien (Chinese) involved, should be accompanied by some substantial supporting evidence. If the facts stated are within the personal knowledge of the inspector reporting the case, they need not be in affidavit form. But, if based upon statements of persons not sworn officers of the Government (except in cases of public charges, covered by subdivision 4 hereof), the application should be accompanied by the affidavit of the person giving the information or by a transcript of a sworn statement taken from that person by an inspector. Telegraphic application may be resorted to only in case of necessity or when some substantial interest of the Government would be subserved thereby, and must state (a) that the usual written application is being forwarded by mail; and (b) the substance of the facts and proof therein contained. The code supplied by the department should be used whenever practicable.

"Subdivision 4 relates to the proof in cases of aliens who have become public charges.

SUBDIVISION 5. EXECUTION OF WARRANT OF ARREST AND HEARING THEREON.

"(a) Upon receipt of a telegraphic or written warrant of arrest the alien shall be taken before the person or persons therein named or described and granted a hearing to enable him to show cause, if any there be, why he should not be deported. Pending determination of the case, in the discretion of the immigration officer in charge, he may be taken into custody or allowed to remain in some place deemed by such officer secure and proper, except that in the absence of special instructions an alien confined in an institution shall not be removed therefrom until a warrant of deportation has been issued and is about to be served.

"(b) At the beginning of the hearing under the warrant of arrest the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued, and shall be apprised that he may be represented by counsel. The alien shall be required then and there to state whether he desires counsel or waives the same, and his reply shall be entered on the record. If counsel be selected, he shall be permitted to be present during the conduct of the hearing and to offer evidence to meet any evidence presented or adduced by the Government. Objections and exceptions of counsel shall not be entered on the record, but may be presented by him in accompanying brief. If, during the hearing, it shall appear to the examining inspector that there exists a reason additional to those stated in the warrant of arrest why the alien is in the country in violation of law, the alien's attention shall be directed to the facts which constitute such reason, and he shall be given an opportunity to show cause why he should not be deported therefor.

"(c) At the close of the hearing the full record shall be forwarded to the bureau, together with any written argument submitted by counsel and the recommendations of the examining officer and the officer in charge, for determination as to whether or not a deportation warrant shall issue.

SUBDIVISION 6. RELEASE UNDER BOND.

"The amount of any bond under which an arrested alien may be released shall be $500, unless different instructions are given by the department, which, prior to release, shall approve the bond, except that the approval of the local United States attorney as to form and execution shall be sufficient when the immigration officer in charge deems it proper, with a view to avoid delay, to submit the bond to such attorney for approval. United States bonds may be accepted in lieu of sureties on bail bond, or sureties may deposit United States bonds instead of justifying in real estate. Aliens who are unable to give bail shall be held in jail only in case no other secure place of detention can be found.

SUBDIVISION 7. WARRANT FOR DEPORTATION AND DEPORTATION THEREON.

"Upon receipt of the department's decision, or as soon thereafter as the circumstances of the case may require, the alien shall be taken into the custody of the immigration officials (if this has not occurred already) for deportation. Thereafter he shall be deported, previous notice of deportation having been given the steamship company concerned, together with a brief description of the alien and any other appropriate data, including the cause of deportation, physical and mental condition, and destination."

On December 31, 1919, the Acting Secretary of Labor, Mr. John W. Abercrombie, on the recommendation of the Commissioner General of Immigration, approved a modification of paragraph (b) of subdivision 5 of rule 22. The change made is the first sentence of paragraph (b) and as modified the sentence reads as follows: "Preferably at the beginning of the hearing under the warrant of arrest, or at any rate as soon as such hearing has proceeded sufficiently in the development of the facts to protect the Government's interests, the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued and shall be apprised that thereafter he may be represented by counsel." (Hearings, pp. 397–399.)

But recurring to the execution of the warrant, it will be observed that neither the statute nor the rules and regulations thereunder provide in what manner or by whom the warrant of arrest in a deportation proceeding shall be served, or by whom the alien shall be "taken into custody" upon the warrant of the Secretary of Labor. The rules do not designate any class of agents or inspectors of the Department of Labor or of the Bureau of Immigration who are or who may be specially commissioned to make such arrests. Admittedly the proceedings for the deportation of an alien are not criminal proceedings.

It is not necessary, therefore, that the arrest be accomplished by a marshal, sheriff, or other peace officer. So far as anything in the immigration law or rules is concerned, the arrest might be lawfully made by any private person to whom the Secretary of Labor or an immigration inspector should direct and deliver the warrant for service, the act of delivering itself being sufficient authorization for taking into custody the alien named therein.

The inquiry follows: If any agent of the Bureau of Immigration not specifically authorized by law or regulation, or any private person to whom a warrant for that purpose is given, may execute the warrant by taking the party into custody, why may not an agent of the Bureau of Investigation of the Department of Justice be qualified to receive from the Department of Labor, or any of its duly authorized agents or inspectors, the warrant issued by the Secretary of Labor, and to carry out the mandate of the warrant by taking into custody the party charged?

Taking into consideration the statutes, rules, and decisions of the courts relating to deportation, and therewith recognizing the fact that the deportation proceeding is not a criminal proceeding, we see no illegal practice, nor the violation of any constitutional right, in the mere fact that many—perhaps the great majority of—warrants in the so-called raids of November 7, 1919, and January 2, 1920, were executed by agents of the Department of Justice, the warrants therefor having been issued by the Secretary of Labor. Neither would it appear that any constitutional right had been violated in the issuance of a telegraphic warrant for arrest or a warrant based on a telegram received by the Department of Labor from a sworn officer or agent of either the Department of Labor or the Department of Justice.

In these raids there was from the outstart and avowedly a close and consistent cooperation between the Department of Labor and the Departmentment of Justice. There was an apparent necessity for it, arising largely out of the insufficiency of the appropriations for the Department of Labor, which left that department with a force of men wholly inadequate for the undertaking. The situation as viewed by the Department of Labor is shown in part, at least, by the statement before the committee of Mr. John W. Abercrombie, former solicitor for the Department of Labor, and Acting Secretary of Labor, as follows:

"Senator WALSH of Montana. Just what do you mean by saying that it was being handled by the Department of Justice? Is not this a matter that was intrusted to your office?

"Mr. ABERCROMBIE. I mean that the Department of Justice and the Department of Labor were cooperating in their activities relating to aliens charged with anarchy—relating to the arrest of aliens charged with violations of the anarchy laws.

"Senator WALSH of Montana. Were you ignorant of the matter to such an extent that you did not even know the day of the arrests?

"Mr. ABERCROMBIE. Mr. Chairman and gentlemen, you will recall that in response to a widespread demand Congress made an appropriation of $1,000,000, or approximately $1,000,000, or perhaps more than a million dollars, to the Department of Justice to be used for the purpose of detecting and prosecuting the so-called 'reds.' The Department of Labor, through the Bureau of Immigration, had requested Congress to make an appropriation of some $500,000—my recollection is that it was $600,000—to be used by the Department of Labor through the Bureau of Immigration for a like purpose.

"The request of the Department of Labor was not granted. As a result the Department of Justice had something like $1,000,000 for that purpose, while the authority to arrest, try, and deport aliens was in the Department of Labor. That department was greatly embarrassed by its inability to function adequately on account of lack of funds. The country was wild on the subject of the suppression of anarchy; every newspaper was full of it; and in response to that popular demand Congress gave this appropriation to the Department of Justice.

"Senator KING. Judge, may I interrupt you there? An appropriation was made, as I recall, for deportation purposes and investigations of the Department of Labor; but I am advised that somebody in the Department of Labor has devoted it—or at least a part of it—to other purposes.

"Mr. ABERCROMBIE. My recollection is that the increased appropriation made to the Department of Labor was for the purpose of deporting those who had already been ordered to be deported and who could not be deported on account of conditions incident to the war. We could not deport while the war was on, and as a result when the war closed there were many aliens—thousands of them, according to my recollection—who were held for deportation; and while I am not absolutely certain about it, my recollection is that the appropriation to which Senator KING refers was made for the purpose of deporting those who had already been found subject to deportation. At any rate the Department of Labor and the Department of Justice felt it their duty to cooperate, the Department of Justice having the money, the necessary appropriation, and the Department of Labor having the authority under the law to deport. So we cooperated to the extent that the Department of Labor issued warrants for arrests upon proper affidavits submitted by the Department of Justice.

"All the hearings, of course, under the law had to be conducted by the Department of Labor.

"Senator WALSH of Montana. But the arrests were actually made by the Department of Justice?

"Mr. ABERCROMBIE. In cooperation. The representatives of the Department of Justice and the Department of Labor acted cooperatively.

"Senator WALSH of Montana. And the expenses were met out of this appropriation for the Department of Justice?

"Mr. ABERCROMBIE. Their part of the expenses. Our officers were paid out of the regular appropriation of the Bureau of Immigration.

"Senator KING. All of the employees you had at your disposal for deportation purposes continued in cooperation with the Department of Justice employees?

"Mr. ABERCROMBIE. Yes. Our employees acted in cooperation with their employees.

"Senator STERLING. You had your regular force?

"Mr. ABERCROMBIE. We had our regular force.

"Senator STERLING. Who were paid out of the general appropriation for the Department of Labor?

"Mr. ABERCROMBIE. Yes; that is my understanding. It was simply an effort of the two departments to cooperate in the performance of important duties.

"Senator WALSH of Montana. Who else was there to pay in connection with the arrests besides your employees—the employees of the Department of Labor?

"Mr. ABERCROMBIE. The employees of the Department of Labor and the employees of the Department of Justice cooperated in making the arrests. The arrests were made in large numbers, and whole clubs or societies were taken at one time; and just two or three immigration inspectors would not do it alone." (Hearings, pp. 403–407.)

Mr. Charles T. Clayton, attorney at law, Washington, D. C., who had been an employee in the office of the Secretary of Labor, and whose duties for a time were to examine the records of immigration cases transmitted to the Secretary, was a witness at the hearings. He had been one of the subcommittee engaged in preparing the report of the committee of 12 lawyers, although he was not one of the signers of the report. Referring to cooperation between the Department of Labor and the Department of Justice on former occasions, he testified:

"Senator WALSH of Montana. * * * Did the department prior to the time of these raids have anything to do with the initiation of these deportation proceedings before the department?

"Mr. CLAYTON. There had been times, I think, at intervals for many years, that field officers in the Department of Justice had worked with the field officers of the Department of Labor in such matters; that they got information about some persons already in the United States, having been admitted, who were engaged in practices not in conformity with the law, when they would bring the matter to the attention of the officers of the Department of Labor and cooperate with them in confining the guilty party, or in establishing such prima facie facts as to his guilt as would initiate processes in the Department of Labor.

"Senator WALSH of Montana. The Department of Labor had solicited the aid of the Department of Justice in connection with that work?

"Mr. CLAYTON. That I could not answer.

"Senator WALSH of Montana. You would see no impropriety in that, would you? If officers of the Department of Justice, of the Bureau of Investigation, being out endeavoring to ascertain about criminal practices, found some man against whom no criminal charge could be brought, and yet he was in this country in violation of the immigration laws, you would see no impropriety in their calling the attention of the Department of Labor to that fact and rendering them such aid as they could in securing a ruling that that individual ought to be deported?

"Mr. CLAYTON. I go further than that, and I should say there would be no impropriety in any citizen doing that." (Hearings, pp. 351–352.)

Further, as to cooperation and the need of cooperation between the two departments, Attorney General Palmer states as follows:

"Attorney General PALMER. The deportation statute, of course, is a statute to be executed, I may say, by the Department of Labor.

"But in December of 1919, when the situation in the country was pretty bad, Mr. Chairman, when violence had broken out in a great many places of a nature that gave all thoughtful citizens much concern, there was a feeling that there ought to be cooperation in the enforcement of this statute—of the closest kind—between the Department of Labor and the Department of Justice; and after conferences it was agreed that the Department of Justice would make the investigations and present the cases to the Department of Labor, laying the facts gathered by the Department of Justice before the Department of Labor and allowing the Department of Labor to act as the law provided.

"That course was proceeded with. Individual arrests for deportation were made, but the situation was too big to be met by that sort of thing. The Department of Justice came to the conclusion that there was an organized effort—or there were several organized efforts—of a quasi revolutionary character; efforts were being made to organize masses of people, as we believed and as the evidence showed, to attempt to injure the Government by force.

"The first organization that we investigated, which resulted in a number of arrests, was the Union of Russian Workers.

"Senator STERLING. This was after your understanding with the Department of Labor?

"Attorney General PALMER. Yes.

"Senator BORAH. Was that understanding agreeable to the Department of Labor?

"Attorney General PALMER. Yes. We made a large number of arrests of the members of the Union of Russian Workers, because their organization and its tenets, its purposes, its plans, its beliefs, brought them within the language of the deportation statute.

"Now, of course, we made simultaneous arrests. What is commonly called a "raid" is really a large number of simultaneous arrests. That was not done because it had a sensational appearance. It was not done for any purpose of giving publicity to what was being done. It was done to protect the Government's interests in the matter. If there was a statute under which men had to be arrested—and there were large numbers, as the Government believed, that violated that statute—obviously we could not go and arrest one or two men and give all the rest of those men notice of what the Government was going to do, and get anywhere near the enforcement of the statute. So that the plan of simultaneous arrests was adopted, and several hundred of the members of this Union of Russian Workers were arrested and turned over to the inspectors of immigration and went through to the Department of Labor, and many of them were eventually deported under the statute.

"During the fall the formation and activities of the Communist Party and the Communist Labor Party proceeded, and by the end of the year 1919 we were convinced, and the Department of Labor agreed, that the Communist Party was an organization membership in which made an alien subject to deportation under the statute, and we organized our people for the purpose of making simultaneous arrests of the members of that party in 33 cities of the United States. Of course, larger numbers were involved, and the arrests, for the reasons I stated a moment ago, had to be simultaneous." (Hearings, pp. 7 and 8.)

It is evident from the foregoing that both the public and Congress must have known of the activities of the Department of Justic in connection with deportation cases or in raids made for the purpose of apprehending criminals and aliens subject to deportation under the statute already quoted. But it is also to be observed that according to the uncontradicted testimony all examinations of parties arrested and all hearings were before an immigration agent or inspector, who alone could hold an alien for deportation.

Attorney General Palmer in his statement before the House Appropriations Committee, when considering the sundry civil appropriation bill, March, 1920, gave a detailed account showing the number of warrants issued, arrests made, including the arrests of leaders of the Communist and Communist Labor Parties, and the deportations ordered. He also discusses the form of deportation proceedings. The statement of Attorney General Palmer before the House committee will be found at pages 614–630 of the hearings before this committee.

In addition to the statement made by the Attorney General to the Appropriations Committee in connection with anarchist and similar activities, attention is called to the fact that in the spring of 1919 there were great and prolonged strikes in many of the industrial centers of the country, and that in these strikes foreign agitators and propagandists were prominent. It may be recalled, however, that Mr. William Z. Foster, an American citizen, as secretary of the committee composed of the 24 international unions, was the chief figure in the management of the great steel strike of 1919. He was before the submittee of the Committee on Education and Labor, appointed to investigate that strike. Excerpts from his book on "Syndicalism" were put into the record made by the committee, showing that he believed nothing illegal if necessary to carry out his views, and that he advocated violence in strikes. His associates were Mr. Margolis, attorney for the I. W. W. at Pittsburgh, and Vincent St. John, formerly secretary of the I. W. W. The committee characterized such men as dangerous to the country and dangerous to the cause of union labor. (Rept. No. 289, 66th Cong., 1st sess., pp. 17 et seq.) The belief was prevalent that many of the agitators were paid out of Russian money furnished for the purpose of stirring a large alien element of our population to revolutionary action. About the same time infernal machines were addressed to many different Government officials, resulting in serious injury to some individuals; and these outrages were followed about a month later by bomb explosions wherein the lives and homes of various State and Federal officials were imperiled.

As a result of this agitation and these acts of violence, including attempts at assassination and destruction of property, the public was much aroused. There was considerable impatience because of the apparent inactivity of the Department of Justice, and this was to some exteat reflected in the unanimous adoption of a Senate resolution introduced by Senator POINDEXTER October 19, 1919, which resolution is as follows:

SENATE RESOLUTION 213.

"*Resolved*, That the Attorney General of the United States is requested to advise and inform the Senate whether or not the Department of Justice has taken legal proceedings, and if not, why not; and if so, to what extent; for the arrest and punishment of the various persons within the United States who, during recent days and weeks, and for a considerable time continuously previous thereto, it is alleged, have attempted to bring about the forcible overthrow of the Government of the United States; who, it is alleged, have preached anarchy and sedition; who, it is alleged, have advised the defiance of law and authority, both by the printing and circulation of printed newspapers, books, pamphlets, circulars, stickers, and dodgers, and also by spoken word; and who, in like manner, it is alleged, have advised and openly advocated the unlawful obstruction of industry and the unlawful and violent destruction of property, in pursuance of a deliberate plan and purpose to destroy existing property rights and to impede and obstruct the conduct of business essential to the prosperty and life of the community.

"Also, the Attorney General is requested to advise and inform the Senate whether or not the Department of Justice has taken legal proceedings for the arrest and deportation of aliens who, it is alleged, have within the United States committed the acts aforesaid, and if not, why not; and if so, to what extent." (Senate hearings, p. 580.)

In response to this resolution the Attorney General submitted to the Senate a report in detail in which, among other things, he pointed out the proposed plan of cooperation with the Department of Labor in the enforcement of deportation statutes.

The Attorney General also, during 1920, issued a document entitled "Red Radicalism as Described by Its Own Leaders," the same having been printed by the Government Printing Office. This pamphlet contains exhibits collected by the Attorney General and the foreword concludes:

"The whole is submitted for the furtherance of a more realizing popular appreciation of the menace involved in the unrestrained spread of criminal communism among the masses."

The report of the Attorney General in response to the Poindexter resolution is Senate Document 153, Sixty-sixth Congress, first session. The Attorney General, after stating that the administration of the deportation statutes is entirely within the jurisdiction of the Department of Labor, but that it seemed to be the only means at his disposal of attacking the radical movement, and as Congress had seen fit to refuse appropriations to the Department of Labor for its enforcement he had cooperated with the irrigration officials to the fullest extent, and, among other things, says:

"Since the organization of the radical division a more or less complete history of over 60,000 radically inclined individuals has been gathered together and classified and a foundation for action laid, either under the deportation statutes or legislation to be enacted by Congress. I should, of course, communicate to you but little of this information. However, it is at the disposal of Congress for proper and confidential use. The record in the Emma Goldman and Alexander Berkman cases is marked 'Exhibit No. 6' and 'Exhibit No. 7.'

"One of the first matters receiving the attention of the radical division after its organization was the various societies in the United States adhering to anarchistic doctrines. Principal among these was the organization known as the Federation of the Union of Russian Workers. The investigations made by this department soon led it to the conclusion that this organization was formed for the sole purpose of destroying all institutions of government and society. It was necessary, however, in order to prove the anarchistic nature of this organization, to secure copies of its constitution, as well as copies of documents and literature published and circulated by it. It is impossible for me to set forth the methods by which same were secured, owing to the extremely confidential nature of these investigations. After definitely establishing the fact that this organization was anarchistic in tendency and in teachings it then became necessary to locate the officers of each of the locals and to establish their membership to this society. Again this department experienced great difficulty in establishing membership, as the members had been advised to guard carefully against information connecting them with the organization.

"After thorough investigation in this matter the cases of the persons who were actively identified with the Union of Russian Workers were submitted to the Department of Labor, and that department issued warrants for the arrest of these persons. On November 7, 1919, simultaneous arrests of over 250 officers and members were made in 12 different cities of the United States upon the warrants issued by the Secretary of Labor charging these persons with advocating the overthrow of the Government of the United States by force and violence.

"I am attaching hereto, marked as 'Exhibits Nos. 8 and 9,' two translations of publications issued by the Federation of the Union of Russian Workers, one entitled 'Manifesto of anarchists-communists,' and the second 'Fundamental principles,' which clearly indicate the purpose of this organization and which justify the drastic action taken by this department in the matter."

The Attorney General then attaches to his report a copy of detailed instructions to all the agents of his department, setting forth the requirements necessary to satisfy the Immigration Bureau in a deportation case. From these instructions we quote the following:

"The character of the organization may be proven—

"(a) By authentic copies of its charter, by-laws, or declaration of principles, official publications, and possibly by membership cards therein, if any. Proof may be made by the affidavit of anyone personally knowing the facts showing authenticity of the document referred to. The strongest proof possible should be obtained, and a number of affidavits from creditable persons should be secured.

"(b) By affidavit stating in detail the facts upon which it is based of persons who are members of, or affiliated with, or who have attended meetings of these organizations and can swear, from occurrences or things said or done at the meeting or meetings, that the particular organization believes in, teaches, or advocates any of the doctrines set forth in section 1 of these instructions.

"Mere proof that one may in general terms be said to be a Bolshevist, either by his own admission or by other evidence, is not sufficient. Additional facts must be secured bringing him within section 1 of these instructions.

"Membership in an organization may be shown by—

"(a) Production of a membership card, together with proof and circumstances showing that it belongs to the person under investigation.

"(b) Admission by the person under investigation that he is a member of such organization.

"(c) Proof that the person under investigation, with more or less regularity, attended and participated in meetings of said organization.

"(d) Assuming to act as officers or agents of such organization by seeking new members, collecting or disbursing money, or distributing its literature.

"(e) Any other facts that would tend to prove or strengthen the proof of such membership.

"Special agents must not satisfy themselves with proof of membership in an anarchistic organization, but should seek further to establish against the individual himself a case under one of the clauses of section 1 of these instructions.

"Special agents will constantly keep in mind the necessity of preserving the cover of our confidential informants, and in no case shall they rely upon the testimony of such cover informants during deportation proceedings."

In the opinion of your committee, these instructions issued by the Department of Justice here at Washington to its agents in the field do not indicate any purpose on the part of the Attorney General or of that official of the department having the investigation of radical activities in charge to act or to countenance the agents of the Bureau of Investigation to act in violation of the Constitution or to deprive any person whomsoever of any legal or constitutional right. On the contrary, it seems apparent to your committee that the department was, in the interests of the personal liberty and security of the persons suspected or taken into custody, proceeding with due caution and in accordance with well-recognized rules of evidence.

Under the conditions which existed at the time, your committee find nothing to condemn in the cooperation of the Department of Justice with the Department of Labor in apprehending any number of aliens whose beliefs or practices rendered them subject to deportation under the law, neither does your committee believe that any wrong is done or constitutional right invaded by taking membership in an "organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government," as prima facie evidence at least of a like belief on the part of such member. It is doubtful whether under any Federal statute it is a crime for the individual alone, whether citizen or alien, in the absence of a conspiracy to so believe, teach, or advocate; but certainly in the interests of national self-preservation there should be no hesitancy in exercising the right to arrest and deport any alien who on investigation is found to come within any of the classes proscribed by the statute.

But, granting that cooperation between the agents of the two departments does not of itself involve or imply any violation of law or illegal practice, there is yet the question as to whether in the manner of carrying out the purpose to apprehend and deport all aliens subject to deportation the persons taken into custody, or whose houses and premises were searched, were consciously subjected to any undue hardship or were deprived of any legal or constitutional right by the agents of the department, and for which the department should be held responsible. In other words, to what extent, if at all, are the allegations of the committee of 12 lawyers, first herein referred to, supported by the evidence adduced at the hearings before your committee?

But first it should be borne in mind throughout the consideration of this subject that it is for the executive department of the Government to put in force any act of Congress for the exclusion or deportation of aliens. In the case of Nishimura Ekiu *v.* United States (142 U. S. 651) it is laid down as an accepted maxim of international law—

"that every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its domains, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States this power is vested in the National Government, to which the Constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the Government, and may be exercised either through treaties made by the President and Senate or through statutes enacted by Congress."

And in the case of Fong Yue Ting *v.* United States (149 U. S. 698) it is said:

"The power of Congress, therefore, to expel, like the power to exclude, aliens, or any specified class of aliens, from the country may be exercised entirely through executive officers, or Congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to be in the country has been made by Congress to depend."

In applying the foregoing principles to the case at bar, the court proceeded as follows:

"For the reasons stated in the earlier part of this opinion, Congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence to be removed out of the country by executive officers without judicial trial or examination, just as it might have authorized such officers absolutely to prevent his entrance into the country. But Congress has not undertaken to do this."

The Fong Yue Ting case arose under the act of Congress of May 5, 1892, an act entitled "An act to prohibit the coming of Chinese persons into the United States." Section 6 of this act provided that—

"any Chinese laborer, within the limits of the United States, who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence shall be deemed and adjudged to be unlawfully within the United States * * * and may be arrested, by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, * * * and taken before a United States judge, whose duty it shall be to order that he be deported from the United States as hereinbefore provided, * * * unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act."

Provision is made for cases where a certificate had been lost or destroyed, and for time in which to procure a duplicate, etc.

The court in the Fong Yue Ting case, in construing the act of 1892, says:

"The proceeding before a United States judge, as provided for in section 6 of the act of 1892, is in no proper sense a trial and sentence for a crime or offense; it is simply the ascertainment by appropriate and lawful means of the fact whether the conditions exist upon which Congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime; it is not a banishment in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment; it is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the Nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the Constitution securing the right of trial by jury and prohibiting unreasonable searches and seizures and cruel and unusual punishments have no application." (See also In re Chin Wah, 182 Fed. 256.)

These quotations from great and leading cases will apply with equal force to the law and the procedure thereunder as hereinbefore set forth, and to the specific complaints of illegal practices to which the committee calls attention. The committee would emphasize the fact, however, that not only the law and judicial decisions but also the conditions as they existed or were believed to exist before and at the time of the raids should have weight in determining whether the Department of Justice or the Attorney General was, under the circumstances, guilty of illegal practices which merit the public condemnation and censure of the Congress. The committee is entitled to consider the interest of witnesses, the bias or prejudice arising therefrom, the circumstances under which affidavits describing alleged outrages and injuries were made, and the interest or bias of those who prepared these affidavits, and this for the reason that the credibility of these affidavit witnesses is, as will appear from the record, necessarily involved.

Referring to the exhibits attached to the report of the committee of 12, Exhibit 1 being a statement of the committee itself, alleges that in Bridgeport, Conn., on November 8, 1919, various workingmen had come together to discuss ways and means for buying an automobile to be employed for instruction purposes, and that the meeting was raided; that 63 men were arrested without warrants and taken to the police station, where they were held for three days; that they slept on iron bunks without covers or mattresses, and were fed little or nothing; and that persons who applied to the Hartford jail to see their friends were also taken up and confined in the jail, and that some of the men were beaten and threatened with hanging or suffocation in order to obtain answers from them, and that most of the men remained confined for five months, until they were transferred by authority of Mr. Post to Deer Island. It is also charged that prisoners were allowed no reading matter; that they were kept alone in their cells, except for visits of agents of the Department of Justice or hearings before inspectors; that they were refused knowledge of the charges against them or the amount of bail; that they were allowed only two to five minutes a day to wash their faces and hands, and only five minutes once a month to wash their bodies; that they were given practically no exercise, and were fed with foul and insufficient food.

These statements are based upon Exhibits 1a, 1b, and 1c, being the affidavits respectively of Semeon Nakhwat, Peter Muzek, and Anton Dimitroff.

Nakhwat in his affidavit tells of his arrest along with 62 others, at Bridgeport, Conn., on the 8th of November, 1919, stating that the arrest was made by Edward J. Hickey, a special agent of the Department of Justice, who had helping him about 14 Bridgeport policemen in uniform and about 9 Department of Justice agents in plain clothes; that after 3 days he was removed from the police station at Bridgeport to the Hartford jail, where he remained for 6 weeks without any hearing, and that on the seventh week he had one hearing before the Labor Department, which hearing was held in the post-office building, and that he was then returned to jail. He further states in his affidavit that in the thirteenth week of his confinement, Mr. Hickey came into his cell and asked him to give the address of a man called Boyko, in Green Point, Brooklyn; that he did not know this man, and told Hickey that he did not, and that thereupon Hickey struck him twice with his fist, once in the forehead and once in the jaw, knocking him down, and that Hickey then kicked him until he became unconscious. He states in his affidavit that Hickey is a big man, weighing about 200 pounds; that for 3 weeks after that he suffered severe pain where he was kicked in the back; that afterwards he asked the guards to let him have a doctor to treat a finger which

had become infected; that he was refused, and, on a second request, they took him to the basement of the jail and put him into a pitch-dark room, the floor of the room being hot and the walls very warm to the touch, and that he was kept in the room for 36 hours, from 8.30 one morning to 8.30 the following evening, and that the only food received during these 36 hours was 1 glass of water and 1 slice of bread given him on the evening of the first day; that he was released from the jail on April 7, having been in confinement 5 months; that the only times he was allowed to be out of his cell, except on one occasion when he had an interview with a friend, was for 2 or 3 minutes every day when he was allowed to wash his face at a sink, and 5 minutes once a month he was allowed to take a bath in a tub. He charges that the food in the jail was very bad, some of it so foul that it could not be eaten at all, and not sufficient in quantity to maintain a person in health; that no books or newspapers were allowed him during the five months, although he asked for them. In his affidavit Nakhwat, while denying that he is an "anarchist, socialist, or Bolshevik," admits that he was a member of the Union of Russian Workers.

It seems incredible that any sensible and civilized human being would be guilty of the personal assaults and outrages alleged to have been committed upon and against the person of Semeon Nakhwat, and especially does it seem incredible that a wholly unprovoked and vicious assault, such as this is charged to be, should be committed by an agent or officer engaged in the enforcement of the law. One of the confidential instructions given to Agent George E. Kelleher, in charge of the Boston district, under date of December 27, is as follows: "Violence toward any aliens should be scrupulously avoided."

It is presumable that this was the attitude of the Department of Justice on the 8th of November preceding, when the Bridgeport arrests were made; and that if the assault, as described by Nakhwat, was committed it was absolutely contrary to the will of the Attorney General or of Mr. Burke, Chief of the Bureau of Investigation of the Department of Justice, who signed the instructions sent to Mr. Kelleher, as above stated.

It will be observed that this affidavit alleges that the arrest and subsequent assault was made by Edward J. Hickey, but on the 29th day of May, 1920, at the city of Washington, D. C., Mr. Hickey, a special agent of the Department of Justice of the Bureau of Investigation, assigned to official duty in the district of Connecticut, made an affidavit in which he states that he has read carefully the alleged affidavit of Semeon Nakhwat, as printed in the report upon the illegal practices of the Department of Justice, and after reciting those portions of the affidavit relating to the arrest of Nakhwat and the vicious and brutal assault made upon Nakhwat by Hickey, has this further to say:

"Deponent further states that he was not in the city of Bridgeport, Conn., on the date given, November 8, 1919, and did not participate in and had no knowledge of either the said Semeon Nakhwat or his arrest; that deponent never even visited the meeting place referred to and had no knowledge of its character or location. Deponent further says that at no time has he entered the cell in the Hartford jail occupied by the said Semeon Nakhwat, and that he has never struck or otherwise abused him."

But with reference to personal assaults and cruelties by the agents or officers making the arrests, either at the time of the arrest or afterwards, it is probable that all the cases of such alleged cruelty have perhaps no better foundation than the case of Lem Kosopud and 14 others, all apparently Russians, decided by Judge Westenhaver in the District Court for the Northern District of Ohio June 12, 1920, and which case is hereinafter more particularly referred to. In the last paragraph but one of his opinion Judge Westenhaver states as follows:

"All of the specific objections urged on this hearing are covered by the foregoing observations. In addition thereto, it is said that some of the petitioners were at the time of their arrest or during their examination by the arresting officers insulted, abused, or physically mistreated. The evidence to this effect is so unsubstantial that I do not deem it necessary to comment thereon. Certainly nothing appears to indicate that the petitioners, or any of them, did not have a fair hearing, or that the executive officers abused their discretion or took any advantage of the petitioners, or deprived them of any opportunity to make as full and complete a defense as desired. All of them were called as witnesses, said that they were informed by the inspector of their right to counsel, and that this right had been waived."

The case of Peter Musek, covered in Exhibit 1b, also refers to conditions in Bridgeport and Hartford. The Attorney General in reply to this affidavit submitted (see p. 96) a copy of his statement before the House Committee on Rules, in which his case was explained. It is shown that extreme care was exercised in accounting and receipting for money and valuables taken from the aliens. The so-called steam room in the Hartford County jail was substantially admitted by counsel for the National Popular Government League before the House Rules Committee, to exist only in the imaginations of the aliens.

The affidavit of Anton Dimitroff (Exhibit C1), also of Bridgeport, Conn., covers substantially the same matter as contained in the two preceding exhibits.

The testimony before your committee in this case appears on page 98, and shows that the Attorney General has twice answered this affidavit, once before the House Rules Committee. Dimitroff also mentions the so-called steam room and conditions in the Hartford jail generally. These conditions are explained by the Attorney General on pages 93 to 96. The evidence fails to show that the conditions of confinement at Hartford differed materially from those in the average penal institutions. It was complained that the aliens were not permitted to have newspapers and magazines. In reply it was claimed that the only newspapers or magazines they desired were publications of an extremely radical character, such as the official organs of the Communist Party, and in several instances they refused other matter.

The pamphlet which forms the basis of this inquiry devotes considerable space to the raid on the Russian People's House at 133 East Fifteenth Street, New York City. This raid was made in November, 1919, during the time action was being taken against the Union of Russian Workers, an anarchist organization distinct from the Communist parties. The affidavits of Mitchel Lavrowsky (Exhibit 2b), Nicaoli Melikoff (Exhibit 2c), Varfolmey Ischenko (Exhibit 2d), Semeon T. Kravchuk (Exhibit 2e), and Peter Karas (Exhibit 2f), are set forth, charging brutality on the part of agents of the Department of Justice, and also the theft of money and other property. These charges of brutality and theft were met by affidavits from the officers who participated in the affair, denying the allegations.

The committee deem it proper to set forth the short statement of Attorney General Palmer as made before the House Committee on Rules, followed by the affidavit of special agent of the Department of Justice, Frank Francisco, who had general charge of the raid on this house:

Mr. Palmer says:

"Now, as to the raid on the Russian People's House, New York, referred to on page 16 of the report. I have had a thorough investigation made of this so-called raid, and have in my possession affidavits from a number of individuals. Agent Francisco, who was in charge of the affair, with Sergeant Gegan, of the New York bomb squad, had entered the building and made known their identity. The two left one of the rooms to procure assistance, and as they left several bottles were thrown at them. Agent Edward Anderson, who participated, was on the third floor, where there were about 25 men in one room. After stating the purpose of his visit, and it appearing that the aliens involved were willing to accompany him, Anderson led the way. Upon reaching the head of the steps he was violently pushed and fell down the entire flight, causing bruises on his arm and leg. These two instances started a general disorder of the persons in the house, and it was necessary to call additional assistance in order to handle the men, who openly declared they were ready to fight. Under these conditions it was necessary to take all the parties involved in the affair to the offices of the department, where they could be examined with some order" (p. 106, House hearings).

Since Mr. Francisco was in general charge of all the proceedings at the Russian People's House, we deem it important that his affidavit should be set forth in full. It is as follows:

"Frank Francisco, of lawful age, being duly sworn, deposes and says that he is a special agent of the Department of Justice of the United States; that on the night of November 7, 1919, he was in charge of a squad of special agents, and, accompanied by Sergt. James Gegan, of the New York bomb squad of the police department, city of New York, the latter commanding about 25 detectives, proceeded to and entered a house known as the People's House, at 133 East Fifteenth Street, the door of which was wide open, and upon the first floor Sergeant Gegan and myself showed our shields and told the occupants who we were. When Sergeant Gegan and myself left the room to secure the help of other detectives, and our backs being turned, several pop bottles were thrown at us, same coming from the rear of the room. While Sergeant Gegan was obtaining assistance, agent informed the men that there was to be no violence or resistance; that we were there to make an investigation, and we wanted their cooperation; that we did not want to apprehend anybody that was innocent.

"After I had finished talking, I heard several voices in the rear call the Department of Justice and the police "sons of b——" and other vile names, and one individual shouted: "We are ready to fight." At this time there was a commotion upstairs, and Sergeant Gegan left the ground floor to investigate the matter upstairs, and in his absence several detectives, whose names are unknown to me, came to my assistance, probably saving me from assault, and it was necessary for the police to resist about a dozen men who were in the rear pushing and crowding others in front of them to attack the police and myself. No violence was used on the men in the front of the room, but we forced our way to the rear, where we found the disturbers, and they were immediately taken out of the room, placed in a patrol wagon, and sent to the office of the bureau of investigation, at 15 Park Row, this city.

"After these disturbers had been sent to the office of the Department of Justice, there was no more trouble on this floor. Investigation showed that a number of these men were prepared for trouble, as various parts of the room contained various instruments such as blackjacks and small "billies."

"Deponent then went to the third floor, which was being used as a school, and found in the front part of the building a class of about 25 men, together with a teacher. They were guarded by either police officers or special agents of this department, and I informed them they were to be taken to the office of the Department of Justice, where they would be questioned as to their identity. When conveyances were ready, these men were passed out in single file, marched down the stairs, being counted as they left the room, also being counted at the door up to a number as high as 22, as the patrol wagons would not accommodate more than 22 persons. It was necessary to take these precautions in order to get the number of persons apprehended, and great caution was taken so as not to cause confusion or a miscount. The stairs used were very narrow and steep, and I recall that I mentioned this fact to Sergeant Gegan, and he had one of his men light a gas jet that had not been lighted, so the prisoners could see where they were going. There was no confusion in removing these 22 men.

"As near as I can recall, the school-teacher was not sent away with these men, but was held downstairs and was brought to the office in a separate cab, accompanied by several women, including Ethel Bernstein and several others.

"Deponent then went to the fourth floor, and to the best of my recollection there were about four men on this floor, and they were sent downstairs unaccompanied to the ground floor, I notifying Sergeant Gegan and the rest of his men that four men were coming down unaccompanied.

"Deponent was instructed by Agent Charles J. Scully to obtain evidence, such as books, records, and cards of the organization known as the Union of Russian Workers, and in a small room on the top floor I found a quantity of books, cards, which were confiscated and brought to the office. In this room were two typewriters with Russian keyboards. The typewriters not being evidence, same were left behind. I was one of the last persons to leave this building, and as I was leaving there was a crowd of about 100 people on the outside, and I was asked if any objection would be made to their entering the building. I saw at least 25 people enter the building, including two reporters of the New York Call, the latter information being obtained from the two men themselves, but none of their credentials were shown to deponent.

"After all the prisoners had been sent away, I returned to the office of the Department of Justice. On the following day, November 8, 1919, en route to the office of the Workman and Peasant, a newspaper, at 241 West Thirteenth Street, I stopped at the People's House, found the door open, and there saw two men sitting in the room who had been brought to the office on the night before and questioned and later released. I asked these men what they were doing there, and they stated they had chased some boys out of the place after they had found them destroying the property. They said the boys had been kicking pictures, cooking utensils, etc., around the floors of the different rooms, and also had broken a number of windows in the rear of the house. I then went upstairs, where I had secured the organization records, and found the typewriters above-mentioned had been destroyed. Upon my arrival I noticed that the gas had never been turned out, but had re-

mained lighted all night, making it possible for anyone to enter the building at any time they chose, especially as the house was mainly a place of curiosity for the people in the neighborhood, especially the children.

"In several bookcases, where we had removed books, the same had been thrown on the floor, thereby breaking same." (House hearing, pp. 100–101.)

This affidavit may serve to explain the charge made by the committee of 12 that "property * * * was intentionally smashed and destroyed."

The committee refers also to the affidavits of Special Agents Edward Anderson, Harry C. Leslie, and John L. Haas, found on pages 102 and 103 of the House hearings, and for specific denial of the affidavit of Nicolai Melikoff the committee refers to the affidavits of Frank Francisco, Harry C. Leslie, James A. Kennedy, and Charles J. Scully, found on pages 103 and 104 of the House hearings.

As a further answer of the department to the charge of brutalities following the arrests of members of the Union of Russian Workers and members of the Communist Party in New York, the committee calls attention to the affidavit of Mr. George F. Lamb, division superintendent in the Department of Justice, and assigned to the Bureau of Investigation in New York City, found on page 105 of the House hearings. Among other things, Mr. Lamb says in his affidavit that his attention had been called to charges made that various persons had been assaulted by agents of the department, either at the place where the arrest was made or after being brought to the office of the Bureau of Investigation. He says that he questioned all of the agents who had taken part in the arrests, and they denied having struck or otherwise assaulted any person on that occasion; that the examination conducted at the bureau was under his immediate supervision, and that he was present throughout the whole period of the examination, which did not terminate until about 4.30 o'clock a. m., November 8, the arrests having been made on the night of November 7. He describes how the examinations were held in various rooms of the bureau, all these rooms connecting, and that it would have been impossible to make a noise or create a disturbance in one room which would not have been heard in several of the adjacent rooms. He says that, being in charge of the bureau, he felt personally responsible for the proper conduct of the examinations, and all through the night visited each examiner in turn to see how he was progressing, and that at no time did he hear of anyone being assaulted or hear any improper language applied to any of the persons being examined. He says further that he has inquired of every agent who was connected in any way with the Union of Russian Workers matter on November 7 if he struck or assaulted or encouraged anybody else to strike or assault any of the parties arrested on that occasion, either in the rooms of the bureau or at any place outside of said bureau, and that every agent had denied having struck or assaulted anyone or having subjected a prisoner to improper treatment of any kind.

The committee also calls attention to the affidavit of Charles J. Scully, special agent of what is known as the radical division of the bureau, and who acted under the supervision of Director William J. Flynn and Division Superintendent Lamb, found on page 106 of the House hearings.

With these affidavits before them, the committee can not believe that the charges made of brutalities, or even improper conduct, on the part of the agents of the Department of Justice in the raid on the Russian People's House at 133 East Fifteenth Street, New York City, have been sustained. That if assaults on any of the men arrested were at any time committed by the agents of the department in any of the raids it is difficult to believe that they were committed without provocation or a first assault on the part of some of the men who were taken into custody.

Exhibit 3, in the pamphlet of the National Popular Government League, is an affidavit made by one Albert de Silver, who is an official of the National Civil Liberties Union, in regard to the alleged raid on the office of Novy Mir, one of the official organs of the Communist Party of America, a paper on which Leon Trotski worked as an editorial writer prior to his becoming minister of war of Soviet Russia, and on which Ludwig C. A. K. Martens also held an editorial position prior to his becoming representative of the Russian Socialist Federated Soviet Republic, in New York City.

Mr. de Silver in his affidavit describes the confusion he found in the two rooms which had been occupied as editorial offices of the paper, saying that they were entirely covered with torn books and papers, some of them in Russian and some of them in English, and that there were pieces of broken typewriters mixed up in the wreckage, and that desks and tables had been upset and the contents removed and torn, and in some cases the panels and drawers of such desks and tables were smashed.

It is significant that Mr. de Silver, considering his position, did not appear before either the subcommittee of the Senate Judiciary Committee or the House Rules Committee, although he alleges that he was an eyewitness. In his affidavit he states that on his visit to the office of Novy Mir he recognized and spoke to Mr. Mortimer R. Davis, special agent of the Bureau of Investigation of the Department of Justice, who seemed to be in charge. He desired to know of Mr. Davis if he might go inside, and alleges that Mr. Davis said that he didn't care, but that he might get hit over the head if he did. In the hearing before the House Committee on Rules Mr. Palmer stated that Mr. Davis, who was then in St. Louis, had been communicated with by long distance, and that he denied emphatically that he had made any such statement to Mr. de Silver, and further stated that there was no undue destruction of property in the offices of the Novy Mir by agents of the Department of Justice on the night of January 6.

The circulation of the Novy Mir is estimated at 20,000. Two or three short extracts from editorials appearing in that paper may be of interest.

On March 8, 1917, under the title "Prepare soldiers of the revolution," among other things, is the following:

"It is important to establish everywhere reading circles of the Novy Mir, to read and discuss jointly the most important articles. It is necessary to rouse and push forward the proletarian mind. It is necessary to prepare soldiers of the revolution.

"A spirit of revolt spreads larger and larger over the working masses of the entire world. Neither threats nor curses of the high priests of the bourgeoisie society are capable of holding back the pressure of proletarian masses. Even in countries where heretofore the revolution has not yet unfurled its red flag and the bourgeoisie gods have not yet been deposed from their pedestals, over there grows a big wave of people's protests which may any day flare up with a red flame. * * * But the revolutionary strike wave, extending more and more over the world, is raising the workingman of the United States, and will teach him the European methods of struggle. His rôle is yet to come."

Again—

"What must interest us and what we must consider first is the sentiment of the broad circles of American working masses. Are they ready to do something in order to really better their condition? The problem of the high cost of living will be solved only so much, as much as the organized American proletariat is capable, not with words but with deeds, to measure its strength with American capitalists and the Government that is defending their interests. All 'accursed problems' can be and must be solved only from this point of view."

Exhibit No. 4 of the National Popular Government League is a short statement with regard to the Salsedo and Elia cases, which were reported in the daily press, during the month of May, 1920, Salsedo having jumped from the fourteenth floor of the Park Row Building, New York City, where the offices of the Department of Justice are located. He was confined there with Elia, both being detained in connection with the investigation of bomb plots. Those two cases are distinct from the nation-wide raids in November and December of the same year. The Attorney General before the House Rules Committee went into detail on this case, his testimony appearing on pages 41, 42, and 161 of the House committee record for June 1, 1920, showing that they were confined with their own consent and the consent of their attorneys, and that important admissions were made by Salsedo. There is nothing whatever in the record before either committee to indicate that the death of Salsedo was due even indirectly to negligence or improper actions on the part of the Government officers.

Exhibits Nos. 5, 5a, 5b, and 5c of the National Popular Government League refer to conditions in Detroit, Mich. The charges are similar to those already set forth, and include particularly unsanitary conditions in places of confinement. Exhibits 5a and 5b also refer to brutality.

There was considerable testimony in regard to conditions in Detroit, and the assistant custodian of the Federal building submitted the floor plan of that building. Undoubtedly the facilities were too limited for the large number of aliens apprehended, although Mr. Arthur L. Barkey, special agent in charge, in giving account of the conditions in answer to the charges made by Attorney Solomon G. Paperno, stated that the corridor around the Federal building, where the arrested aliens were taken, extended around the four sides of the building, and surrounded an open court, at the top of which was an extensive skylight, which during the daytime provided the entire lighting for the interior of the Federal building. He further stated that this corridor was 18 feet wide, 12 feet high, and in the aggregate measured 4,512 square feet, which allowed approximately 8 square feet for the occupancy of every alien held, and that it is therefore untrue that those arrested did not have sufficient room even comfortably to stand. It had been alleged by Mr. Paperno that the flooring in this corridor was stone, but Mr. Barkey says it is a wooden floor, which extends on all four sides of the corridor. Mr. Barkey's statement is found in full on pages 458–463 of the Senate hearings.

In answer to the charge as to insufficiency of food, it was shown that after the aliens had been removed from the Federal building there were large quantities of food left by them.

One of the witnesses as to conditions in Detroit was a member of the citizens' committee, appointed by the Assistant Secretary of Labor, Mr. Post, and the committee had also before it a pamphlet issued by the Federal Council of the Churches of Christ, prepared by Mr. Panunzio, as well as the letter from Attorney Paperno, of Detroit, to which the statement of Mr. Barkey, above referred to, is a reply.

Admitting, however, that there was for a few days an unfortunately crowded condition in the Federal building in Detroit, which it would seem the department agents sought to relieve as rapidly as possible with the facilities at hand, through their examinations of the aliens arrested, yet such condition was largely the result of a campaign of this size and character, although your committee believe that much of the inconvenience and hardship to persons arrested might have been avoided by the exercise of reasonable care and foresight to begin with.

While not taking the position that the agents of the Department of Justice, or both the Departments of Justice and Labor, had no sufficient cause for arresting and holding, either for warrants or for examination, the persons actually taken, yet the committee is of the opinion that in the Detroit raids the number likely to be arrested should, if possible, have been ascertained in advance and provision made by those in charge of the raids for the housing under reasonable conditions as to room and sanitation of all who were arrested.

There were two houses raided in the Detroit campaign—one the South Slavic Hall, which was the headquarters of the South Slavic Branch No. 17, Communist Party of America, and was a rendezvous for all radicals of that nationality, according to the statement of Mr. Barkey; and the other was the House of Masses, said by Mr. Barkey to be owned by an association composed of all the well-known radicals in that district. "It was a place in which for a long period of time speakers openly advocated the overthrow of the Government of the United States by force and violence and was the distribution point for insidious propaganda against the country. When the agents visited these halls they found secret meetings in progress, and it was at these halls that the most active agitators were taken into custody for investigation."

The testimony of the Attorney General before the House Rules Committee on conditions in Detroit appears on pages 60 to 63, House hearings.

Exhibits 6 and 7 of the National Popular Government League refer to the subject of provocative agents, and the one notable instance cited purports to be given by Miss Pratt. Miss Pratt charged that one of the agents of the Department of Justice testified that as such he had joined the Communist Party of Buffalo and had become its recording secretary. He appeared as a witness against Miss Pratt before the board of education of Buffalo when she was suspended as a teacher in the public schools.

On page 87 of the House committee hearings this charge is branded by the Attorney General as a deliberate and unwarranted falsehood. He introduced a transcript of the record of the case before the board of education of Buffalo and showed that the particular agent had no connection with the Department of Justice at the time, and, in fact, has never worked as an undercover agent. With regard to Petzold (Exhibit 7), the Attorney General replies to the House committee on page 95 of that record. This covers the same special agent referred to in the previous affidavit.

Exhibit 8 of the National Popular Government League is a general charge to the effect that the Department of Justice in western Penn-

sylvania and West Virginia at least followed the practice of using undercover informants employed by the private detective agencies, which in turn are employed by the steel and coal companies; the Department of Justice accepting the reports of these private detectives as the basis for action. No evidence of a substantial nature was presented to your committee on this point, either by the National Popular Government League or the witnesses who appeared. It is also charged in this connection that arrests were frequently made upon the unsupported statements of these private informants, the arrests being made by the local police without warrant, the police reporting the case to the Department of Justice, which then proceeds with an investigation. No facts are presented in this connection. Your committee can not censure the Department of Justice for making an investigation in cases reported to them by the police, regardless of how the arrest was made, provided the Government merely investigated and was not responsible for the initial arrest.

The pamphlet of the National Popular Government League devotes considerable space to the case of one Gaspare Canone, an anarchist of New York, there being included photographs purporting to show his condition after being subjected to brutal treatment by the Government agents and police as well as specimens of his handwriting purporting to show that his name was forged by Government agents, who placed the same on a statement alleged to have been made by him. The Attorney General referred to this case before the House Rules Committee, stating that he had ordered a special investigation of the same. He filed with your committee a number of affidavits of officers and employees in this department (see pp. 92 and 134 to 155 of Senate hearings) explaining the case in great detail. He also filed an authenticated photograph sworn to by a local police officer, who took the same just after Canone's arrest, and which shows the subject to be in an entirely different condition from that indicated in the exhibit filed with the charges. The charges are answered by the officers in the order made in this case and their affidavits appear in full. In addition, it is shown that Canone is an admitted anarchist.

Exhibits 10, 11, and 12 refer to the confidential instructions issued by the Bureau of Investigation of the Department of Justice to its agents at the time of the raids. This subject is closely related to the exhibits immediately following, referring to the Colyer case at Boston, a habeas corpus proceeding in the United States district court before Judge George J. Anderson. These instructions of the department appear to form the main basis of the charges of illegal practices against the department. The decision of Judge Anderson appears to be based very largely on these same instructions, although in that proceeding the court gave consideration to a great mass of other matter. That the Department of Justice and the Attorney General, as the chief law officer of the United States, had sufficient legal authority to act in the enforcement of the deportation statutes, particularly in cooperation with the Department of Labor, has been already discussed.

On the subject of arrest without warrant, it appears from the testimony that warrants were applied for in many hundreds of cases, and that while executing or attempting to execute these warrants the officers found large numbers of individuals in circumstances indicating they also should be held as fit subjects for action similar to that contemplated in the cases where warrants were in their possession. In this respect it is claimed that the officers followed an old practice of the Immigration Service in detaining the party or parties and applying immediately for telegraphic warrants of arrest, and that the Department of Justice in its participation merely followed the custom of the other department.

But in such case what difference in principle between the arrest of a party without a warrant who is found in the commission of a public offense and the arrest of a party without a warrant who is found participating in the meeting of an organization proscribed under the deportation statute, and who to all appearances is a member of such organization? Especially if warrants were in possession for the arrest of specifically named persons found at a meeting of the proscribed organization, would not the agents be justified under the law in taking into custody for examination others found at the meeting but for whose arrest no warrants had been issued or even telegraphed for before the arrests were made?

Confusion arose in some instances due to the misspelling of difficult names, which resulted in mistaken identities. The Iwanko case, a discussion of which is found on pages 542–560, Senate hearings, is an example. It is hardly a matter of wonder that in a movement of such proportions some mistakes were made or that in some cases American citizens were arrested. In comparison to the total number of warrants issued or arrests made, it would appear that the percentage in which there was a mistake as to citizenship was, after all, very small, and the record shows clearly that promptly upon the discovery of American citizenship the party was released. There has been some difference of opinion in the courts with regard to arrests without a warrant in possession. Judge Anderson, in the Colyer case, took the position that in such a case there was not due "process of law," and ordered the release of the petitioners on habeas corpus. On the other hand, Judge Westenhaver, on June 12, 1920, in the United States District Court for the Northern District of Ohio, in the case of Lem Kosopud, ruled in effect that an arrest in these cases without the officer having a warrant in his possession is not irregular. The opinion of Judge Westenhaver is instructive, and more particularly so because it involves a large number of arrests of aliens made on telegraphic warrants on the night of January 2, 1920, and at the same time raids and arrests were made in other cities of the United States. It bears on nearly all the points involved in this investigation.

We quote from the opinion as follows:

* * * "Other grounds more strongly urged in argument are the following: That the petitioners were originally arrested without warrant; that some, if not all, were immediately interrogated, before obtaining counsel, with respect to the charges alleged in the warrants; that the answers then made were given in evidence against them in some, if not all, of the cases on the hearing before the immigration inspector; and that at the time of their arrest membership cards in the Communist Party and literature in their possession tending to support the charge made in the warrant were seized and afterwards introduced in evidence against them. The warrants in all except two cases were issued December 29, 1919. Telegraphic notice of the issuance of these warrants was given to special agents of the Department of Justice and arrests made January 2 or 3, 1920. At the time of such arrest the formal warrants were not in the possession of the arresting officers. It is also true that immediately thereafter some, if not all, of the petitioners were interrogated without the presence of any counsel representing them, and the statements then made were afterwards made in evidence, and that in some instances membership cards and other incriminating evidence found in their possession were seized and used. * * *

"Nor is any sound reason suggested why the original arrest was unlawful because the arresting officer did not have in his physical possession the warrant of arrest. It had been issued and instructions to act had been received by the arresting officer. It would be a strong proposition in an ordinary felony case to say that a fugitive from justice for whom a capias or warrant was outstanding could not be apprehended until the apprehending officer had physical possession of the capias or the warrant. If such were the law, criminals could circulate freely from one end of the land to the other, because they could always keep ahead of an officer with the warrant. The practice in such cases is precisely that which was followed in these cases.

"Nor do I perceive any good reason why the arresting officer may not lawfully interrogate or examine the person arrested with respect to the charge made against him, even though the alien is not then represented by counsel and is under arrest. This is the usual course in criminal proceedings. Whether his statements thus made may be given in evidence against him depends upon whether or not they were voluntary. They will be presumed to have been made voluntary unless the contrary appears, and they will be held to be involuntary only when shown to have been induced by threat, promise, or encouragement of hope of favor. The absence of counsel, the fact that the prisoner may not have been warned that he was not required to make a statement, or that if he did it might be used against him, or that he was under arrest and restraint, do not by themselves prevent the statements from being voluntary or make them incompetent as evidence. (See Wilson v. United States, 162 U. S. 613.)

"No objection was made on the hearing before the immigration inspector, or at any other time, to the use of this testimony because it was not voluntary or on any other ground. Likewise, as to the membership cards and incriminating literature seized at the time of their arrest, the petitioners on the hearings freely admitted the authenticity of the cards, their membership in the Communist Party, familiarity with the contents of the incriminating literature, and in many, if not all, cases a belief in the views therein contained. To make available the constitutional provision that unreasonable searches and seizures without warrant render inadmissible evidence thus seized an objection should be interposed at some time or another. Whether, if such an objection had been interposed on the hearing before the immigration inspector or before an order of deportation was made, these cards and this literature would be admissible presents a question which does not arise upon the record and as to which no opinion need be expressed.

"Another objection much urged is that the petitioners did not have a fair hearing because they were not represented by counsel. As already stated, they did not have counsel when interrogated by the arresting officer. The immigration inspector, however, testified that all of them were advised during their hearings before him that they were entitled to have the assistance of counsel in preparing their defense and in defending against any order of deportation. The proceedings show that the warrant was fully read and explained to each of them, and that they were advised of their right to counsel, and that each of them waived his right to counsel. * * *

"The only legal inquiry upon the foregoing facts is whether or not the petitioners were denied counsel in such a way as to deprive them of a fair hearing. Manifestly, the absence of counsel when they were being interrogated by the arresting officers is immaterial. The situation in that respect is no different from that which exists in most cases of arrest on a criminal charge. The aid and assistance of counsel at or during the hearing before the immigration inspector and before the order of deportation is made is the privilege which the law accords to aliens charged with being unlawfully within the United States. Nor does it make a hearing before an immigration inspector unfair and subject to review because the alien may not have had the benefit of counsel at the beginning of those proceedings. It is sufficient if, during the hearing, he is advised of his rights or is accorded counsel, and no part of the evidence previously taken or used against him is concealed or withheld from his counsel and he is not thereby deprived of the privilege of bringing forward any explanation or rebutting evidence. It was so held in the following cases: Low Wah Suey *v.* Backus (225 U. S. 460, 471); Mok Nuey Tan *v.* White (9 C. C. A.; 234 Fed. 743); Guincy *v.* Bonham (263 Fed. 582, 585)."

Your committee believes in administrative cases involving the control of immigrants the Government through its executive departments has and must continue to have what might seem to be but which are really not extraordinary powers. So far as arrests on telegraphic warrants are involved in the present charges against the Department of Justice, it is very evident that the department was but following rule 22 of the Department of Labor governing the proceedings in deportation cases, which rule and the practice under it was sustained by Judge Westenhaver in the Koposud case. The validity of a telegraphic warrant when issued in accordance with the rule of the Labor Department is recognized in Jouras *v.* Allen (222 Fed. 756). So far as arrests without warrant of any kind are concerned, they should be justifiable, no law prohibiting them, in cases and under circumstances analogous to arrests in criminal cases when permitted at common law and under the statutes of perhaps all the States.

Concerning the charge of unlawful searches and seizures in these raids, evidence was introduced showing that search warrants were secured in many instances, and that certain provisions of the espionage act were used as the basis for the issuance of the same. When Title II of the espionage act, relating to search warrants, was framed the Judiciary Committee endeavored to clearly fix the limits of action thereunder so as to insure a due regard for the constitutional rights of the citizen. However, if your committee are to be guided wholly by the principles so plainly laid down in the case of Fong Yue Ting (149 U. S. 698) and in the case In re Chin Wah (182 Fed. 256), it would seem unnecessary to discuss further the question as to whether searches and seizures without warrant in deportation cases were inhibited by the Constitution, for the language of the court in the first named of these cases, and which is followed in the Chin Wah case, is that "the provisions of the Constitution, securing the right of trial by jury and prohibiting unreasonable searches and seizures and cruel and unusual punishments, have no application" in deportation proceedings. However, it is but proper to say that the view and explanation of the Attorney General concerning the theory under which search warrants were issued and used was that the evidence procured would be used as the basis for possible criminal prosecution. He refers to the fact that the cases of Silverthorne Lumber Co. *v.* United States (251 U. S. 385), and Ex parte John Jackson (96 U. S. 277), referred to in the charges against the Department of Justice, were not decided until, in the Silverthorne case 24 days, and in the Jackson case 40 days, after these raids, and that in framing the confidential instructions to the agents of the department he did not have the guide

of these decisions, if they could have been of guidance at the time the instructions were framed.

Title II of the espionage act makes it incumbent upon the judge or commissioner, when proper grounds are shown, to issue the search warrant. It is only reasonable to suppose, therefore, that the officials considered the showing made sufficient to justify the issuance of the warrant. It should be observed that the evidence introduced by the Attorney General before both the House and Senate committees shows, among other things, that much of the radical propaganda material was disseminated through the mails. The espionage act makes it a penal offense to distribute certain described matter through the mails, and the Postmaster General in administering those sections had prohibited this class of matter. The Attorney General urges that the continued dissemination through the mails was, therefore, a violation of the penal statutes of the United States, in which the papers themselves were the means of committing the offense. He indicated his consideration of section 6 of the Criminal Code in connection with search warrants. Whether that section would apply to this class of matter has never been determined by any competent court, but the view of the Attorney General was that whether he actually uses the evidence procured on a search warrant for prosecution under one statute, or in the preparation of a case under another statute, or, in fact, whether he uses it in any prosecution at all, is a matter of administrative discretion for which he is not compelled to answer.

In the consideration of the written instructions issued by the Department of Justice in connection with the raids, and covering the matter of search warrants, the Attorney General contends that at least there were sufficient grounds upon which to base application for such warrants.

As to searches and seizures in the absence of search warrant, the Attorney General showed that in the average case searches and seizures were made with the consent either express or implied of the party whose premises were searched. It is but just to say that in many cases there was a conflict on this point between the testimony on behalf of the alien and that introduced by the Attorney General in reply. None of the aliens were examined directly by the committee, and it is a question under all the circumstances as to which is more worthy of belief. But the written instructions of the Department of Justice to their agents instruct that search warrants are to be procured "wherever necessary." The Attorney General explained this by stating that it was intended to cover those instances in which the alien objected to a search or stood upon his rights as to the search warrant. It should be noted that aside from the one case of Sedar Sarachuk, in which a denial is made by the Department of Justice, there was no case presented to your committee in which a search of the dwelling was made over the expressed protest of a householder.

Considerable attention has been devoted to the so-called immigration rule 22, before both your committee and the committee of the House Committee on Rules. The change made in this has been noted. Under the change aliens arrested on warrants of arrest for deportation were to be permitted to have counsel at such stage in the proceedings as would insure protection of the Government. It was shown that this rule was adopted because in many instances where a warrant of arrest was about to be served, and where the alien was permitted to have counsel from the very beginning, before identifying himself, he would refuse to answer even questions as to identity, on the advice of counsel. This rule was upheld by the United States Supreme Court in the case of Low Wah Suey (225 U. S. 460), where it is held that "a preliminary examination of an alien without counsel is permitted by the statute; and if at subsequent stages of the proceedings the alien has counsel, there is no denial of right." See also the Koposud case decided by Judge Westenhaver.

It seems necessary to quote again paragraph (b) of subdivision 5 of rule 22, as amended in December, 1919:

"Preferably, at the beginning of the hearing under the warrant of arrest, or, at any rate, as soon as such hearing has proceeded sufficiently in the development of the facts to protect the Government's interests, the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued, and shall be apprised that thereafter he may be represented by counsel."

It will be seen that the rule, in substance, requires that before the beginning or soon after the beginning of the hearing the alien shall be apprised that thereafter he may be represented by counsel.

Under the procedure authorized by this amended rule the Federal officer or officers conducted a preliminary examination of the alien, in which they used a form which had been prepared for that purpose, setting forth questions as to identity, birth, age, citizenship, address, and affiliations, if any, with certain specified organizations. The objection made to this procedure is wholly untenable under the authorities above cited.

But the record shows no case, so far as your committee is advised, where the alien was not, at least after the preliminary examination above mentioned, advised of his right to counsel, and no case in which he was prevented from securing counsel.

In view of the fact that these were not criminal cases, and because of the past experiences of the Government in even identifying the subjects, the committee is of the opinion that the rule was justified. In any event, the Department of Justice can not be charged with illegal practices, when it was following the rule of the Department of Labor, which rule already had been approved by the United States Supreme Court. However, the rule has since been changed.

In conclusion, on this particular subject, and with special regard to Exhibit No. 13 of the National Popular Government League, there has not only been a wide difference of opinion as to the regularity of process, but also on the question of whether the Communist and Communist Labor Parties fell within the provisions of the act of October 16, 1918, as proscribed organizations, membership in or affiliation with which subjected an alien to deportation. The Department of Labor ruled that the Communist Party was such a proscribed organization; but although the principles and teachings of both parties were identical, it saw fit to exclude the Communist Labor Party. This decision was made on the theory that the program of the Communist Party taught the overthrow of the Government of the United States by force.

Judge Anderson, in the Collyer case—a habeas corpus proceeding—endeavored to overrule the Department of Labor in this decision, he holding that the Communist Party did not teach the forcible overthrow of this Government. As stated above, he has since been overruled by the Court of Appeals; but prior to the decision of the higher court at least three Federal judges disagreed with him and ruled to the contrary (Judge Westenhaver, in the Kosopud case, in Cleveland; Judge Knox, in the case of Martin Abern, in New York; and Judge Hough, of the Federal Court of Appeals for the Second Circuit, in the case of Georgian *v.* Uhl), while Federal Judge Albert B. Anderson, of the United States District Court for Indiana, canceled the certificate of citizenship of Paul P. Glaser on the ground of membership in the Communist Party. (May 28, 1920, case No. 7926.)

Another portion of the confidential instructions of the Department of Justice, which was the subject of considerable question, is that instructing that confidential informants of the department should arrange, wherever possible, to have meetings fixed for the night on which it was contemplated to make the raids for the purpose of expedition. This, it was charged, was an evidence of the use of provocative agents. Your committee can not agree that the mere arranging for having subjects appear at a given time and place in order to expedite action by the authorities is a provocative act, so far as any offense is involved. The use of undercover informants is one of the oldest practices in criminal investigation, and it has the specific approval of the courts. In some cases the Supreme Court has refused to consider confidential informants and undercover agents as accomplices, even where they used decoys. (See Grimm *v.* United States, 156 U. S. 604, and Goode *v.* United States, 159 U. S. 662.)

No evidence has been introduced before your committee showing that any of the undercover agents or informants of the Department of Justice ever actively participated in the framing of any portion of a platform or program or indulged in any speech or writing advocating or encouraging the teaching of violence or the use of force. The inferences drawn by Judge Anderson in the Collyer case, to the effect that Government agents were responsible for offensive portions of the platform and program of the Communist Party of America, certainly were not warranted from the evidence produced before your committee, including the record in the Collyer case.

Exhibit 16 of the National Popular Government League is merely the opinion of Assistant Secretary of Labor Post in the case of Thomas Truss, of Baltimore, canceling the warrant. The committee considers that this was put in for purposes of illustration, in view of the fact that the Attorney General before the House Rules Committee (see pp. 196–199) covered the facts in the Truss case in detail. Although several witnesses before your committee referred to the Truss case, no new evidence was introduced tending to show any illegal action on the part of the agents of the Department of Justice.

It is felt that your committee in this report has gone sufficiently into detail by referring to the charges presented in the order in which they appeared.

The inquiry included repeated demands upon the Attorney General for an explanation of the statutory authority for nearly every move made by the Department of Justice and the Department of Labor in the campaign. Your committee, however, feels that many of these details are of a character concerning which the Attorney General is permitted to exercise some administrative discretion along the lines indicated by the Supreme Court in the McDaniel case (7 Pet.), where it was said by the court that while the head of a department——

"* * * is limited in the exercise of his powers by law; * * * it does not follow that he must show a statutory provision for everything he does."

Your committee, while not in any way impugning the motives or questioning the sincerity of any of the committee of 12 lawyers in making these charges against the Department of Justice, are disposed to believe that the special interests and affiliations of some of them are relevant to the inquiry.

Three of the most prominent of the committee of 12, namely, Felix Frankfurter, Ernst Freund, and Frank P. Walsh, were identified with the American Civil Liberties Union, a consolidation of organizations advocating unlimited free speech. This union was organized on January 12, 1920, the same being a reorganization of the National Civil Liberties Bureau. One of its directors was Mr. Roger N. Baldwin, who made a statement before the New York joint legislative committee, in which he set forth the purposes of the union and the scope of its activities. In the course of his statement he said, among other things:

"I would say on behalf of the entire committee that all of them disbelieve the legal theory of constructive intent, and that all of them believe in the right of persons to advocate the overthrow of government by force and violence, while all of the members of the committee totally disbelieved in any such doctrine themselves."

Mr. Baldwin gave some advice to Louis P. Lochner, noted for his pacifist activities after the war declaration, for his conduct of a lobby against the espionage act, and his connection with the Nonpartisan League, a Socialist of German descent, in which Mr. Baldwin said:

"We want to also look like patriots in everything we do. We want to get a lot of good flags, talk a good deal about the Constitution and what our forefathers wanted to make of this country, and to show that we are the fellows that really stand for the spirit of their institutions."

One of the documents issued by the unions composing the American Civil Liberties Union has this to say:

"There should be no control whatever in advance of what any person desires to say. * * * There should be no prosecution for the mere expression of opinion on matters of public concern, however radical, however violent. Laws purporting to prevent the advocacy of the overthrow of the Government by force or violence are all violations of the right of free speech. The expression of all opinions, however obnoxious, should be tolerated."

Your committee think it has been rightly said that the "effect of the activities of the American Civil Liberties Union is to create in the minds of the ill-informed people the impression that it is un-American to interfere with the activities of those who seek to destroy American institutions. They seek to influence legislators and executives to repeal or veto any law calculated to protect the State or the Federal Government from the attacks of agitators" (pp. 1979–1982, Report of the New York legislative committee).

The conclusion of the New York committee is that the American Civil Liberties Union, in the last analysis, is a supporter of all subversive movements, and its propaganda is detrimental to the interests of the State. It attempts not only to protect crime but to encourage attacks upon our institutions in every form. Many of the members of its committee—that is, the committee of the American Civil Liberties Union—are undoubtedly sincere in their convictions, but the consequence of their activities is injurious to the public interest.

Zechariah Chafee, jr., who testified before your committee, is a professor of law at Harvard University. He with Mr. Frankfurter were associated with other counsel for the aliens in the Colyer case. Although it does not appear that he is a member of the Civil Liberties Union, Mr. Chafee has written a book in which he declares that there

should be no law against sedition and anarchy (p. 187, Senate hearings).

The activities of Mr. Frank P. Walsh have been quite pronounced. He has been something else than cochairman of the War Labor Board. He first was a member of the Neutral Conference Committee, organized ostensibly to bring before the public the idea of a conference of neutral nations, irrespective of peace platforms, preparedness, and the terms of the war settlement. While cochairman with ex-President Taft, of the War Labor Board, he advised and assisted in putting out propaganda literature justifying the position of the I. W. W. in New York. Mr. L. S. Chumley, who had his offices with the National Civil Liberties Bureau, was in correspondence with Roger Baldwin, hereinbefore referred to, and in writing Mr. Baldwin said that Mr. Walsh would do the same, and asked for suggestions how to raise $25,000 bail for Haywood. It appears therefore that Mr. Walsh had his active relations with both the Civil Liberties Bureau and the I. W. W. (See p. 1901 of report of the New York legislative committee.)

Mr. Francis Fisher Kane, another of the 12, had on January 12, 1920, resigned his position as United States district attorney for the eastern district of Pennsylvania, stating as reasons therefor that he was out of sympathy with the antiradical policies of Mr. Palmer and his method of carrying them out. Entertaining the views he did and as expressed in a letter to the Attorney General of January 12, 1920. Mr. Kane acted most honorably in tendering his resignation, and his sincerity can not easily be questioned. He states in his letter that as he reads the manifestos of the Communist Party that party does not expressly stand for the overthrow of the Government by force; further that he "believes in the nationalization of the railroads, of the coal industry, and perhaps other public utilities." He disagrees with the Post Office Department in denying to the New York Call (Socialist) second-class mailing privileges and says that he would like to see section 3 of the espionage act die, etc. Mr. Kane's statement before the committee and the letter to the Attorney General, found on pages 294–350 of the Senate hearings, gives the impression that his tendencies are strongly Socialistic and serves to explain his part in the report of the committee of 12 and his appearance before the Senate committee.

Mr. Swinburne Hale is also a signer of the report of the committee of 12. While making no statement before the Senate committee, his testimony before the House committee was published in pamphlet form under the caption "Do we need more sedition laws?" He was a member of the platform committee of the committee of 48 at the St. Louis convention, December, 1919. He held the rank of captain in the National Army and was in the military intelligence section. He resigned when the New York legislative committee demanded information regarding Ludwig Martens. He is reported to have said during the course of a speech before the committee of 48 in Chicago, "I will never be drafted or serve again in another war of offense or defense."

Dean Tyrrell Williams, of the Washington University Law School, St. Louis, Mo., is also one of the complainants who appeared before the Senate committee. His statement is found at pages 207–224 of the hearings. The committee find nothing of value in the statement and little that is relevant to this inquiry.

Jackson H. Ralston, of Washington, D. C., one of the signers of the report, was responsible largely for the institution of the charges against the Department of Justice, as shown by his statement at pages 257–258 of the Senate hearings. Mr. Ralston communicated with the majority of those attorneys who signed the National Popular Government League report, and was counsel for some of the men arrested. He was counsel for Mr. Louis F. Post, Assistant Secretary of Labor, in a hearing before the House committee on charges against Mr. Post arising out of his actions and policies in connection with deportation proceedings. Impeachment proceedings against Mr. Post were threatened or imminent at the time, hence it does not seem far-fetched to say that the formal charges against the Department of Justice had their origin in the inquiry first made by the House concerning the course pursued by the Assistant Secretary of Labor. Mr. Ralston, as well as others who signed the report, are members of the National Popular Government League.

In conclusion, your committee is of the opinion there was no usurpation of power by the Department of Justice in its cooperation with the Department of Labor in the deportation proceedings which have been the subject of this inquiry; that the execution of warrants of arrest by the agents of the Department of Justice was lawful; that no constitutional right was violated in making arrests on telegraphic warrant, as permitted by rule 22 of the rules governing in deportation proceedings; that the change made in rule 22 in December, 1919, did not deprive any alien of "due process of law"; that in the matter of searches and seizures under warrant, or without search warrant, in deportation cases, the Attorney General could justify his course under the decision of the Supreme Court holding that in such cases the constitutional guaranties have no application. In any event, your committee do not find that any great hardship or deprivation ensued from the use of search warrants by the agents of the Department of Justice.

The question of simultaneous arrests or raids in different cities and sections of the country is largely a matter of policy. Reference has hereinbefore been made to the conditions existing or believed to exist at the time these raids were made. The department evidently proceeded on the theory that simultaneous arrests was the most effective way of putting an end to extreme radical activities and ascertaining who among the great body of aliens in our country were subject to deportation because of their membership in organizations proscribed by the statute. Your committee can not say but that the policy thus adopted and carried out was an effectual one. Subsequent events and conditions might very well indicate that it was effectual.

But, on the other hand, your committee are of the opinion that the arrests of aliens and their detention afterwards was in some instances accompanied by unnecessary hardships. In some instances, as at Detroit, for example, arrests in such large numbers should not have been made, or facilities should have been provided in advance for the accommodation, under reasonable conditions as to room and sanitation, of all who were arrested. It seems to your committee that there was a lamentable want of foresight on the part of those agents of the Department of Justice who were in charge of the raids in this respect. Further, more complete facilities should have been provided for the speedy examination of all who were taken into custody, in order that the work of those found not to be subject to deportation should not suffer or their families be deprived of their presence at home. There was, it seems to the committee, an unnecessary delay in making some of these examinations.

Further, we think that in some cases, particularly in the cases of the arrests at Bridgeport and Detroit, there was unreasonable delay in finally determining whether the aliens arrested were subject to deportation. But to what extent the Department of Justice should be held responsible for these delays your committee is hardly in a position to say. Presumably the work and any supervision on the part of the Department of Justice ended when the arrests were made and the alien was turned over to the immigration inspector of the Department of Labor. If delays were thereafter caused by a failure of the agents of the Department of Justice to present evidence in the case, then the department or such agents are responsible, but as to whether delay of this kind was caused by the agents of the Department of Justice does not clearly appear. But, in any event, and whoever is chargeable with such delay, aliens should not be kept confined in jails, barracks, or elsewhere for months, as was done in some cases, without determination of the question as to whether they are liable to deportation or not, or without actual deportation if found subject to deportation under the statute.

Your committee are of the opinion that in the interests of certainty and to avoid confusion in the administration of statutes providing for the deportation of aliens there should be some additional legislation amending present statutes so as to provide:

(a) A more explicit definition of what shall constitute opposition to the Government by force or what shall constitute the advocacy of the overthrow of the Government by force or violence, either by the individual or by any association or organization of individuals.

(b) That the Department of Justice, through the Bureau of Investigation, be given specific concurrent authority with the Bureau of Immigration of the Department of Labor in the apprehension of aliens subject to deportation for any of the statutory reasons, the general jurisdiction of the Department of Labor to issue warrants for arrest in such cases and to hear and determine the same to remain in the Department of Labor as at present.

(c) That the Attorney General of the United States be given specific authority to be represented by a duly authorized assistant in all cases before the Department of Labor based upon evidence or information submitted by the Department of Justice and to have the right to examine and cross-examine witnesses.

(d) That in addition to agents of the Department of Justice warrants of arrest in deportation cases may be executed by any civil officer of any State or of the United States engaged in the enforcement of law to whom such warrant may be addressed and delivered for service.

(e) A limit should be fixed on the time during which one arrested in deportation proceedings may be held in jail to await a determination by the Department of Labor, the period of delay occasioned by him not to be included, and a limit also to the time within which he shall be deported if found subject to deportation.

CHARGES OF ILLEGAL PRACTICES OF THE DEPARTMENT OF JUSTICE.

REPLY BY SENATOR WALSH OF MONTANA TO THE REPORT HERETOFORE SUBMITTED BY SENATOR STERLING TOUCHING CHARGES OF ILLEGAL PRACTICES OF THE DEPARTMENT OF JUSTICE.

The report submitted by the Senator from South Dakota in the nature of a comment made upon the disclosures before the subcommittee directed to inquire into the charges of illegal practices by the Department of Justice would, if approved or acquiesced in, afford more occasion for alarm, in the view of the undersigned, than even the acts of the department he has heretofore felt compelled to condemn.

It will be noted that in no particular are the facts as recited in the report submitted by me disputed. Issue is taken on some of the legal propositions advanced, and in connection therewith views are expressed which, but for the exigency which their author conceives to exist, never would be asserted by him or by anyone who appreciates or prizes the essentials of liberty. To these the observations herewith submitted will be in the main addressed. In passing, however, it may be remarked that by every adroit method of approval the committee is by the report under review solicited to conclude that "the end justifies the means." Even the horrible condition which prevailed in Detroit in consequence of the wholesale arrests made there is, in a measure, condoned by the mildness of the criticism directed at those responsible for it. It was perhaps somewhat worse there than elsewhere, but in some degree the same dire consequences must have ensued wherever the hordes taken in the "raid" were assembled. It was not only at Detroit that some of the victims "went crazy."

I shall spend no time on those portions of the report in which there are considered at some length the alleged abusive treatment of individual aliens by the subordinates of the department, set out in the pamphlet of the Popular Government League, and the character of the lawyers assuming the authorship of the same, obvious attempts to divert attention from the serious matters revealed by the hearings. It is enough to say, with reference to the wrongs so complained of, that even if fully established it would be sufficient for the responsible superior officers to say, as they no doubt might truthfully say, that they had in no manner countenanced them and had no knowledge that they were perpetrated.

I can not forbear, however, from remarking that perhaps the state of the record in that regard might not be so satisfactory to the Senator from South Dakota had he made any effort to go into the charges in that line. The department came forward with its version of the affair, presented as was the showing in the pamphlet, as a rule, by affidavit. The writer thought it useless, and perhaps more than useless, to spend time upon such an inquiry. No other member of the committee proposed a searching inquiry or proposed to call the alleged victims or those likely to support their complaint. And now it is regarded persuasive that the charges were not backed up at the hearing.

This is no adversary proceeding in which the National Popular Government League or any individual or group of individuals is required to assume the burden of proof. In the pamphlet is an affidavit of one De Silver, telling of the way a raid upon and search of the office of the newspaper organ of the Communist Party was carried out, the place being described as being in a state of wreck thereafter. The report says:

"It is significant that Mr. De Silver, considering his position, did not appear before either the subcommittee of the Senate Judiciary Committee or the House Rules Committee, although he alleges that he was an eyewitness."

Mr. De Silver was not called before the subcommittee of which the Senator from South Dakota was the chairman. If the issue upon which Mr. De Silver testified was by the chairman deemed important, he had the power of the Senate to compel the attendance of the witness and to require him to subject himself to examination and cross-examination.

As to the alleged "radical" tendencies of the lawyers mentioned, their character neither in that regard nor in any other appears to have any relevancy whatever to the inquiry before this committee, either

with respect to the facts which, as stated, are not denied, or with respect to the law applicable to such facts.

It might reasonably be assumed that some at least of those making complaint of the treatment accorded those taken in the raids were upon one consideration or another more or less sympathetic with them.

The argument of the Senator from South Dakota proceeds upon the theory, not avowed, but nevertheless clear, that the Department of Justice may do anything which the law does not forbid. He finds, for instance, that while under the act of 1892 a Chinaman may be arrested, with a view to his deportation, by any United States customs official, collector of internal revenue or his deputies, or United States marshal or his deputies, and, impliedly, by no one else, a white man may be arrested by anyone to whom the Secretary of Labor, or even an immigration inspector, may deliver the warrant for service or by anyone who may by either of such officials be directed to do so, there being in the law no class of officers expressly authorized to make service of the warrant upon white aliens. So he reasons concerning searches and seizures. Reaching the conclusion that the fourth amendment does not extend to deportation proceedings and finding in the law no express prohibition upon the perpetration, under the express command of the department, of such outrages as the evidence shows were committed, in order to secure documentary evidence, he finds nothing to condemn, in either the order or the manner in which it was carried out. I proceed to canvass the contention that searches and seizures such as those ordered and carried out as shown by the record before us are not forbidden by the fourth amendment.

It is indisputable that the Government may admit or exclude aliens in its discretion except as it may be restrained by treaty, and may, accordingly, prescribe the conditions under which they may enter or remain. It is likewise settled beyond controversy that no one is entitled to have tried by a court the question as to whether he is or is not subject to deportation—the determination of that question may be reposed in an administrative officer. That one charged with being an alien in this country in violation of its laws is entitled to a hearing before he can be deported would seem to need neither elucidation nor argument. It is monstrous to conclude, as one must conclude if the argument of the Senator from South Dakota is to be followed to its logical result, that the Secretary of Labor may deport anyone, even a citizen of the United States, whom he believes to be subject to deportation, without being required to observe the constitutional principle that no person shall be deprived of his life, liberty, or property without due process of law, implying, as it does, as declared by Webster, the right to be heard before being condemned. Indeed, orders of deportation come under review by the courts only upon the contention that by the proceedings resulting in them the petitioner has been, and that by the execution of such order they will be, deprived of their liberty without due process of law, the court being by section 753, Revised Statutes of the United States, authorized to issue and to hear writs of habeas corpus when a prisoner is in custody "in violation of the Constitution * * * of the United States." The question was squarely presented to the Japanese immigration case (189 U. S. 86, 100–101), in which the conclusion of the court was expressed in the following language:

"It has been settled that the power to exclude or expel aliens belonged to the political department of the Government, and that the order of an executive officer invested with the power to determine finally the facts upon which an alien's right to enter this country or remain in it depended was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to reexamine the evidence on which he acted or to controvert its sufficiency. (Fong Yue Ting *v.* United States, 149 U. S. 698, 713; Nishimura Ekiu *v.* United States, 142 U. S. 651, 659; Lem Moon Sing *v.* United States, 158 U. S. 538, 547.) But this court has never held, nor must we now be understood as holding, that administrative officers when executing the provisions of a statute involving the liberty of persons may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard before such officers in respect of the matters upon which that liberty depends, not necessarily an opportunity upon a regular set occasion and according to the forms of judicial procedure but one that will secure the prompt, vigorous action contemplated by Congress and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore it is not competent for the Secretary of the Treasury or any executive officer at any time within the year limited by the statute arbitrarily to cause an alien who has entered the country and has become subject in all respects to its jurisdiction and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized."

It will be noticed that the case first cited in the above quotation is Fong Yue Ting *v.* United States (149 U. S. 698, 713). The proposition determined therein is accurately stated in the opening sentence of the excerpt above set out. The counsel for the alien had insisted that the proceedings under review before a United States judge, as provided by section 6 of the act of 1892, were judicial in their character, criminal in their nature, and that the guaranties of the Constitution in reference to criminal proceedings were applicable. Attacking the views expressed by the court, Justice Brewer said:

"I utterly dissent from and reject the doctrine expressed in the opinion of the majority that 'Congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence to be removed out of the country by executive officers, without judicial trial or examination, just as it might have authorized such officers absolutely to prevent his entrance into the country.' An arrest in that way for that purpose would not be a reasonable seizure of the person within the meaning of the fourth article of the amendments to the Constitution. It would be brutal and oppressive."

And again:

"His deportation is thus imposed for neglect to obtain a certificate of residence, from which he can only escape by showing his inability to secure it from one of the causes named. That is the punishment for his neglect, and that, being of an infamous character, can only be imposed after indictment, trial, and conviction."

These expressions from the dissenting opinion are not quoted in the belief that they, rather than the majority opinion, constitute the sounder view of the law, but simply to indicate the question that was before the court in the Fong Yue Ting case and what was decided therein. They were answered in the opinion of the court thus:

"The order of deportation is not a punishment for crime. It is not a banishment in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the Nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend."

Then follows the remark so much relied upon by the Senator from South Dakota:

"He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the Constitution securing the right of trial by jury and prohibiting unreasonable searches and seizures and cruel and unusual punishments have no application."

Justice Gray, for the court, was trying to make it clear that those provisions of the Constitution securing certain rights to defendants in criminal proceedings are inapplicable to proceedings for deportation. If what he said is to be considered as an asseveration that the fourth amendment applies only to warrants issued in criminal proceedings, it must be considered as having been overruled in Weeks *v.* U. S. (232 U. S. 392), referred to in the original report of the writer, in the opinion in which the court says:

"The effect of the fourth amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers, and effects against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted under our Federal system with the enforcement of the laws."

Indeed, no one who attends to the history of the times in which the amendment in question had its origin can have any doubt about the proposition thus stated by the court. It is perfectly well known that the amendment was proposed and adopted as a guaranty against practices like the issuance of writs of assistance, the controversy over which stirred the Colonies from Massachusetts to Georgia. Those writs were not issued in criminal proceedings, but were sued out by the customs officers to search for smuggled goods.

The question of the applicability of the fourth amendment to arrests with a view to deportation was not presented in the Fong Yue Ting case, and being a habeas corpus proceeding to test not the original arrest but the order of deportation could not have been presented. It is perfectly well settled that in such a proceeding the validity of the original arrest is not a subject of inquiry. In Ekin *v.* United States, 142 U. S. 651, 662, the court said:

"A writ of habeas corpus is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the Government is shown he is not to be discharged for defects in the original arrest or commitment." (Ex parte Bollman & Swartwout, 4 Cranch, 75, 114, 125; Coleman *v.* Tennessee, 97 U. S. 509, 519; United States *v.* McBratney, 104 U. S. 621, 624; Kelley *v.* Thomas, 15 Gray, 192; The King *v.* Marks, 3 East, 157; Shuttleworth's Case, 9 Q. B. 651.)

To the same effect are Moy Wing Sun *v.* Prentis (234 Fed. 24), Ex Part Chin Him (227 Fed. 131), and Ong Seen *v.* Burnett (232 Fed. 850).

The question to be determined is not whether the alien was or was not legally arrested, but whether he is or is not entitled to remain in the United States. The legality of his arrest can be determined only upon a motion seasonably interposed to discharge him or in an action for false imprisonment. So on an appeal from a judgment of conviction, the question to be resolved is the guilt or innocence of the defendant, and it is wholly irrelevant whether he was legally or illegally arrested.

Much is claimed for the opinion of Judge Westenhaver, referred to in the report which is the subject of this comment, and particularly it is asserted that it was by him decided that arrests in deportation proceedings may be made without a warrant. That is not what he held. What he asserted was simply that the arresting officer need not necessarily have the warrant in hand. No one will contend that when a sheriff goes with a posse to make an arrest under a warrant the member thereof who actually makes the capture must have manual possession of the warrant, but the rule applicable in such a case affords no justification for an arrest in Concord, N. H., because of a warrant in the hands of an officer in Boston, and a fortiori for an arrest without any warrant. But whatever was said by Judge Westenhaver touching the validity of the original arrest was as shown by the authorities cited above, wholly beside the question before him. Anything said on the subject is obiter in the extreme sense, irrelevant except that in considering the question of whether the hearing by the administrative officers was fair—that is to say, whether the prisoner had a hearing in a just sense—oppressive and illegal acts of the arresting officer appearing to act conjointly with his inquisitors may be taken into consideration. (Whitefield *v.* Hanges, 222 Fed. 745, 748–749.)

The Department of Justice did not have the view when it directed, nor did its agents when they carried out, the searches and seizures complained of, that the fourth amendment is inapplicable to and affords no guaranty whatever in deportation proceedings against either arbitary arrests or unreasonable searches and seizures.

The general circular of instructions issued by the bureau of investigation to its agents who were to carry on the raids—which, by the way, though made the basis of much of the criticism in the report heretofore submitted by the writer, is not even mentioned in that here reviewed—admonishes them to sue out search warrants wherever "absolutely necessary" to secure the documentary evidence it was hoped would be captured. And such search warrants were sued out in pretended conformity to the requirements of the fourth amendment, but upon a showing that no lawyer could regard as sufficient, as shown in the earlier report to this committee. Not only was the showing no more than a pretense of compliance with the Constitution but the warrant, in its command, made no efforts at "particularly describing the * * * thing to be seized."

But let it be assumed that the fourth amendment has no application to deportation proceedings. Still there is no warrant in the law for entering a man's house, rifling his drawers, peering into his private papers, and walking off with any documents that are his, for any purpose, much less to use them as evidence against him.

Speaking of the great argument of James Otis against the oppressive writs of assistance, John Adams said: "Then and there the Revolution began." Otis, who appeared on the stage, of course, before the fourth amendment came into existence, contended that searches such as were contemplated under writs of the character against which he arraigned were contrary to the principles of elemental justice and violative of the spirit of the common law. But even the arrogant

minions of the Crown did not go so far as to insist upon the right to search without any warrant, nor to contend that, in the absence of any express provision in the law prohibiting searches without a warrant, they were at liberty to prosecute such.

The circular letter referred to, which the Senator from South Dakota chooses to ignore, says:

"I have made mention above that the meeting places and residences of the members should be thoroughly searched. I leave it entirely to your discretion as to the method by which you should gain access to such places. If, due to the local conditions in your territory, you find that it is absolutely necessary for you to obtain a search warrant for the premises, you should communicate with the local authorities a few hours before the time for the arrests is set and request a warrant to search the premises."

He informs the committee that no searches were made except with the consent of the inmates or the occupants of the dwellings. It can not be pretended that the subcommittee made any inquiry into the conditions under which each search and seizure was made—the command was to search and seize nolens volens and to get a search warrant where "absolutely necessary."

Of what consequence is it that some of the subordinates of the department or all of them considerately disobeyed this command or executed it with some attention to the proprieties which their innate devotion to the principles of liberty suggested. The law, under any and all circumstances, forbade the searches and seizures for the purpose of securing evidence, and the pretense that they were made to secure the implement of crime ought to be left for exploitation to those who are responsible for them. It does not commend the report of the Senator from South Dakota that he does not frankly admit that they were entirely lawless. He advances, however, a new excuse for them, not heretofore thought of by the young man, Mr. Hoover, who, as shown by the famous circular letter, was acting as counsel in the prosecution of the raids, namely, that under the espionage act the circulars and other proselytizing literature being put out by the proscribed organizations having been declared by the Postmaster General to be unmailable, they became instruments for the commission of the crime of mailing the same. The fact that the Postmaster General held the matter to be unmailable is of no consequence. The statute reads as follows:

"SEC. 2. Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter, or thing of any kind containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is hereby declared to be nonmailable.

"SEC. 3. Whoever shall use, or attempt to use, the mails or Postal Service of the United States for the transmission of any matter declared by this title to be nonmailable shall be fined not more than $5,000 or imprisoned not more than five years, or both."

No new feature is introduced into the question by this statute, except possibly the feature of forcible resistance to the law as distinguished from forcible overthrow of the Government. It is even less exact to speak of the literature as "property to be used in the commission of a felony" when appeal is made to this statute than when reference is made to section 6 of the Criminal Code. In my judgment it is not an instrument for the commission of either crime, though it undoubtedly might and probably would be evidence of the intent to commit either or both. But let that go. I inquire again, What justification can be offered—none has been—for the direction of the circular emanating from the department to seize membership cards, financial records, "all literature, whatever its character, books (minutes of the meetings of the society, even works in its library, if it has one), papers, and anything hanging on the walls," a print of Carl Marx or a picture of the fall of the Bastille, for instance?

I confess to some surprise that the Senator from South Dakota did not frankly admit that the claim that the searches and seizures ordered by the department and carried out by its subordinates is not a mere pretense and a very shallow pretense, the object—and the only object of them—being to secure evidence. Nor can I refrain from remarking that even in the zeal that he has displayed to exonerate the officials responsible for them he has had no word to say for either the absurd showing upon which the warrants were issued or the equally absurd character of the command they carry. He must justify them, so far as his own conscience is concerned, upon the theory that they are not expressly forbidden in the law, for in justice to him it should be said, with reference to the considerations just canvassed the report says, not that he maintains but that "the Attorney General claims" or "the Attorney General insists."

Not so with respect to arrests without a warrant. Here the Senator himself subscribes to the doctrine that the absence of a prohibition in the law affords room for the belief that they are justifiable. Here is his language:

"So far as arrests without warrant of any kind are concerned, they should be justifiable, no law prohibiting them, in cases and under circumstances analogous to arrests in criminal cases when permitted at common law and under the statutes of perhaps all the States."

The common law—the development of ages—authorizes the arrest of one caught flagrante delicto—in the actual commission of a crime. Upon what course of reasoning can the conclusion be arrived at that one who has committed no crime, but is subject to arrest under a purely statutory proceeding, with a view to his deportation, authorizing an arrest by authority of a warrant, can be arrested without a warrant? It is said that by analogy the right arises. Even if that were admitted, the conditions are by no means analogous. An officer may arrest one caught in the act, because all the facts necessary to the guilt of the prisoner takes place under the very eyes of his captor. His testimony alone will furnish proof of the guilt of the offender. But the officer who arrests one taken at a meeting of the Communist Party may, and probably will, be unable to say (1) whether the meeting was, indeed, a meeting of the Communist Party; (2) whether, though the prisoner was at the meeting, he was, in fact, a member of the party, or possibly a postulate who went with a view to determining whether to become a member or not, or went out of mere curiosity, or as a student of politics or sociology or as a reporter for some journal; or (3) whether the man is an alien or a citizen of the United States. Though it would be a strained inference to conclude that every man at the meeting is a member of the proscribed party, it would be wholly inadmissible to conclude that all members or all those attending are aliens. It is impossible to overlook the fact that many of those identified with the proscribed organizations are American citizens—the leaders often are. Bill Haywood and most of his associates, the moving spirits of the I. W. W., are such. Eugene Debs is a native American, and so, I believe, are Foster and Morgolis.

So much for arrests without any warrant. As to telegraphic warrants, the report of the Senator from South Dakota asserts that their "validity" "when issued in accordance with the rule of the Labor Department is 'recognized' in Jouras *v.* Allen (222 Fed. 756)."

The value of the report under review in its discussion of the law involved may be gauged by the following from the opinion of the court in that case, written by Judge Sanborn:

"Gust Jouras is a Greek. He entered the United States in accordance with its law in 1903, when he was about 16 years of age, and has resided in it ever since. For five years prior to his arrest by the inspector he lived in Kansas City. He was, and long had been, engaged in operating restaurants and lunch wagons in that city, and at the time of his arrest he and his two partners were the owners of two restaurants worth $1,500, which they were operating. The record convinces that he was a quiet, peaceable, business boy. There is no evidence that he was violent, passionate, or dangerous, or that he ever concealed, or intended to conceal, his whereabouts, or to flee or clandestinely escape from any charge or arrest. Prior to January 5, 1914, the inspector took the ex parte statements of Mrs. Brown and other prostitutes in reference to the charge subsequently made against Jouras, and on that day made a telegraphic application for a telegraphic warrant of arrest. He received such a warrant of arrest, which read in this way:

"'Arrow Gust Jouras receipt or relay thirty.

"'4.05 p. m.

"'W. B. WILSON, *Secretary.*'

"The meaning of this statement is said by the inspector to be:

"'Arrest following-named alien (Gust Jouras) and bring before yourself for hearing, forwarding record of proceedings to the department; alien found receiving, sharing in, and deriving benefit from the earnings of a prostitute or prostitutes. Authority granted for release under bond in the sum of $3,000.'

"Rule 22b of the Department of Labor requires that during the hearing the alien shall be allowed to inspect the warrant. The purpose of that portion of that rule is to inform the accused of the genuineness of the signature to the warrant and of the charges against him. But such a telegraphic warrant in a code of which the alien is ignorant accomplishes neither of these objects. The signature to it is not the genuine signature of the Secretary, or any officer, and the telegram gives the accused no information. Hence rule 22, subdivision 2, requires that 'Telegraphic application may be resorted to only in case of necessity.' There was neither necessity nor reason for a telegraphic application in this case. But the inspector having made a telegraphic application and procured the telegraphic warrant at about 4 p. m. on Saturday, January 5, 1914, went to Jouras's restaurant, seized him, and caused him to be thrown into and kept in solitary confinement in a dark cell at police headquarters 'for investigation' during Saturday night, Sunday, Sunday night, and until Monday at 11 a. m., when he took him to his room, handcuffed him, and with a weapon at his command gave him a hearing there without counsel or friend, which consisted of questioning him in an exceedingly threatening manner, and writing down what he succeeded in extracting from him. This course of action was arbitrary, contrary to the rule regarding telegraphic applications, a clear abuse of the discretion of the inspector, and a hearing thus conducted is unfair and contrary to the fundamental principles which inhere in due process of law." (United States *v.* Ruiz, 203 Fed. 441, 443; 121 C. C. A. 551.)

The case immediately preceding the Jouras case, as they are reported in 222 Federal, is Whitfield *v.* Hanges, which might, with equal accuracy, be said to "recognize" the "validity" of telegraphic warrants, for, as in the Jouras case, not a word is said as to whether such warrants are or are not valid. But some aspects of the proceedings assailed before this committee as they present themselves to the judicial mind are revealed in their repellent character by the following from the opinion in that case by the same eminent judge who wrote the opinion in the Jouras case:

"The appellant received a telegraphic warrant of arrest, caused the appellees to be arrested, and was examining one of them, and with his employees, Captain Campbell and another police officer, was holding them in confinement and preventing them from seeing or consulting with any other person, when their counsel appeared and demanded to see and consult with them and to take part in the examination. The inspector refused this request, permitted no one to see and consult with them until after he had examined each of them in secret. After their examination was completed he permitted them for the first time to see anyone but himself and the police officers and to have counsel and to introduce the testimony of witnesses. It will be noticed that the rule gives the inspector no authority secretly, in the presence of no one but himself and his police officers, whose presence and power unavoidably places the defenseless alien under fear and restraint, to examine or question him. It is limited to giving authority to the inspector to give the alien a hearing to enable him to show cause why he should not be deported, and by its terms it excludes a secret examination of the alien to extort a confession or evidence unfavorable to him. The provisions of the rule that the inspector shall grant the alien a hearing, that during the hearing he shall be permitted to inspect the warrant, and that at such stage thereof as the officer deems proper he shall be permitted to have counsel were made for the benefit of the alien for the purpose of giving him a fair trial. The liberty, and the property also—for if he is imprisoned and deported he must lose his business and sacrifice his property—of a permanent resident alien, like the appellees, as well as their deportation, are involved in the issue, and these provisions of the rule should be liberally construed to accomplish their plain purpose. To the same end the discretion of the inspector in determining when the alien shall inspect the warrant and when he shall have counsel should be exercised so that his hearing shall be full and fair. A denial of permission to him to see the warrant and to have counsel within five minutes of the close of the hearing would be a clear abuse of discretion and would render the provisions of the rule as administered 'inconsistent with law' and void. Although a law or rule be fair and just in appearance, yet if it is applied and administered by public authority with an evil eye and an oppressive hand, so as to deprive a person of his fundamental rights, it can not be sustained." (Yick Wo *v.* Hopkins, 118 U. S. 356, 374, 6 Sup. Ct. 1064, 30 L. Ed. 220; Henderson *v.* Mayor of New York, 92 U. S. 259, 23 L. Ed. 543; Chy Lung *v.* Freeman, 92 U. S. 275, 23 L. Ed. 550; Ex parte Virginia, 100 U. S. 339, 25 L. Ed. 676; Neal *v.* Delaware, 103 U. S. 370, 26 L. Ed. 567; Soon Hing *v.* Crowley, 113 U. S. 703, 5 Sup. Ct. 730, 28 L. Ed. 1145.)

"One of the objects of this rule was to give, not to deprive, the alien of the benefit of counsel. The time when an alien, who is ordinarily ignorant of the law, of legal procedure and of his rights, may derive the most benefit of counsel is when he is arrested and his hearing begins. It would have been no abuse of the discretion of the inspector to have permitted the appellees to have counsel to advise them immedi-

ately upon their arrest, to be present and to take part in the proceedings at and after the first stage of the examination and hearing of the aliens. Such a course would have been in accord with the fundamental principles of English and American jurisprudence, consistent with the law, and it should have been pursued."

The practice here so emphatically and so justly condemned was that regularly pursued in connection with the raids of November, 1919, and January, 1920. It will be noted that the court seems to regard the right of the prisoner, in custody in deportation proceedings, to counsel "when he is arrested and his hearing begins" as essential to a fair hearing and consequently that to deny it is to proceed without due process of law. If that be sound, and it certainly is sensible, then the midnight change in the rule regarding counsel, effected intervening the issuance of the warrants in anticipation of the raids of January 2 and their execution, was void, as it was applied, and the refusal to permit those proceeded against to procure or consult counsel until after what is referred to as the preliminary hearing was a censurable abuse.

In the Pannunzio report the author states that he found men who had been in jail for weeks and for months in some cases and were still held incommunicado because they had not yet had their preliminary hearing. (Hearings, pp. 335–336.)

The quotation last above will serve to dissipate an erroneous view, evidently entertained by a member of the committee, that the examination to which the persons taken in the raids were presently subjected, without the presence or assistance of counsel, was conducted by the arresting officer and that complaint in that regard had no better foundation than would be a criticism of a sheriff for talking with his prisoner.

The fact is that the examination was not in the nature of an informal conversation between the prisoner and the arresting officer, but was a formal inquiry before an immigration inspector, who, at the so-called final hearing, heard and recorded any additional evidence that might be adduced either for or against the prisoner and who, under the rules, was required, on transmitting the record to the department, to make recommendations as to the disposition which should be made of the case.

Though the Senator from South Dakota insists that the warrant authorized by the statute may be served by anyone to whom it is delivered for service, and consequently that it may be addressed to anyone, because the statute does not say to whom it shall be addressed or who may serve it—another application of the principle for which he contends that anything may be done which the law does not forbid—he is not so confident of the soundness of that position as to abandon the fiction that the officers of the Department of Justice were "cooperating" with those of the Department of Labor in making the arrests. This he asseverates and reasseverates, though he is significantly silent about the command of the Burke letter, "It is to be distinctly understood that the arrests made are being made under the direction and supervision of the Department of Justice," and so they were made. Neither does he think it worth while to comment on the statement in the letter of the Comptroller of the Treasury that the Department of Labor declined to reimburse the Department of Justice on account of expenses incurred by it in connection with the arrests, because the services had been rendered "without request or authority from the Department of Labor."

Enough has been said on the legal propositions advanced in the original report, successfully assailed, as it is insisted, in no particular, namely—

1. The agents of the Bureau of Investigation of the Department of Justice have no authority to make arrests in deportation proceedings, if, indeed, they have authority to make arrests at all.
2. The agents of the Department of Labor have no authority to make an arrest looking to deportation without a warrant.
3. The issuance of a warrant upon the unsworn statement of an agent of the Bureau of Investigation is a plain violation of the fourth amendment to the Constitution of the United States.
4. There is no authority in the law for the conduct of a search in deportation proceedings, either of the residence of the alien or of the meeting places of societies condemned by the immigration laws, or for the seizure of books, records, or papers of either.
5. There is no authority in the law for the issuance of a search warrant in deportation proceedings at all.
6. There is no authority in the law for the issuance of a search warrant to seize books or papers to be used as evidence, even of the commission of a crime, much less to establish a case in deportation proceedings.

Touching the inhumanity of arresting thousands of persons in one night, necessitating their being kept in fearfully overcrowded quarters, involving long delay in the preliminary hearing before the release of those who, upon no theory of the law or the evidence, could be deported, and still longer delay before the department, overwhelmed as it was, could finally decide whether the prisoner was or was not entitled to be released, the report has nothing to say except in feeble extenuation of the conditions admitted to have prevailed at Detroit, said to have been speedily relieved. It will be remembered that the jails of the city being crowded with those held after their escape from the fetid quarters to which they were originally confined in the Federal building, the city council spread upon its records a formal resolution demanding that they be removed, the health of the city being imperiled by the condition of the prisons occasioned by the presence of prisoners in such numbers.

Nothing is said in justification or excuse of the course of the department in that regard, save for a remark presently to be noticed, for it can not be said that the comment that the making of simultaneous arrests is an administrative matter resting in the discretion of the officers charged with the execution of the laws offers either excuse or justification. Undoubtedly it is an administrative matter—that is the nature of the complaint, that the discretion reposed in the department was frightfully, cruelly abused; that there was no exigency which required the simultaneous arrest of thousands of persons, including multitudes who were not legally subject to detention, and other multitudes who, though possibly technically subject to deportation, were perfectly harmless, deluded individuals, prospective citizens of a most desirable class, wanting only a rudimentary knowledge of our system of government with which they had had no opportunity to acquaint themselves. The committee is still unapprised of the reason for these wholesale arrests or why the generality of those held were not tolerated until in due course they could be proceeded against in an orderly manner, the "leaders" only in the revolutionary movement, if there was one, and the "officers" of the proscribed societies being apprehended, as the Attorney General with fine sarcasm advised the committee he had done. The course pursued had a virtue, however, in the opinion of the Senator from South Dakota—it was effectual. He says:

"The department evidently proceeded on the theory that simultaneous arrests was the most effective way of putting an end to extreme radical activities and ascertaining who among the great body of aliens in our country were subject to deportation because of their membership in organizations proscribed by the statute. Your committee can not say but that the policy thus adopted and carried out was an effectual one. Subsequent events and conditions might very well indicate that it was effectual."

That is the idea. Why quibble over the law or dwell upon rights guaranteed by the Constitution? Why cavil at the means if the ends attained are to be commended? Let that spirit have the slightest countenance from the Senate of the United States and the criminally inclined will cry, "Fie upon your laws." If we do not respect them, who may be expected to except from dread of the gallows or the dungeon?

Whether the course pursued, as it has been reviewed, to put "an end to extreme radical activities" was effectual or not is wholly beside the question before this committee, and varying opinions may well be indulged with respect thereto. For myself, I find it difficult to conceive of a course more powerfully calculated to excite widespread hatred of our Government and of all government, seeing that ours is, as we confidently believe, the best that the world knows. The indignities and outrages suffered by the victims, the majority of whom were released, will rankle in their breasts until their dying day, and their friends and relatives will share with them the conviction that justice "for a season bade the world farewell" when they went through the ordeal from which some of them emerged maniacal.

I am skeptical about the claim that the subsidence of radical activities is attributable to these lawless raids, particularly as the same change is noticeable all over Europe. That the change has ensued proves nothing to me. Post hoc non propter hoc. At the time the proceedings reviewed were in progress scare articles in the newspapers had excited the belief that Bolshevism was about to overrun Europe and to engulf America. It is quite probable that the founders of that political cult, with the ardor that has been often found to characterize the devotees of a new religion, went or sent their missionaries into remote countries to spread the faith which they had embraced and excited the enthusiasm and aroused the activities of those harboring related notions of government and of the organization of society in this country and other countries. It was claimed, and perhaps established, that very considerable sums of money were expended by the new Russian Government in propaganda, so widely and effectually pursued during the war, in disseminating the doctrines to which it was nominally attached. If Europe ever was alarmed at the prospect of being overrun either by the arms or the ideas of Russia, it has fully recovered its normal state; if there ever prevailed any general idea that the people of Europe were about to embrace Bolshevism, it has been dissipated.

Perhaps the initial enthusiasm of its advocates has waned; perhaps their pecuniary resources for purposes of propaganda have been exhausted; perhaps, in the distress which has calamitously come upon the people of Russia, they find better uses for their money at home; perhaps the ill success that has attended Bolshevist rule in Russia has hardened the hearts of those who might otherwise yield to the persuasive tongues of its evangelists in foreign parts or chilled the populace that might otherwise have heedlessly accepted their plan for the regeneration of the world; perhaps, and more likely, the public mind, overwrought by the war, has been restored to its normal operation and the plain common sense of the American people has again asserted itself. Perhaps it is one or all of these causes, or others not mentioned, rather than the lawless acts of the Department of Justice, that is responsible for the decadence of extreme radical activities in this country.

It is advanced that they should be condoned because both "the public and Congress must have known of the activities of the Department of Justice in connection with deportation cases or in raids made for the purpose of apprehending criminals and aliens subject to deportation." In that connection reference is made to the testimony of the Attorney General given before the House Committee on Rules in the month of March, 1920, and to the Poindexter resolution. The fact was evidently overlooked that the information given to the public by the hearings before the House committee was disclosed some months after the raids, and that the disclosure then made by the Attorney General was to the effect that he had caused to be apprehended the "leaders" and "officers" of the proscribed organizations. The response of the Attorney General to the Poindexter resolution of October 17, 1919, was timely, being transmitted under date of November 15, 1919. By the resolution he was requested to advise the Senate as to what steps he had taken to prosecute those guilty of the bomb outrages or of efforts to overthrow the Government by force, or of similar offenses, and also to advise "and inform the Senate whether or not the Department of Justice has taken legal proceedings for the arrest and deportation of aliens who, it is alleged, have within the United States committed the acts aforesaid; and if not, why not; and if so, to what extent."

To that part of the resolution he responded as follows:

"The administration of this law (the deportation statute) is entirely within the jurisdiction of the Department of Labor.

"However, under the existing conditions of our laws, it seemed to be the only means at my disposal of attacking the radical movement, and as Congress had seen fit to refuse appropriations to the Department of Labor for its enforcement, I have cooperated with the immigration officials to the fullest extent." (S. Doc. No. 153, 66th Cong., 1st sess., p. 10.)

The conclusion is a strained one that Congress either knew in advance or was later advised of the cruelties inflicted upon or the injustices suffered by the great multitudes caught in the raids.

Congress has not yet condoned the practices here condemned, and while it retains its right to the respect of the American people it never can condone them. We must either indorse the conduct of the department or we must repudiate its acts. There is no middle course. The offense, if offense there has been, was that of the Department of Justice. We become equally guilty if, being brought to our attention, and we find ourselves unable to commend it on the one hand, we refrain, from any cause, from denouncing it on the other.

Nor can we ignore the matter on the assumption that the affair is a closed incident. The same practices, or others of like character, are being even now pursued by the department officials. The New York World of August 6, 1921, has the following news item:

"After arresting Giuseppe di Filipis, the 23-year-old Bayonne (N. J.) truckman, on the charge of being the driver of the Wall Street bomb

wagon, and keeping him in a cell 14 days, practically incommunicado, Government officials went into court yesterday, 80 days following the original arrest, and asked that the charge be dismissed, virtually admitting that their suspicions were unfounded. Filipis was taken into custody by agents of the Department of Justice May 17 last on information furnished by Thomas J. Smith, a former lieutenant of the New York fire department, who 'positively' identified the young Italian as the driver of the bomb wagon. Smith had previously 'positively' identified Tito Ligi in Scranton."

There was a time when it was fondly believed that nothing of the kind could occur in America, that the constitutional guaranty of a speedy public trial meant something more than a mere declaration, and imprisonment without an immediate hearing to determine whether there existed probable cause for holding the prisoner was unknown in this land of liberty.

Recently the offices of a committee directing a strike on a Georgia railway in the city of Atlanta were invaded upon the pretended authority of a subpœna duces tecum by the United States marshal, acting under the direction of a representative of the department, and all books, papers, and other documents therein seized and carried away to be used as evidence before a grand jury, at the time, on the initiative of the same department official, engaged in an inquiry as to whether the officers whose papers had thus been taken were not guilty of some offense cognizable by a Federal grand jury in connection with the strike then in progress. It is to the credit of the administration of justice in that jurisdiction that the court upon the petition of the parties whose rights were thus trampled upon, ordered the surrender of the documents and of all copies of the same which might have been made.

It has been said that though the clangor of arms had ceased, though actual peace had prevailed for more than a year when the raids were made, it was a time of high feeling, approaching hysteria, because of the general apprehension of the spread of Bolshevism, because of the dastardly bomb outrages, and the activities generally of the "reds." Of this state of mind the Poindexter resolution affords some evidence. There is no extenuation in that condition. It is only in such times that the guaranties of the Constitution as to personal rights are of any practical value. In seasons of calm no one thinks of denying them; they are accorded as a matter of course. It is rare except when the public mind is stirred by some overwhelming catastrophe or is aghast at some hideous crime, or otherwise overwrought, that one is required to appeal to his constitutional rights. If, in such times, the Constitution is not a shield, the encomiums which statesmen and jurists have paid it are fustian.

CREDIT EXTENSION FOR EXPORT OF GRAIN PRODUCTS.

Mr. NORBECK. I ask that an editorial which recently appeared in the Nation be printed in the RECORD in 8-point type. It relates to credit extension for the export of grain products.

There being no objection, the editorial was ordered to be printed in the RECORD in 8-point type, as follows:

[From the Nation of January 24, 1923.]

SENATOR NORRIS'S "SOCIALISM."

Of all the measures which have been put forward to help the poor farmer—who grows noticeably more militant in his poverty as the days go by—none has been so completely frowned upon by the pillars of normalcy as the Norris bill. The recent extended debate on this measure afforded us the gratifying spectacle of advocates of Government subsidies for ships, railroads, and banks denouncing Mr. NORRIS's proposals as the most "socialistic" agricultural program ever presented.

In the eyes of the administration spokesmen who are also engaged in formulating a prescription for the ills of the farmer (through the appropriate agency of the Senate Committee on Banking and Currency) the Norris bill was radically wrong. To these men the ideal remedy for the farmer is a remedy which halts the union now being cemented between the workers on the land and the workers in the city, a remedy appeasing the former while it does nothing to encourage the latter. The Norris bill, on the contrary, was specifically designed to "increase the price which the producer receives and decrease the price which the consumer pays." The essence of it was the proposal that the Government itself step in between the producer and consumer, eliminating some of the costly processes which eat up the farmer's profits and the worker's wages and stabilizing the great agricultural industry by stabilizing the marketing of its products. The Government was not to have a monopoly of the distribution of food, but through its competition was to force efficiency and economy. The bill would have created the farmers and consumers financial corporation, to be managed by a board of three directors appointed by the President with the advice and consent of the Senate. Capital stock, amounting to $100,000,000, was to be subscribed by the Government. The corporation would have been empowered:

"To build, buy, lease, and operate elevators and storage warehouses; to buy agricultural products from any person or cooperative organization of producers within the United States and to sell such products to any person or cooperative organization of consumers within the United States, and to any person or cooperative organization of consumers, or to any government or subdivision of government without the United States; to act as agent of any person or cooperative organization producing or dealing in agricultural products within the United States in the sale of such products either within or without the United States; and to make advances for the purpose of assisting any person or cooperative organization in financing the sale, or exportation and sale, of such agricultural products, but in no case shall any of the money so advanced be expended without the United States. Every such advance, and any sale of such products made on time, shall be secured by adequate security of such character as shall be prescribed by the board of directors."

The measure had another provision of special interest in view of the pending ship subsidy bill. This provision was thus explained by Senator NORRIS:

"It provides—and this has some relation to the ship subsidy bill that we are seeking to displace—that to this corporation shall be turned over by the Government any ship or ships that it owns, not chartered to any other corporation or not in use, with the provision that this corporation can use such ships as may be necessary in transporting the products it handles from this country to foreign ports, without any compensation for the use of those ships, except to keep them in repair and pay the expense of operation, and that in case of war, or when the President at any time believes there is danger of war, he shall notify the corporation, and the ships shall be immediately turned back, without the payment of any money. This will enable the Government to recuperate its merchant marine without any expense whatever."

Well, for the present the Norris bill is dead. The ship subsidy measure has been displaced by the Capper farm credits bill, which would extend the life of the War Finance Corporation and provide for the incorporation of various credit concerns, with power to buy and distribute farm products. But no appropriation for the accomplishment of these ends is included in the bill. Senator LENROOT's measure, also awaiting consideration, would authorize the Treasury to advance $5,000,000 each to the 12 Federal land banks. Both of these proposals aim at easier credit facilities for the farmer; neither goes to the root of the problem of distribution and fair prices. More credit for the farmer is all very well, but eventually mortgages or notes fall due, and as things stand the farmer has no cash with which to meet them, because it has cost him more to produce his wheat, his corn, and his potatoes than he has realized by their sale. Both farmer and labor groups in Congress supported the Norris bill. The Farmers' National Council aided in its drafting and backed it vigorously. The Cleveland conference of progressives indorsed its passage. And then when the vote came the progressives found themselves alone. Republicans and Democrats discovered their fundamental intimacy and voted to substitute for the ship subsidy bill the safe but ingratiating phrases of Senator CAPPER's measure. By this move the whole question of agricultural legislation is given over to the scant mercies of the Banking and Currency Committee.

Senator NORRIS had good authority for his "socialistic" bill, even though it antedated the Constitution:

"They shall build houses and inhabit them; they shall plant vineyards and eat the fruit of them. They shall not build and another inhabit. They shall not plant and another eat."

But it takes party support rather than authorities or precedents to pass bills, and the vote against Senator NORRIS's measure was 53 to 19. We hope that this easy fusion against the first radical proposal of the progressive bloc need not be taken as an omen; but, perhaps, after all the chief function of the progressives may be not to pass legislation nor even to block legislation, but to show the country and the old parties that valid political differences have little relation to party names.

VISÉ RESTRICTIONS AND FEES (H. DOC. NO. 547).

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith a communication from the Secretary of State recommending that Congress confer upon the President authority to modify visé fees and requirements applicable to aliens temporarily visiting the United States. Such action is recommended to enable the Secretary of State to enter upon negotiations with foreign governments with a view to obtaining reciprocal modification of existing visé restrictions and fees. The recommendations of the Secretary of State have my full concurrence.

WARREN G. HARDING.

[Inclosure: From Secretary of State, as above.]

THE WHITE HOUSE, *February 5, 1923.*

HOUSE BILL REFERRED.

H. R. 13835. An act authorizing the Secretary of the Interior to appraise tribal property of Indians, and for other purposes, was read twice by its title and referred to the Committee on Indian Affairs.

REMOVALS IN BUREAU OF ENGRAVING AND PRINTING.

Mr. CARAWAY. Mr. President, I submit a resolution which I send to the desk, and I ask unanimous consent for its immediate consideration.

Mr. CURTIS. Let the resolution be read.

The VICE PRESIDENT. The Secretary will read the resolution.

The reading clerk read the resolution (S. Res. 432), as follows:

Whereas pursuant to an Executive order of the President of the United States, issued March 31, 1922, and immediately effective, the director and 27 other officials of the Bureau of Engraving and Printing were summarily removed from their positions and stricken from the rolls of the civil service; and

Whereas it would appear from subsequent investigation that this removal was without just cause; and

Whereas said removal reflects upon the honor and integrity of the officials so discharged; and

Whereas those who were given the places from which said employees were removed have been publicly charged as being instrumental in having issued said Executive order; and

Whereas it would be for the best interest of the service that the whole matter should be made public; and

Whereas it would be helpful to know the character, reputation, and fitness of those removed and those appointed to succeed them: Now, therefore, be it

Resolved, That the Committee on Civil Service be, and is hereby, directed to inquire into the cause or causes of the removal of said employees; the right of the President to have made the order; the character, reputation, and fitness of the men and women so removed; the power of the President to name their successors; the character, reputation, and fitness of the men and women so designated as their successors, and all other facts and circumstances with reference to the matter, and to report to the Senate its findings and such recommendations as it may see fit before the 1st day of March, 1923.

The committee is hereby empowered to send for books and papers; to require the attendance of witnesses; to administer oaths, and do all things necessary to carry out the purpose of this resolution.

That the discharged employees, if they shall desire, may be represented by counsel of their own choosing and by them to be paid. The same privilege, under the same condition, is extended to the director of the bureau and those with him appointed to the places vacated by the said Executive order.

All expenses not otherwise herein provided for shall be paid out of the contingent expenses of the Senate, such expenses to include a stenographer to be paid not exceeding $1.25 per printed page of said testimony.

Mr. STERLING rose.

Mr. CURTIS. Mr. President, I will yield to the Senator from South Dakota, the chairman of the Committee on Civil Service, if he desires to make a suggestion. However, if he will wait a moment, I was going to suggest that the resolution submitted by the Senator from Arkansas [Mr. CARAWAY] would have, first, to be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. WILLIAMS. Has the resolution for which the Senator from Arkansas desires consideration been referred to the Committee to Audit and Control the Contingent Expenses of the Senate?

The VICE PRESIDENT. It has not been.

Mr. WILLIAMS. I make the point of order that the resolution must be referred to that committee. It can not be called up for consideration in the Senate unless it has been so referred.

Mr. CARAWAY. If the Senator from Mississippi will yield to me for a moment, I wish to say that I am merely asking unanimous consent that the resolution may be considered. Of course, if the Senator wishes to make his point of order he may do so, but I hope he will not make it.

Mr. WILLIAMS. There is a rule of the Senate and of the House of Representatives requiring that all measures which necessitate the payment of money out of the contingent fund shall be referred to the Committee on Accounts in the House of Representatives and to the Committee to Audit and Control the Contingent Expenses of the Senate in the Senate.

Mr. CARAWAY. I am aware of that.

Mr. WILLIAMS. There can be no unanimous consent even given for the consideration of such measures unless they have taken that course. The reason of the rule, Mr. President, is perfectly plain, if Senators will stop to think a moment. It is that neither House should be allowed by itself to make appropriations ultimately out of the Treasury, for the appropriations out of the contingent funds do ultimately come out of the Treasury. I beg the Senator from Arkansas to believe that I do not even know what his resolution is nor what it is aimed at, but I do know that, as I caught the reading of the resolution, it provides that money shall be paid out of the contingent fund of the Senate.

Mr. SMOOT. The requirement as to the reference of such resolutions to the Committee on Contingent Expenses of the Senate is not a rule, but it is a law.

Mr. WILLIAMS. We have found frequently during the last 25 or 30 years that measures calling for appropriations have been passed in each House by unanimous consent which were not acts of Congress, but were merely the act of one House of Congress, although having the effect of law. So the law requires that all measures making appropriations out of the contingent fund shall go to the Committee to Audit and Control the Contingent Expenses of the Senate and to the Committee on Accounts of the House of Representatives.

Mr. CARAWAY. Mr. President, of course I shall not attempt to argue with the Senator from Mississippi. I realize there is such a statute, but I know it is violated frequently. I shall ask, then, that the resolution be referred to the Committee to Audit and Control the Contingent Expenses of the Senate, and I hope the committee will report it promptly to the Senate.

Mr. SMOOT. Mr. President, I desire to reiterate, merely for the record, that the requirement for the reference of such resolutions to the Committee to Audit and Control the Contingent Expenses of the Senate is not a rule of the Senate, but it is imposed by an act of Congress.

Mr. CARAWAY. I am conscious that it is an act of Congress; everybody knows that.

Mr. SMOOT. No; everybody does not know it.

The VICE PRESIDENT. The resolution submitted by the Senator from Arkansas will be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. CARAWAY subsequently said:

Mr. President, I desire to take just a moment with reference to the resolution which I submitted a few moments ago and which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

The importance of securing some action upon that resolution immediately arises from the fact that the Executive order removing the employees referred to in the resolution from the civil service was issued on the 31st day of last March. Their rights as civil-service employees will be gone if there is not something done with this matter before the year shall have expired. They have waited patiently for a statement to be issued by the President giving his reasons for their summary removal. The facts have been developed by investigation conducted both by the Treasury Department and by the Attorney General's Department, and the reports have been with the President now for two months. They show that there was no wrongdoing on the part of these people, and therefore that they have lived for a year under a suspicion and under a cloud that never ought to have been cast upon their fair names. One of them is dead. Another is thought to be stricken with a fatal illness. All of them are entitled that the world should know what the facts were. I sincerely hope, therefore, that no one will stand in the way of a full and free and thorough investigation.

The investigation goes further than ordinarily would be requested because of the fact that by the wording of the Executive order and the extraordinary nature of the order the country was led to believe that these officials had been guilty of some wrongdoing.

Therefore I say they have labored under a cloud of suspicion for a year; they are entitled to a thorough public examination of the causes of their removal, of their characters and reputations and fitness for the employment in which they were engaged; and since that is true and since it has been said over and over again that they were removed for political reasons and that those who succeeded them were the instigators of the order, the character and reputation and fitness of the people who succeeded them should also be gone into, and the public made to know just what the facts were.

I have been perfectly willing myself, though the resolution has been drawn for weeks, to defer its introduction until those people who were friendly with the administration—I refer to Republican Senators with whom I have counseled—should feel that the President had been given all the time necessary in order to make restitution to these discharged employees. The time has arrived, in their judgment, when some action ought to be had. The resolution is full. It gives every side of the controversy a chance to be heard. It gives the discharged employees, if they should wish it, the opportunity to be represented by counsel and provides that they shall pay for the counsel; it gives those who took their places an opportunity to be represented by counsel, if they shall see fit to employ one, to be paid by them as the others are to pay their counsel. There can be no political bias to it, because each side shall be represented; everyone whose interest has been jeopardized shall have his chance to be heard, and nobody, I take it, can object to its consideration.

I hope, therefore, that the Committee to Audit and Control the Contingent Expenses of the Senate will see fit to report back the resolution at once, and have the examination before the year shall have expired and these employees shall have lost all their rights.

MOBILE RIVER BRIDGE, ALA.

Mr. HEFLIN. Mr. President, on Friday last I introduced the bill (S. 4469) to extend the time for the construction of a bridge or bridges and trestles over the navigable channels of the mouth of the Mobile River, in the State of Alabama. I asked that the bill go over until to-day. It is on the Vice President's table, and I now ask unanimous consent for immediate consideration.

Mr. CURTIS. Mr. President, it would have to be referred to a committee.

Mr. HEFLIN. No; it would not.

Mr. CURTIS. Under the rules it must go to a committee.

Mr. HEFLIN. Not if unanimous consent is granted for the consideration. Mr. President, the time will be out on the 14th of the present month for the company to commence the work.

Mr. CURTIS. Let me remind the Senator that the Committee on Commerce reports such bills out almost immediately. I ask that the bill may be referred to the Committee on Commerce.

Mr. HEFLIN. Of course, if the Senator objects it will have to take that course.

Mr. CURTIS. It is not a question of objecting; under the rule it must go to the committee.

Mr. HEFLIN. Unanimous consent sets aside the rule.

The VICE PRESIDENT. The bill will be referred to the Committee on Commerce.

CONSIDERATION OF THE CALENDAR.

Mr. CURTIS. Mr. President, has morning business been concluded?

The VICE PRESIDENT. If there is no further morning business, morning business is concluded.

Mr. CURTIS. I ask unanimous consent that the call of the calender may begin at Order of Business No. 975, where we left off when the calendar was last called, and that the Senate consider bills that are not objected to.

The VICE PRESIDENT. Is there objection?

Mr. WALSH of Massachusetts. Mr. President, I ask the Senator to consent that the call of the calendar begin with Order of Business 969, which is just ahead of the number indicated by him. Order of Business No. 969 was passed over at the request of the Senator from Utah.

Mr. CURTIS. I have no objection to that.

Mr. WALSH of Massachusetts. I thank the Senator.

The VICE PRESIDENT. Is there objection to beginning the consideration of the calendar at Order of Business No. 969?

Mr. NORRIS. Mr. President, I wish to make an inquiry of the Senator from Kansas. In the last call of the calendar was the suggestion included that no bills should be considered except by unanimous consent?

Mr. CURTIS. I do not remember; I was not in the Chamber when the request was made at that time.

Mr. NORRIS. The only objection I have to the Senator's request is that it embraces only unobjected bills.

Mr. CURTIS. I made the request in that form for the reason, if the Senator will permit me, that on the last occasion when the calendar was considered and there was no stipulation as to unobjected bills being considered, practically all the morning hour was devoted to the consideration of one bill, and others to which there was no objection were not reached. There are on the calendar a number of bills to which there is no objection, and I think it would be well to dispose of them, because it might be possible to have them passed by the House if the Senate should consider and act upon them now.

Mr. NORRIS. I appreciate the Senator's point, but at the same time, if we always do that when the calendar is called and only bills which are unobjected to are considered, it means that one Senator may prevent the passage of any bill.

Mr. CURTIS. That is true.

Mr. NORRIS. I am willing that we should proceed in the manner suggested by the Senator on the call of the calendar to-day and consider only unobjected bills, but I should like to have it understood that when we take up the calendar again the request for the consideration of only unobjected bills will not be made, but that the bills on the calendar will be considered under the rule.

Mr. CURTIS. That course will be satisfactory to me, so far as I am concerned.

FAMILY OF LIEUT. HENRY N. FALLON (RETIRED).

The VICE PRESIDENT. The Secretary will state the first bill on the calendar under the unanimous-consent agreement.

The bill (S. 3553) for the relief of the family of Lieut. Henry N. Fallon (retired), was considered as in Committee of the Whole.

The bill had been reported from the Committee on Claims with an amendment, on page 1, line 6, after the words "sum of," to strike out "$2,078.93," and insert "$1,500," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury is authorized and directed to pay to the family of Lieut. Henry N. Fallon, United States Navy (retired), out of any money in the Treasury not otherwise appropriated, the sum of $1,500 in full satisfaction of all claims for expenses incurred by them or under their direction in the locating and caring for Lieut. Henry N. Fallon, after his escape from St. Elizabeths Hospital, District of Columbia.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

WILLIAM J. EWING.

The bill (S. 3226) for the relief of William J. Ewing, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Claims with an amendment, on page 1, line 6, after the words "sum of," to strike out "$2,000," and insert "$1,560," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to William J. Ewing, or his legal representatives, the sum of $1,560, as full compensation for permanent injuries received by the said Ewing on the 18th day of December, 1901, at San Francisco, Calif., while in the performance of his duties as an employee of the United States Life-Saving Service.

The amendment was agreed to.

Mr. SMOOT. Mr. President, I should like to ask the Senator from Oregon [Mr. McNARY] to state briefly the reasons for the passage of this bill. I have not had time to read the report in full, but the Senator may know just exactly what the reasons are.

Mr. McNARY. Mr. President, the reasons are set forth in detail by the Secretary of the Treasury, Mr. Mellon; also in affidavits by those who were acquainted with the claimant.

Briefly, Mr. Ewing was in the service of the Government, working in the capacity of one connected with the life-saving station in San Francisco. While in the course of a drill, Mr. Ewing's shoulder was dislocated and many of the muscles were torn from the bones. He received treatment and finally was compelled to resign, and now is permanently injured, being unable to earn his living. The Secretary of the Treasury—and I think that is significant in itself—after making a careful and thorough examination of all the facts, has reported favorably, unconditionally so. The committee—and, by the way, that is the only grievance I have—have reduced the amount from $2,000 to $1,560, which I think is very small compensation for the injury sustained, permanent in its character as it is, while in the performance of his duty. I can not conceive of any objection that could be had to this claim, in view of the condition in which we find Mr. Ewing to be.

Mr. KING. Mr. President, as I read the report, this accident occurred many years ago, over 20 years ago. It seems to me the Government is put at a great disadvantage when claims for payment are presented 20 years after the alleged injury. I shall object to the consideration of the bill until we have further information in regard to it.

Mr. McNARY. Mr. President, what is the technical objection of the Senator from Utah?

Mr. KING. I object to its consideration.

The VICE PRESIDENT. The bill will be passed over.

ROBERT J. KIRK.

The bill (S. 3849) for the relief of Robert J. Kirk was announced as next in order and was read.

Mr. ROBINSON. Mr. President, I do not desire to object to the consideration of this bill, but I think the Senate ought to defeat its passage.

The statutes forbade, and still forbid, persons from holding the offices of referee in bankruptcy and United States commissioner at the same time. The policy of the law preventing one person from holding those two offices seems to me to be a good one. In any event, it is the statute which Congress enacted in 1896, and which is still in effect.

This is an appropriation to award the beneficiary, Mr. Kirk, a comparatively small sum of money for services rendered as United States commissioner while at the same time he was, in fact, a referee in bankruptcy in the same district. The justification for the bill in the committee report is that the beneficiary was ignorant of the law which forbade him to hold the two offices, and that he resigned when he discovered that he could not legally perform the functions of the two offices.

In my judgment, Mr. President, that is no justification at all. Aside from the well-established maxim of the law that every one is presumed to know the law, which we all admit is a legal fiction in many instances, it is important that one who assumes to exercise the functions of an office should know that he is eligible to perform those duties. The statute denied Mr. Kirk the right to become United States commissioner while at the same time performing the functions of a referee in bankruptcy, and I believe the bill ought to be defeated. I do not care to consume any great length of time in discussing it. If the policy of the law which forbids persons from serving as United States commissioners and referees in bankruptcy at the same time is wrong, we ought to repeal the law. We passed the law, however, believing it wholesome and in the public interest, and it is a wholesome and a beneficial statute; and instead of enforcing it we now propose to relax it in the case of an individual who was so ignorant that he did not know that under the law he did not have a right to occupy these two offices at once.

Mr. CAPPER. Mr. President, the Senator from South Carolina [Mr. SMITH], the author of this bill, is unavoidably absent to-day. He is very much interested in the measure; and I ask the Senator from Arkansas if he will not extend the Senator from South Carolina the courtesy of permitting the bill to go over until his return?

Mr. ROBINSON. The Senator from Kansas can ask that the bill go over; any Senator can do that; and I shall be glad to make the request myself, in view of the statement of the Senator from Kansas. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

CHARLES D. SHAY.

The bill (S. 2002) for the relief of Charles D. Shay, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Claims with an amendment to strike out all after the enacting clause and to insert:

That the Employees' Compensation Commission shall be, and it is hereby, authorized to extend to Charles D. Shay, who received injuries April 7, 1910, without fault or negligence on his part, while in the performance of his duties as locomotive engineer on the Panama Railroad, the provisions of an act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, compensation hereunder to commence from and after the passage of this act.

Mr. SMOOT. Mr. President, I want to ask the Senator if this matter has not already been referred to the Employees' Compensation Commission. I judge, from a letter here from A. L. Flint, chief of office of the Panama Canal, that it has been. In his letter dated May 11, 1920, addressed to Hon. SELDEN P. SPENCER, chairman of the Committee on Claims, he says:

SIR: I am in receipt of your letter of the 8th instant, requesting a report in connection with the bill (S. 2599) for the relief of Charles D. Shay.

In reply I inclose herewith a copy of a letter addressed to this office by the auditor of the Panama Canal, dated December 31, 1917, in reference to Mr. Shay's case, which is self-explanatory.

In view of the reference in the auditor's letter to file 8883 of the Secretary of Commerce and Labor as giving the complete history of Mr. Shay's case, copies of your letter and this acknowledgment are being referred to the United States Employees' Compensation Commission, as it is understood that all files in the Department of Labor with reference to injury compensation cases have been referred to that commission.

So it seems to me that the bill as amended is of little use.

Mr. KING. I ask that the bill go over.

The VICE PRESIDENT. The bill will be passed over.

PURCHASE OF SEED GRAIN FOR EASTERN WASHINGTON.

The bill (S. 4281) to appropriate $500,000 for the purchase of seed grain to be supplied to farmers in the crop-failure areas of eastern Washington, said amount to be expended under rules and regulations prescribed by the Secretary of Agriculture, was considered as in Committee of the Whole, and was read as follows:

Be it enacted, etc., That the Secretary of Agriculture is hereby authorized, for the crop of 1923, to make advances or loans to farmers in eastern Washington, where he shall find that special need for such assistance exists, for the purchase of wheat for seed purposes, and, when necessary, to procure such seed and sell same to such farmers. Such advances, loans, or sales shall be made upon such terms and conditions and subject to such regulations as the Secretary of Agriculture shall prescribe, including an agreement by each farmer to use the seed thus obtained by him for the production of grain. A first lien on the crop to be produced from seed obtained through a loan, advance, or sale made under this section shall, in the discretion of the Secretary of Agriculture, be deemed sufficient security therefor. All such advances or loans shall be made through such agencies as the Secretary of Agriculture shall designate. For carrying out the purposes of this section there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $500,000, to be immediately available, and not more than $10,000 may be used in the District of Columbia and elsewhere, by the Secretary of Agriculture in the administration of this act.

SEC. 2. That any person who shall knowingly make any false representation for the purpose of obtaining an advance, loan, or sale under this act shall, upon conviction thereof, be punished by a fine of not exceeding $1,000, or by imprisonment not exceeding six months, or both.

Mr. SMOOT. Mr. President, if I am not mistaken, this bill was incorporated in an appropriation bill, and the House, objecting to it, it went out.

Mr. McNARY. Mr. President, this amendment was offered by the junior Senator from Washington [Mr. POINDEXTER] to the agricultural appropriation bill. It went out in conference. This bill itself was introduced by the senior Senator from Washington [Mr. JONES], and while it proposes to do the same thing, yet it is a separate measure. Inasmuch as the Senator from Washington is here, he can explain it.

Mr. ROBINSON. Mr. President, the measure seems to be of an emergent nature; at least, it is framed upon the theory that an emergency exists. I think the Senate ought to consider the bill, but I would like to have an explanation of the circumstances and conditions which make necessary the passage of the bill.

Mr. SMOOT. Mr. President, what I rose to state was that the House absolutely refused to agree to a provision of the same character as the proposed bill, when attached as an amendment to the agricultural appropriation bill, the Senate having agreed to it, and it would seem almost a waste of time to pass this bill now, as it is a Senate bill, and send it to the House with the expectation of having it pass the House during the few remaining days of the present session.

Mr. ROBINSON. May I point out to the Senator from Utah that under the legislative practice now, an authorization should be made for the appropriation before the appropriation is actually embraced in the bill; so that the position taken by the House of Representatives was technically in compliance with the procedure of both branches of Congress at this time. If a separate bill should be passed authorizing the appropriation, the facts justifying the authorization, it must be that the body at the other end of the Capitol would pass the bill as an emergency measure.

Mr. McNARY. Mr. President, for the sake of accuracy I want to state to the Senator from Utah that the amendment was not defeated in the House. It did not come to a vote. It passed the Senate, however, and went into conference, the House conferees objected to the item, and the Senate conferees receded from the amendment. It did not reach the House, as a matter of fact, for consideration.

Mr. JONES of Washington. The Senator is in error about that. He will remember that we disagreed about the item, and it went to the House and was rejected by the House.

Mr. McNARY. On a vote?

Mr. JONES of Washington. They did not take a yea-and-nay vote, but upon a vote without a division it was defeated.

Mr. McNARY. In that particular I stand corrected.

Mr. JONES of Washington. May I say just a word, as I was called out of the Chamber when the matter came up. I think the suggestion of the Senator from Arkansas is a very proper one, and I believe the House would look at this matter in an entirely different light if it were presented in a separate bill rather than as an item in an appropriation bill which they had not considered at all. If this bill passes the Senate it will go to the House, and in the House will be referred to the proper committee, and will be considered; and I am very much in hopes that the Senate will pass it. The situation was explained quite fully when the amendment covering this matter came up during the consideration of the Agricultural appropriation bill. I do not want to take the time of the Senate this morning, during this unanimous-consent consideration of the calendar, to speak at length upon the bill.

I just want to say that in about five of the counties in eastern Washington there has been an absolute wheat failure during the last five or six years. The farmers there got only a little over $1,300 or $1,700 out of the loans we have made for that purpose heretofore, not because they did not need it but because the local banks took care of the situation as well as they possibly could. They have reached their limit now, however; they can not take care of the situation any further, and there are about 400,000 acres of land which have already been prepared for this year's seeding; that is, they expected to put in the wheat in the fall, and they could not get the seed, and they could not do it; but it is summer fallowed and ready to plant. The estimate is that there would be a production of about 4,000,000 additional bushels of wheat if these people could get the seed. They are in dire distress. There is probably greater need for it in this locality than in almost any locality that suffered when we made those loans heretofore, and the language of this bill is exactly the language of the preceding appropriation for this purpose. Of course, this applies to only one State;

it applies to eastern Washington alone. That is the section of the country that is affected; and I would like to have the Senate act as it did when the matter was presented as an amendment to the appropriation bill. It seemed to be convinced of the necessity for it then; and I hope the Senate will pass this bill as a separate measure, and I hope that the full committee, where the matter will probably be heard, will act favorably on it and that there will be favorable action also in the House.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

ROAD CONGRESSES.

The joint resolution (S. J. Res. 263) to authorize the Secretary of Agriculture to accept membership for the United States in the Permanent Association of the International Road Congresses, was announced as next in order.

Mr. ROBINSON. Mr. President, there does not appear to be a printed or other report from the committee accompanying the joint resolution. I would like to ask the Senator who introduced the resolution, or the Senator reporting the same, what will be the approximate expense incurred by the passage of the joint resolution?

Mr. TOWNSEND. There is no report, as the Senator suggests, but there was filed with the committee a message from the President of the United States on December 14 last in response to a letter from the Secretary of State, that prompted by a letter from the Secretary of Agriculture setting forth a reason for membership as provided in the joint resolution. I wrote to the department for information in reference to the cost. It is set forth in Document No. 275, which I hold in my hand, and which I filed with my joint resolution, and a copy of which I had hoped to have laid before each Senator. In substance, this conference, or congress, was instituted, as I remember, in 1908, being held at Paris. Later, in 1910, it was held at Brussels, and somewhere else two years later. Then the war came on and the activities of the congress were discontinued. This year there is a meeting to be held at Seville, Spain, and our Government has received an invitation to attend. The Secretary of Agriculture brings the matter to the Secretary of State with the statement that under the law he is not permitted to accept membership in such an organization or to invite such organization to the United States.

It is provided in the joint resolution that we shall take the maximum membership, which is 15. The subsidy, as they call it, or the charge, is 1,000 francs for each member, which would mean 15,000 francs, which, with the franc at 20 cents, would be about $3,000; but, of course, that is not the value of the franc now.

Mr. WARREN. An annual assessment?

Mr. TOWNSEND. An annual assessment.

Mr. WARREN. Of $3,000?

Mr. TOWNSEND. It would be that if the franc were worth 20 cents, but as it is now worth about 7 cents, it would be about $900.

Mr. ROBINSON. Out of what fund would the expenses of our members be paid?

Mr. TOWNSEND. They would be paid out of the fund which now goes to the road division of the Department of Agriculture for administration purposes.

Mr. ROBINSON. What would be the amount of that, approximately?

Mr. TOWNSEND. I have forgotten. I think the law provides that not to exceed 3 per cent of the appropriation for the road department is to be devoted to administration purposes.

Mr. ROBINSON. May I ask the Senator from Michigan, who I am sure has studied the question, what functions are performed by the international road congress? May I say, in connection with the question, that I can understand very well that the United States would have a direct interest in an international road congress which related to Canada and Mexico, perhaps, but it is very difficult for me to comprehend what benefit can accrue to the United States Government by representation in an international road congress assembled in Seville, Spain, or anywhere else on another continent. I would like to be informed by the Senator from Michigan why it is that the State Department and the Department of Agriculture have found it wise and essential that this Government have representation, and the maximum representation, too, at a road congress to be held in the city of Seville, Spain.

Mr. TOWNSEND. That congress is composed of representatives from practically every country in Europe, and from a large majority of the countries in South America. The general objects of the congress are set forth in the following statement:

1. By organizing road congresses.
2. By publishing papers, proceedings, and other documents.
3. By collecting the results of (a) tests carried out on roads; (b) laboratory tests throughout the world on materials which are used or are suitable for road construction and maintenance. These tests may be either in the form of mere records collected by the association or they may have been carried out by the association itself or through its instrumentality.

Its affairs are managed by a permanent international commission.

The Senator says he wants to know why we would be interested in a road congress attended by representatives from other countries, aside from Canada and Mexico. The Senator is well aware, I am sure, of the fact that road construction is one of the great subjects now under consideration throughout the world. The United States itself is expending millions of dollars upon roads. We are trying, through the department and otherwise, to prosecute investigations as to the character of roads, the character of road materials, and the methods which should be employed in construction.

Some of the nations of the Old World have built the best roads that have ever been constructed. It stands to reason that we could learn something and we could contribute something at the same time. The former Secretary of Agriculture, Mr. Meredith, urged upon Congress very strongly that this Nation take out membership in the association. The present Secretary of Agriculture sets forth in a complete document the reasons why we should be members and should participate in the congresses which are to be held, as we hope now, annually. There has not been one held since about 1912 or 1914 on account of the war, as I remember, but one is to be held this year in Seville.

Mr. ROBINSON. With the indulgence of the Senator from Michigan, the results of scientific experimentation, whether conducted by the delegates who assemble in an international road congress or the representatives of the governmental departments which ordinarily make such investigations, can be obtained without sending an expensive delegation to attend an international congress. If the Secretary of Agriculture wanted to find out, for instance, what the Government of Spain has accomplished in the way of discovering new or better road materials, he would ordinarily not send a junket representative of the Department of Agriculture to attend a general public conference but would send an expert, and that expert would be able to procure all the information which would be available for delegates to an international congress, and much more, in all probability. Here is a proposal to incur the expenses necessary for the sending of 15 delegates.

Mr. TOWNSEND. Oh, no; the Senator is entirely mistaken about that. It is not intended that there should be more than one or two delegates sent, but we would have our membership represented by the highest number, which is 15. There never would be more than one delegate. By the way, the Secretary of Agriculture, through the Department of State, has sent unofficial representatives to various of the congresses. They were not entitled to vote. We could not invite the congress to the United States under the law without having membership in the congress. It was thought desirable by the department that we should not only have official representatives at the congress but that we should also be in a position to invite the congress to meet in the United States on a subject, I repeat, which is second in importance to none other coming before the Congress of the country.

Mr. ROBINSON. If the Senator will pardon me, the joint resolution provides expressly that the United States shall be represented in the congress by the maximum number of delegates allowable. It seems that the policy of the joint resolution is not only to authorize but to require that the Government be represented by 15 delegates. Of course, if representation is necessary or desirable at all, it might be wise that the Government should have a full delegation at the congress, but I want to say to the Senator from Michigan in all seriousness that I very much doubt whether benefits to this Government would accrue corresponding to the expense that would be incurred under the joint resolution.

Mr. TOWNSEND. If I were not satisfied that the men who have given the closest thought and attention to the subject, and who have devoted a great deal of study to it, were right about the proposition which the department has recommended, and that the expense of it would be paid out of appropriations which they already have, thus involving no additional expense to the Government, I should not have urged the joint resolution.

Mr. STERLING. Mr. President, I think we are working under Rule VIII, and it seems to me Senators are exceeding the time limit in their discussions. There are other bills of importance on the calendar.

The VICE PRESIDENT. The limit of discussion is five minutes under the rule.

Mr. ROBINSON. Very well. I shall not object to the present consideration of the joint resolution, but I shall vote against it.

Mr. NORRIS. Mr. President, the proposition, it seems to me, is of considerable importance. It is true, as has been suggested, that it might be made a junket under the terms of the joint resolution. If it is carried out, however, in good faith and with the intentions of those who are behind it, none would go as delegates except experts. If they handle the matter right, it can be made very useful, it seems to me.

I appreciate the point that is made by the Senator from Arkansas. It is possible to send 15 delegates. We could easily remedy that by amending the joint resolution. It seems to me 15 are entirely too many, and that we should limit it to 3 or some such number. It might be well to have some provision in the joint resolution about the kind of people who should be delegates, but I think the committee have gone on the theory that it would be carried out in good faith, and I have no doubt that it would be so carried out. If it is, and the right kind of men are selected as delegates, we shall get great benefit from it.

Mr. ROBINSON. May I ask the Senator from Michigan by whom the delegates are to be selected under the joint resolution?

Mr. TOWNSEND. They would be selected by the Secretary of Agriculture.

Mr. ROBINSON. The joint resolution does not so provide.

Mr. TOWNSEND. That is the intention, however. That has been done. As I said, they have been doing it for some time without any official recognition. They want official recognition and want a vote in the congress. They want to have the right to invite the congress to the United States once in a while.

Mr. ROBINSON. There is nothing in the joint resolution to prevent the Secretary of Agriculture from making the selection, nor is there anything in the joint resolution which authorizes or requires him to do it.

Mr. NORRIS. I would suggest to the Senator from Michigan that he amend the joint resolution so as to limit the number of delegates to three, which I think would be ample.

Mr. TOWNSEND. The only object in having 15 the maximum representation is as set forth in the statement of the Secretary of Agriculture, that it gives us the highest standing with other countries of similar importance before the congress. I asked him particularly how many delegates would be sent. He said probably never more than one expert from the department, but he would have authority to vote there for the 15 memberships for which we pay the subsidy.

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was considered as in Committee of the Whole and was read, as follows:

Resolved, etc., That the Secretary of Agriculture is authorized and directed to accept membership in the Permanent Association of International Road Congresses and that the United States be represented in that congress by the maximum number of delegates allowable, and that the Secretary of Agriculture is authorized to expend annually, out of the administrative fund provided by section 21 of the Federal highway act of 1921, the sums necessary to cover the membership fees and such other expenses as may be necessary in maintaining membership in said association.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

AMOS Y. STARBUCK.

Mr. NORRIS. Mr. President, I notice upon the calendar that bills providing for the restoration of injured employees under the retirement act, so they may get the benefit of it, have been referred to the Committee on Claims. The other day I introduced such a bill (S. 4460), following the usual form. I asked that it be referred to the Committee on Claims, but I found on getting a copy of the bill that it had been referred to the Committee on Civil Service. I would like to ask the chairman of the Committee on Civil Service whether such a bill has been referred to his committee?

Mr. STERLING. I hardly know to what bill the Senator refers.

Mr. NORRIS. We have just passed several on the calendar.

Mr. STERLING. Bills for relief?

Mr. NORRIS. Yes.

Mr. STERLING. Do they relate to the civil service?

Mr. NORRIS. For instance, Order of Business No. 977, the bill (S. 2002) for the relief of Charlies D. Shay. I notice that bill is word for word, with the exception of one added clause with reference to the date when restoration shall be effective, with the measure which I introduced the other day. The bill was reported and is on the calendar as reported by the Senator from Indiana [Mr. NEW] from the Committee on Claims. I had no choice with reference to the bill I introduced. I would just as lief the bill should be referred to the Committee on Civil Service, but I realize that there may be some difficulty before action is taken on the measure and I would like to have it follow the other bills, to whichever committee is the proper one.

Mr. STERLING. My attention has not been called to either of the bills and I do not know whether they are of such a nature that they ought to be referred to the Committee on Civil Service or not.

Mr. NORRIS. I will read the bill which I introduced:

That the Commissioner of Pensions shall be, and he is hereby, authorized and directed to extend to Amos Y. Starbuck, a former employee of the Railway Mail Service, the provisions of an act entitled "An act for the retirement of employees of the classified civil service, and for other purposes."

If the Senator will read the other bill to which I have called attention, reported by the Committee on Claims, he will see that it is a copy of the bill I have just read. I am willing that my bill shall go to either committee. I have no choice; but it seems to me it ought to go to the Committee on Claims. I asked that it be referred to that committee, but the Chair referred it, I notice, to the Committee on Civil Service. While the chairmen of both committees are both present, I would like to have the matter straightened out. If such bills as that are to be referred to the Committee on Claims, I want to ask that the bill I have introduced shall be so referred.

Mr. STERLING. I am not anxious that any particular bill shall be referred to the Committee on Civil Service or that the Committee on Civil Service shall have the work of examining and considering the bill, but on the face of it it would seem to me it is a bill quite appropriate for reference to the Committee on Civil Service, because it has to do with the civil-service retirement law and the rights of parties under it.

Mr. NORRIS. I am quite willing it should stay there, only I wanted to have the Senate know that I have called attention to it and I do not want objection to be raised afterwards that it should have gone to the Committee on Claims, which is reporting some bills just exactly like it.

Mr. CAPPER. Mr. President, I think the Senator from Nebraska is correct. A great many bills of that nature have been referred to the Committee on Claims and have been considered by that committee. Usually, I think, they have been referred to that committe at the request of the author of the bill. I think that has more to do with it than anything else, so far as the reference to the Committee on Claims is concerned.

Mr. NORRIS. Out of deference to the chairman of the Committee on Civil Service, I shall make no request. I will let the measure remain with his committee.

EDITH B. MACON.

The bill (S. 1678) for the relief of Edith B. Macon was announced as next in order.

Mr. KING. Mr. President, reserving the right to object, I should be glad to have the bill read.

The Assistant Secretary read the bill, as follows:

Be it enacted, etc., That the Commissioners of the District of Columbia are hereby authorized and directed to pay, out of any moneys in the Treasury not otherwise appropriated, to Edith B. Macon, the daughter of and sole heir of the estate of Davis W. and Elizabeth L. W. Bailey, deceased, the sum of $3,127.85, one half of said sum to be paid out of the revenues of the District of Columbia and the other half out of the Treasury of the United States, in settlement of the claim of said Davis W. Bailey against the District of Columbia under his contract for laying asphalt pavement in said District: *Provided*, That the sum aforesaid, when paid, shall be accepted as a full and final settlement both of principal and interest of the award made July 18, 1892, for the sum of $10,519.20, and duly filed in the Supreme Court of the District of Columbia in favor of the said Elizabeth L. W. Bailey as administratrix of said estate of said Davis W. Bailey.

Mr. ROBINSON. Mr. President, the bill is very unusual in form and substance. It appears on the face of the bill that in the year 1892 some tribunal made an award, finding these parties were entitled to $10,519.20. After a lapse of a little more than 30 years a bill is brought into the Senate appropriating the sum of $3,127.85, with the proviso attached that the parties must accept that sum in full accord and satisfaction of an award for three times that amount, made more than 30 years ago.

I wish to ask the author of the bill or the Senator reporting it for an explanation of the matter, and particularly why, if an award has been made in the sum of more than $10,000, the parties who are the beneficiaries under that award should be required to receive one-third of the amount after the lapse of 30 years in full satisfaction of the award? By whom was the award made and under what circumstances?

Mr. MOSES. Mr. President, if the Senator from Arkansas would read the report accompanying the bill he would find two communications, in one of which——

Mr. ROBINSON. But I have not the time to read the report.

Mr. MOSES. He would find that is the sum agreed upon by the corporation counsel for the District of Columbia as being the proper sum to be paid. He would there find another letter which recommends that a reduced sum be paid, upon the ground that the profits which accrued from a contract then were larger than the profits which would accrue from a contract now made under circumstances more highly competitive than they were forty-odd years ago.

I introduced the bill, Mr. President, and I wish to say to the Senator from Arkansas that possibly one reason for accepting a greatly reduced sum from the award originally made by the courts thirty-odd years ago is that practically everybody connected with the case, both claimants and counsel, have died. The counsel in this case died within a few months, and there is nobody left but the daughter of the original claimant who received the original award. The report was prepared by the junior Senator from Delaware [Mr. BAYARD], and, after a careful examination of all the papers and communication with the District authorities, recommended to the full Committee on the District of Columbia that the bill should be reported favorably without amendment.

It is, to be sure, as the Senator indicates, an old claim, but the Senator knows perfectly well the heart-breaking experience of people who have done legitimate work for the Government and who have been years here in trying to get their pay for it. This is simply one of numerous similar cases. I think this bill has particular merit, inasmuch as it has been passed upon by the court and by the District authorities. I assume that the Senator has reference rather, when he speaks of the peculiar form of the bill, to the provision that half of the sum to be paid shall be paid out of the District treasury and half out of the Treasury of the United States.

Mr. ROBINSON. No; I have reference to the provision of the bill which specifies that a court judgment of $10,000 and more which was entered more than 30 years ago shall be satisfied by a legislative enactment through the payment of a little more than $3,000.

Mr. MOSES. Mr. President——

Mr. ROBINSON. If the Senator will wait for just a moment, I desire to say that his statement that the profits allowable under transactions of the nature involved in this bill were greater 30 years ago than they now are, and for that reason the requirements that the beneficiary shall receive one-third of the amount found to be due 30 years ago is justified, seems most extraordinary.

Mr. MOSES. No; I did not say that.

Mr. ROBINSON. The court——

Mr. MOSES. If the Senator will permit me right there, I desire to say that I do not advance that as an argument which I propose; that is stated in one of the documents which are embraced in the report.

Mr. ROBINSON. With no intention to reflect upon any individual, I desire to say that any governmental or legislative process which would assume to settle a court judgment rendered more than 30 years ago for one-third of the face of the judgment approximates dishonesty.

Mr. WALSH of Montana. If the Senator will pardon an interruption, I desire to say that the report discloses that the judgment referred to was reversed in the Supreme Court of the United States.

Mr. MOSES. It does.

Mr. WALSH of Montana. That decision was rendered upon the ground that the judgment was entered upon an award made by arbitrators, and that the Commissioners of the District of Columbia had no authority under the law to submit the claim to arbitration and award. So it goes back to the original cause of action, which arose earlier than 1879.

Here are some dates which are given in the report:

The contract was made July 30, 1879.
Suspended February 12, 1880.
Original suit for damages brought February 24, 1883.
The arbitrator made his award on July 18, 1892.
Suit was filed upon this award August 8, 1893.
Was confirmed by court of appeals November 3, 1896.

The award was reversed by the Supreme Court of the United States May 31, 1898, upon the ground that the commissioners had no power or authority under the law to submit the claim to arbitration. So we go clear back to a claim that originated in 1879, and that failed away back in 1898, because the judgment had been reversed.

Mr. MOSES. That does not change the essential fact that the work was performed.

Mr. WALSH of Montana. Certainly it does. By all of the rules of reason the statute of limitations long ago ran against the claim. As the Senator has stated, everybody who knew anything about the matter is dead—dead long ago—so that every reason that is at the foundation of the statute of limitations may be urged against this claim.

Mr. MOSES. The only reason why it is brought here is because no action can be taken anywhere else.

Mr. KING. Mr. President, will the Senator permit an interruption?

Mr. MOSES. Yes.

Mr. KING. I invite the Senator's attention to the fact that the present commissioners state that there was a counterclaim against the contractor for defective work, and that in any event the board only recommended $1,220.86.

Mr. MOSES. Yes; that is on the basis of their statement that, under present competitive conditions, the profits accruing from this work would not have been as much as they were. The Senator will find in earlier documents filed by the commissioners that the deduction of the countercharge had already been made from the sum of four thousand and odd dollars. I am stating the case only as I know it from the record.

Mr. KING. I reserve the right to object. I think we ought to have a little fuller explanation. Furthermore, I suggest to the Senator that in any event the Commissioners of the District of Columbia have no authority, as I am advised, to pay any amount which is properly payable out of the Treasury of the United States. I suggest to the Senator that he let the bill go over until the next calendar day.

Mr. MOSES. I have no recourse, Mr. President.

Mr. KING. I want the Senator to be entirely satisfied.

Mr. MOSES. I have to be.

Mr. KING. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

SOPHIE K. STEPHENS.

The bill (S. 1528) for the relief of Sophie K. Stephens was announced as next in order.

Mr. KING. I reserve the right to object to the bill after it shall have been read.

The PRESIDING OFFICER (Mr. POINDEXTER in the chair). The bill will be read.

The Assistant Secretary read the bill, which had been reported from the Committee on Claims with an amendment, on page 1, line 5, to strike out "$7,500" and in lieu thereof to insert "$512.75," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury is hereby authorized and directed to pay to Sophie K. Stephens, of 2107 Beverly Road, Brooklyn, N. Y., the sum of $512.75, out of any money in the Treasury not otherwise appropriated, as compensation for and in full satisfaction of all claims for damages against the United States for injuries sustained on December 4, 1918, by falling over United States mail sacks which had been left on the sidewalk in front of the Kensington post office, Brooklyn, N. Y.

Mr. KING. I should like to have some explanation from the committee with reference to this claim. In the absence of such explanation, I object, and ask that the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

SUPREME LODGE OF THE WORLD, LOYAL ORDER OF MOOSE.

The bill (S. 4275) incorporating the Supreme Lodge of the World, Loyal Order of Moose, was announced as next in order.

Mr. WALSH of Montana. Mr. President, this bill comes from the Committee on the District of Columbia. It provides for the incorporation of the Loyal Order of Moose, the bill reciting that this organization is to become a corporation in the District of Columbia—not of the District of Columbia, but in the District of Columbia.

Heretofore, I think without exception, all of the very many bills introduced providing for Federal incorporation have gone to the Committee on the Judiciary. That committee has been so overwhelmed with applications for special corporate charters that it has been obliged to establish a rule for the exclusion from the benefit of Federal incorporation of any organization whose purpose is not to carry out some power granted to the Cngress by the Constitution. Some relaxation in that rule, or at least some liberality in its application, has been urged in behalf of organizations associated with the conduct of the late war, such as the disabled veterans and the nurses whose services were so valuable in connection with the war. Up to the present time, however, the committee has not felt constrained to relax in any degree whatever its rule in regard to that matter. I shall submit at the earliest possible date an amendment to the rule which will authorize the incorporation of organizations which participated in the late war, including the nurses and the veterans, but I am perfectly certain that the Committee on the Judiciary, which has always handled this subject, will not consent to any further relaxation of the rule.

Now, apparently, organizations which desire incorporation endeavor to avoid that by having their bills referred to some other committee, and we have here a bill providing for the in-

corporation of the Loyal Order of Moose. If this bill shall pass, there will be nothing for the Committee on the Judiciary to do except to abrogate its rule and allow other similar measures to be considered exactly the same way.

Mr. WILLIAMS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Mississippi?

Mr. WALSH of Montana. I yield.

Mr. WILLIAMS. Will the Senator permit me to say that this particular request for incorporation goes a little bit further than ordinarily is the case? It is not a Federal corporation alone, but the bill proposes to incorporate "the Supreme Lodge of the World." I do not know exactly where American congressional power comes to organize anything as a "supreme lodge of the world" of any description.

Mr. WALSH of Montana. That is quite true.

I regret very much to be obliged to get in the way of the enactment of this legislation, but I am merely calling attention of the Senate to the door that it is opening, if the Committee on the Judiciary is to be deprived of a power it has always heretofore exercised to pass preliminarily upon these questions, and all these applications for incorporations are going to go to any and every committee that the projector or proposer of the bill may care to submit it to.

Mr. President, I wish to call attention to the fact that the Code of the District of Columbia makes ample provisions for the incorporation of fraternal organizations which desire to be incorporated as corporations of the District of Columbia. The provisions will be found in section 749 et sequitur of the Code of the District of Columbia. Of course, if this organization is to be a corporation of the District of Columbia, there is no need of a special statute, for we have made provision already for the incorporation of corporations under the District of Columbia. This will be a Federal corporation. It will enjoy the privilege, if this bill goes through, of having all of its cases tried in the Federal courts throughout the country, wherever they may arise—a privilege not enjoyed by other fraternal organizations.

In view of that situation, Mr. President, I move that this bill be referred to the Committee on the Judiciary.

The PRESIDING OFFICER. The question is on the motion of the Senator from Montana.

The motion was agreed to.

ADMISSION OF REFUGEES FROM NEAR EASTERN COUNTRIES.

The bill (S. 4092) providing for the admission into the United States of certain refugees from near eastern countries was announced as next in order.

Mr. McNARY. Let that go over.

Mr. STERLING. Mr. President, I hope the Senator from Oregon will withhold temporarily his objection to this bill.

Mr. McNARY. I withhold it for the present.

Mr. STERLING. The bill is a very important one, and it seems to me under the circumstances that this country can do no less than to admit these Armenian refugees to the number that the Commissioner General of Immigration estimates would come in under the terms of the bill.

Mr. McNARY. What is the number?

Mr. STERLING. The number, according to the estimate of the Commissioner General of Immigration, is perhaps between five and six thousand under the first part of the bill, besides the 25,000 orphaned or homeless children who might be allowed to come in.

Mr. President, the bill is confined to Armenian refugees alone. The Committee on Immigration modified the bill so that it would include people of that race alone, and it provides for the admission only of those who have relatives in this country within certain degrees. It provides, as I said, for the admission of these 25,000 orphaned or homeless children according to the terms of a bill introduced by the Senator from Mississippi [Mr. WILLIAMS], which was incorporated in the bill. They are admitted under such safeguards that no peril or menace can possibly arise to the people of this country. Every one of these immigrant refugees must be guaranteed against becoming a public charge. They are admitted under the closest restrictions as to relatives in this country and as to their being supported by those relatives in case there is need for their support.

With reference to the orphaned or homeless children, they may be taken into American or Armenian homes, their support being guaranteed, or they may be taken by some philanthropic institution or orphanage, their support being guaranteed. That pertains, of course, to orphaned or homeless children under the age of 16 years. No refugees would be admitted as orphans who are over that age, and no others would be admitted unless they come under the other terms of the bill, which, as I have stated, would admit between 5,000 and 6,000 at the utmost.

Mr. ROBINSON. Mr. President, will the Senator yield to a question?

Mr. STERLING. I yield.

Mr. ROBINSON. The bill expires June 30, 1924, I believe.

Mr. STERLING. Yes.

Mr. ROBINSON. No person can be admitted under its provisions after that time?

Mr. STERLING. That is correct.

Mr. ROBINSON. The Senator states, I believe, that it is expected that about 5,000 persons will be admitted under the provisions of the bill.

Mr. STERLING. Between five and six thousand, according to the commissioner general. He can not estimate it exactly, but he thinks that is a high estimate.

Mr. ROBINSON. What I desire to know particularly is how the estimate is arrived at—by what process.

Mr. STERLING. It can not be arrived at except by taking into account, of course, the Armenians in this country now and ascertaining as nearly as possible those who may have relatives who fled from Smyrna or that vicinity during the late disaster there.

Mr. ROBINSON. Any person who can qualify under the bill is entitled to admission at any time prior to June 30, 1924?

Mr. STERLING. Yes.

Mr. ROBINSON. So that in the administration of the bill there can be no discrimination? If the number should exceed the estimated number, that will make no difference in the administration of the bill?

Mr. STERLING. That is correct.

Mr. ROBINSON. The persons would be admitted without regard to the number who had theretofore been admitted?

Mr. STERLING. Yes.

Mr. WILLIAMS. Provided they qualified.

Mr. ROBINSON. Yes; I say, provided they qualified.

Mr. STERLING. The Commissioner General of Immigration appeared before the committee, and I can not think the number will exceed the number stated by him. According to the best information they have, it can not exceed that number.

Mr. FRELINGHUYSEN. Mr. President, may I ask the Senator from South Dakota a question?

Mr. STERLING. I yield to the Senator from New Jersey.

Mr. FRELINGHUYSEN. What is the limitation; how many?

Mr. STERLING. Between five and six thousand, the Commissioner General of Immigration says.

Mr. FRELINGHUYSEN. And 25,000 children?

Mr. STERLING. And 25,000 children, who will be taken care of in the manner provided for in the bill.

Mr. NEW. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield to the Senator from Indiana?

Mr. STERLING. I yield to the Senator.

Mr. NEW. I am not objecting to the subject matter of this bill at all, but I think it is pretty evident that operating as we are for consideration of the calendar under Rule VIII, it will be impossible to dispose of this bill within the 25 minutes remaining. It will be impossible for us to give proper consideration to it. There are half a dozen Senators on their feet now with questions to ask about this bill. While, as I say, I am not objecting to the bill itself, it is perfectly evident that the further consideration of the bill now will effectually block the consideration of anything else that is on the calendar.

Mr. STERLING. Mr. President, I should like to say, in reply to that, that bills have been considered here this morning—private claim bills, I think—that have consumed much more time than we have consumed so far in the consideration of this bill. As to any questions that may be asked, I will say that the bill is brief, and I will endeavor to answer quickly and briefly any questions that may be asked by any Senator.

Mr. WILLIAMS. Mr. President——

Mr. STERLING. I yield to the Senator from Mississippi.

Mr. WILLIAMS. Mr. President, if the Senator will permit an interruption, I should like to make a few remarks. They will not take over three or four minutes. We have spent more time this morning upon the consideration of a claim for $3,000, a claim 30 years old, than we have thus far spent on this bill.

What is this bill for? Here are these Armenians who went to Palestine and fought for the Allies and their associates during the late war, who have been decimated, to say the very least, perhaps more than that. In fact, some of the estimates go so far as to say that one-third of the entire population has been killed and more than a tenth of the women raped; and that the Senate of the United States can not give a few minutes to the consideration of a measure of this kind is a reflection upon American humanity and American patriotism. Even the Soviet Russian Government, I notice, set aside the other day a lot of

land in Russian Armenia for Armenian fugitives. The council at Lausanne has just surrendered to the Turks the demand for a homeland for the Christian Armenian people in Asia. The Turks positively refused it; and there was not enough spirit in France, Italy, and Great Britain to read an ultimatum to them to stop the murder and the rape and the deportation of these people.

All that this bill asks is that something like 5,000 or 6,000 adults shall be admitted, provided they are otherwise admissible under our immigration laws—remember that; they must not be diseased and they must not be illiterate—and that 25,000 little children, orphaned or homeless, shall be allowed to come to America and go to orphan asylums, whether religious or governmental or philanthropic, which shall give bond to prevent them from becoming a public charge until they are old enough to work for themselves. That is all the bill provides; and certainly the Senator from Indiana is not going to tell me that he will object to a few minutes being spent upon the explanation of the bill, and a request for unanimous consent, when we have spent twice that much time upon a little question of $3,000 here this morning.

Mr. WILLIS. Mr. President, as the Senator from South Dakota knows, I am not opposed to this bill. Indeed, I participated in the consideration of it, and in the drafting of the amendments. If the bill is to be now considered, I am very strongly in favor of it. I want, however, to correct one misapprehension that Senators seem to have. The only positive limitation is as to the number of orphans that may be admitted. The so-called limitation of 5,000 adults really is not a limitation.

Mr. STERLING. Oh, no; I thought I made myself plain in that regard. I said twice, at least, that that was the estimate of the Commissioner General of Immigration.

Mr. WILLIS. I know, but I heard other Senators speak of it as a limitation. That is only an estimate. I am in favor of the consideration of the Senator's bill.

Mr. WALSH of Massachusetts. Mr. President, I think there is a very strong sentiment in this country in support of this legislation, and I hope favorable action will be taken to-day. The people of my State who have interested themselves in this question are among our most representative citizens, and numerous petitions and letters from church and philanthropic organizations have been sent me indorsing this measure.

I hope we will not delay longer, as it is now several weeks since this legislation was petitioned for. I myself introduced a resolution for this purpose early in December. It seems to me, as the Senator from Mississippi [Mr. WILLIAMS] has said, that this legislation is in the interest of humanity and a patriotic act. I wish the bill was somewhat broader in its scope, but it has been very carefully drawn, and it is more definite and restrictive than the resolution offered by me and fully protects the country against any abuses of our immigration laws. Mr. President, I sincerely hope the bill may be favorably acted upon to-day. It does not seem possible that there can be any serious opposition.

Mr. LODGE. Mr. President, I think the Armenians, in whom I have taken a very great interest for a long time, present a peculiarly tragic history. They have been deprived of their land. The Turks have absolutely refused to give them any land to live in. Probably half the population that existed at the beginning of the war has been massacred, and their situation is piteous in the extreme. I think this bill is carefully safeguarded.

Mr. WILLIAMS. Mr. President, will the Senator from Massachusetts pardon a suggestion? They are unlike any of the others of these refugees, in that they have no home land of their own.

Mr. LODGE. None.

Mr. WILLIAMS. The Greeks have a home land; the Italians have a home land. These people have none on the surface of the earth except what poor, barbarous, soviet Russia offered to them the other day; and we are not going to be shamed by letting Russia outdo us.

Mr. LODGE. That is very true; but the Senator has alluded to one point that I think of importance, because I take great interest also in the Greeks. The sufferings of the Greeks in the massacres at Smyrna have been simply terrific. There are some 1,100,000 Greek refugees. Of course they have a country to go to, but it is a very small country, and their situation is trying in the extreme. I do not suppose it is possible to add them to this bill, but I wish to make that allusion to the Greeks themselves.

Mr. STERLING. Let me say, in addition to what the Senator from Massachusetts has said, that there is little Greece, with its population of perhaps 4,500,000. It has been estimated that there are as many as a million and a half refugees in Greece. Greece can not take care of all of them, yet she is doing the best she can, and without any discrimination whatever as between races.

Mr. KING. The Senator might add, speaking about the Greeks who were expelled from Asia Minor, that there have been over 400,000 expelled from Thrace and vicinity, and many of them, threading the mountain passes, have reached Athens and the surrounding territory, and in those congested districts thousands of them are dying from disease, starvation, and exposure.

The PRESIDING OFFICER. Is there objection to the consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported by the Committee on Immigration with an amendment, to strike out all after the enacting clause and to insert the following:

(1) That when used in this act the term "refugee" shall mean any homeless person of the Armenian race who shows that he has fled from his home in reasonable apprehension of death or bodily injury at the hands of Turkish troops or the Turkish civilian population since the 1st of August, 1914, and was resident prior to fleeing from his home in territory now occupied by the Turkish military or civil authorities.

(2) That when used in this act the term "relative" shall mean a husband, a wife, a parent, a grandparent, an unmarried or widowed daughter, granddaughter, or a sister, or a son, grandson, or a brother under 18 years of age.

SEC. 2. That any person resident within the United States, who is either a citizen of the United States or who prior to the approval of this act has made a declaration of intention to become a citizen, may petition the Commissioner General of Immigration for the admission into the United States of any relative who is a refugee.

SEC. 3. (1) That the petition for admission must contain (a) the name and address of the petitioner; (b) if a citizen, the date and place of his admission to citizenship and the number of his certificate, or if a declarant the date and place of his declaration of intention and number of his declaration; (c) the name and address of his employer, or the address of his place of business or occupation if he is not an employee; (d) the degree of relationship of the person for whom the application is made, and the name of the place where such person was resident prior to fleeing from his home, and the place of temporary sojourn of such person at the time the application was made if known to petitioner; (e) a statement that he is able to and will if required give bond or undertaking as provided by section 21 of the immigration act of February 5, 1917, that the person for whose admission the application is made shall if admitted not become a public charge; (f) a statement of the circumstances, as far as known, under which such person was compelled to flee from his home.

(2) The petition must be made under oath before some person having authority to administer oaths and must be supported by such further evidence as may be required by regulations issued under this act.

(3) Application may be made in the same petition for more than one person.

SEC. 4. That the petition must be accompanied by the sworn statements of two responsible citizens of the United States to whom the petitioner is known that to the best of their knowledge and belief the statements made in the petition are true, and that the petitioner is a responsible person, able to give the bond required by section 3 of this act.

SEC. 5. (1) That on the receipt of any petition the Commissioner General of Immigration may make such inquiries as to him may seem necessary, either in the United States or in any foreign country, to establish the truth of the statements made in the petition or in the accompanying statements.

(2) Any consul or consular officer of the United States shall give such aid to the Commissioner General of Immigration in carrying out this act as his other duties permit.

SEC. 6. The Commissioner General of Immigration may in his discretion consider as evidence the official statements of an agent of any corporation organized for philanthropic purposes under the laws of the United States or any State thereof engaged in the relief of refugees and affiliated with any committee appointed by the President for Near East relief, if the agent is delegated by his organization for the purpose.

SEC. 7. That if the Commissioner General of Immigration shall find that the persons named in the petition are refugees and relatives within the meaning of this act, and are otherwise admissible under the provisions of the act of February 5, 1917, and other laws relating to immigration, then upon approval of the Secretary of Labor such refugees shall be exempt from the provisions of the act approved May 19, 1921, entitled "An act to limit the immigration of aliens into the United States," as extended and amended by the public resolution of May 11, 1922, and they shall not be included in estimating the quota of alien immigrants of the nationality to which they belong established under such act as extended and amended.

SEC. 8. That any refugee as herein defined who has been permitted by the immigration authorities of the United States to land temporarily shall be finally admitted if a petition be filed and approved as provided herein in respect to such alien. That the admissibility to the United States of refugees under this act shall, so far as feasible, be determined prior to embarkation of such refugees at a foreign port, and to that end officers of the United States Immigration Service and of the United States Public Health Service may be detailed for service abroad, but any examination which may be conducted by such officers abroad shall not be in substitution for examination at a United States port.

SEC. 9. That in addition to the above the Commissioner General of Immigration, subject to approval of the Secretary of Labor, is hereby authorized to admit as refugees not more than 25,000 orphaned or homeless Armenian children under 16 years of age (if physically and mentally qualified under the terms of the immigration act of February 5, 1917, and other immigration laws) and who are now under the care of the Near East Relief or American or European missions and relief associations in Constantinople, Asia Minor, or elsewhere: *Provided, however,* That some responsible orphans' home, governmental,

religious, or secular, in the United States, or some family, American or Armenian, now living within the United States, shall agree to receive and care for them, giving proper guaranties to the Secretary of Labor that they will not become a public charge.

SEC. 10. That the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall prescribe rules and regulations necessary to carry this act into effect.

SEC. 11. That any person who knowingly and fraudulently aids in any way to secure the admission under this act of any person not properly admissible under it shall be punished by a fine not exceeding $1,000 or by imprisonment for a term of not exceeding one year, or both.

SEC. 12. That this act shall take effect upon its passage. No refugee shall be admitted under its terms after June 30, 1924, except those for whose admission petition has been filed previous to that date.

SEC. 13. That this act be cited as the Near East refugee act of 1923.

Mr. STERLING. I offer an amendment to the amendment.

The PRESIDING OFFICER. The Secretary will state the proposed amendment to the amendment.

The READING CLERK. On page 10, line 6, as the bill was reported, after the word "elsewhere," insert a comma and the words "and to this end such officials shall cooperate with the Near East Relief in selecting, protecting, transporting, and placing in the United States such children."

Mr. STERLING. The amendment is offered to give full responsibility for the care of those orphan children, and more responsibility to the determination as to who shall come. The Near East Relief is the one philanthropic agency in the East that has a charter from the United States Government.

The amendment to the amendment was agreed to.

The PRESIDING OFFICER. The question recurs upon the committee amendment as amended.

Mr. WALSH of Massachusetts. I would like to ask the Senator from South Dakota how many refugees the committee estimates are now living?

Mr. STERLING. Between five and six thousand adults, besides the 25,000 orphaned or homeless children.

The amendment as amended was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

TRANSFER TO CLASSIFIED CIVIL SERVICE.

Mr. SHIELDS. Mr. President, I was unable to be in the Chamber at the beginning of the call of the calendar, and I wish to inquire what was done with Order of Business No. 927, Senate bill 3247, to transfer to the classified civil service agents and inspectors in the field service, including general prohibition agents and field supervisors appointed and employed pursuant to the national prohibition act, and for other purposes?

The PRESIDING OFFICER. That bill was not reached on the calendar. By unanimous consent the Senate commenced at Order of Business No. 969.

Mr. SHIELDS. The bill to which I have referred was not passed?

The PRESIDING OFFICER. No.

Mr. SHIELDS. I hope the Senate can go back to it when it finishes the call of the calendar.

The PRESIDING OFFICER. The Secretary will proceed to call the calendar.

TRAVELING EXPENSES OF UNITED STATES EMPLOYEES.

The bill (S. 4176) to amend section 370 of the Revised Statutes of the United States was considered as in Committee of the Whole, and was read, as follows:

Be it enacted, etc., That section 370 of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"SEC. 370. Whenever the Solicitor General, an attorney, an assistant attorney, a special assistant to the Attorney General, or any other officer of the Department of Justice is sent by the Attorney General to any State, District, Territory, or country to attend to any interest of the United States the person so sent shall receive in addition to his salary and the necessary expenses of travel, his actual expenses incurred for subsistence, not to exceed $7 per day, or a per diem of $6 in lieu of such actual expenses, while absent from the seat of government, the account thereof to be verified by affidavit."

Mr. KING. I shall be glad to have an explanation from the Senator in charge of this bill.

Mr. NELSON. I will make a brief explanation. The employees of the Department of Justice, the Solicitor General, and all the agents whom they have to send throughout the country to investigate matters pertaining to the department find their expenses for subsistence much higher than the amount allowed by law. Under the existing law they are allowed a fixed sum of $5 a day, or, in lieu thereof, their actual expenses, not to exceed $6 a day. That means that they have the option of taking the $5, or they can have the allowance of $6 a day, but in that case they must render their account to show they have expended that much. This increases the two items $1 each, making them $6 and $7, respectively. That is all there is to the bill.

Mr. KING. May I say to the Senator that in most of the appropriations which have been made for the traveling expenses of employees of the Government, including officers of the Army and the Navy, my recollection is that $4 a day is the amount allowed.

Mr. NELSON. Oh, no; as a matter of fact, they are allowed more than the amount here proposed. If the Senator will read the report made here, he will find that officers of the Navy and the Marine Corps are allowed $7 a day. Federal judges are allowed $10 a day. Stenographers are allowed as much as $8 a day, and other officials are allowed $6.

This is simply to allow them $1 more in each case, $1 more where they take the actual money, and $1 a day additional where they render an account. An employee can take either. If he is satisfied to take the per diem, he is limited to $6 a day. If he wants his actual subsistence, it is limited to $7 a day, but in that case he must render an account.

Mr. KING. May I inquire of the Senator, because he is familiar with many of these appropriation bills, if there are not many officials of the Government and employees of the various departments whose expenses are limited to $4 a day?

Mr. NELSON. There may be some of the minor clerks whose expenses are so limited, but these employees of the Department of Justice are usually experts, sent throughout the country to investigate and to obtain evidence in cases. They are more than the ordinary department clerks.

Mr. KING. This amount is to cover their hotel bills?

Mr. NELSON. It covers all except transportation. It covers their hotel bills, their board and room rent, and their subsistence.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

ADDITIONAL TERM OF COURT AT LIMA, OHIO.

The bill (H. R. 10817) to amend section 100 of the Judicial Code of the United States was considered as in Committee of the Whole.

Mr. NELSON. I desire to say that that is a long bill, which reenacts a whole paragraph of the Judicial Code. The only change in existing law is the establishment of a term of court in northern Ohio, at Lima; and there is no occasion to read the bill. The Senator from Ohio [Mr. WILLIS] will propose an amendment to the bill, to which there is no objection.

Mr. WILLIS. I desire to offer several amendments to the bill, on page 2.

The PRESIDING OFFICER. The Secretary will state the amendments.

The READING CLERK. On page 2, line 13, after the word "Lima," insert a comma and the words "if in the opinion of the court the public convenience so requires," and, on line 14, strike out the words "June and," so as to make the bill read:

Be it enacted, etc., That section 100 of the Judicial Code is hereby amended to read as follows:

"SEC. 100. The State of Ohio is divided into two judicial districts, to be known as the northern and southern districts of Ohio. The northern district shall include the territory embraced on the 1st day of July, 1910, in the counties of Ashland, Ashtabula, Cuyahoga, Carroll, Columbiana, Crawford, Geauga, Holmes, Lake, Lorain, Medina, Mahoning, Portage, Richland, Summit, Stark, Tuscarawas, Trumbull, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Auglaize, Allen, Defiance, Erie, Fulton, Henry, Hancock, Hardin, Huron, Lucas, Mercer, Marion, Ottawa, Paulding, Putnam, Seneca, Sandusky, Van Wert, Williams, Wood, and Wyandot, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Cleveland on the first Tuesdays in February, April, and October, and at Youngstown on the first Tuesday after the first Monday in March. Terms of the district court for the western division shall be held at Toledo on the last Tuesday in April and October, and at Lima, if in the opinion of the court the public convenience so requires, on the first Tuesday after the first Monday in September: *Provided*, That suitable accommodations for holding court at Lima be furnished free of expense to the United States.

"Grand and petit jurors summoned for service at a term of court to be held at Cleveland may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Youngstown. Grand and petit jurors summoned for service at a term of court to be held at Toledo may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Lima.

"Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Cleveland or at Youngstown, as the court may direct. Crimes and offenses committed in the western division shall be cognizable at the terms held at Toledo or at Lima, as the court may direct.

"Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Youngstown. Any suit brought in the western division may, in the discretion of the court, be tried at the term held at Lima.

"The southern district shall include the territory embraced on the 1st day of July, 1910, in the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington, which shall constitute the eastern division of said district.

"Terms of the district court for the western division shall be held at Cincinnati on the first Tuesdays in February, April, and October; and for the eastern division at Columbus on the first Tuesdays in June and December, and at Steubenville on the first Tuesdays of March and September. Grand and petit jurors summoned for service at a term of court being held at Columbus may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term being held or authorized to be held at Steubenville. Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Columbus, or at Steubenville, as the court may direct. Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Steubenville: *Provided*, That suitable rooms and accommodations for holding court at Steubenville shall be furnished free of expense to the Government until the completion of the Federal building: *And provided further*, That terms of the district court for the southern district shall be held at Dayton on the first Mondays in May and November. Prosecutions for crimes and offenses committed in any part of said district shall also be cognizable at the terms held at Dayton. All suits which may be brought within the southern district, or either division thereof, may be instituted, tried, and determined at the terms held at Dayton."

The amendment was agreed to.

Mr. KING. May I inquire of the Senator from Ohio whether provision has been made for a suitable building, or whether this contemplates that the Government will sooner or later be called upon to make an appropriation to erect a building?

Mr. WILLIS. That matter was fully considered, and it is provided in the bill that this shall be done without any additional expense to the Government. I think I ought in fairness also to say that when this matter first came up both of the judges of the northern district of Ohio were opposed to the bill. I have their letters here. They wrote to my colleague and to me; but they said, in response to an inquiry from the Representative who introduced the bill, that they would have no objection to it, providing the amendment which the Senate has just adopted were adopted. In other words, this makes it optional with the court. I think it quite likely that court will not be held there very often, at any rate, while the present judges remain on the bench, which I trust will be for a long time, because they are very competent judges.

Mr. ROBINSON. If that is the case, why should Congress pass the bill? If it is not expected that court will be held in this place, why not wait until there is an actual necessity for providing for a term of court at Lima?

Mr. WILLIS. The Senator did not understand me correctly if he understood me to say that it was not proposed to hold court there. Court will be held there, but under the terms of the bill as it originally stood it was made mandatory that they should hold two terms of court there, and the judge advised me by wire that if it were provided that there may be only one term, and it be left in the discretion of the court he would have no objection, and he thinks it would be a wise measure.

Mr. ROBINSON. The Senator from Ohio also said that while the present judges are on the bench, it is not anticipated court will be held there very often.

Mr. WILLIS. I think that is true, because there will not be a very great amount of litigation, but they do not object to it as it stands now. With this amendment the bill meets their approval.

Mr. ROBINSON. Then it would seem there is little necessity for this amendment to the existing statute.

Mr. WILLIS. I think it will be a convenience to litigants in that section of the State. It will not be used very often, and there will be no increased expense to the Government. That is the opinion of both judges. I think the legislation may be safely enacted, and I hope the bill will pass.

Mr. KING. I wanted to ask the Senator another question. By whom are the accommodations necessary for the holding of the court to be furnished?

Mr. WILLIS. Of course, there is a Federal building in the city of Lima now, so it is not proposed to build an additional building. I hope the Senator will not object to the bill.

Mr. KING. I am interested in knowing whether this is merely for the purpose of getting the head of the camel into the tent, and using this for the purpose of getting a large appropriation for a Federal building in Lima——

Mr. WILLIS. I assure the Senator that is not the object, and it will not be the result.

Mr. KING. Upon the theory that "We have a court; now we must have a suitable building to house it."

Mr. WILLIS. No.

Mr. KING. The Senator from Ohio assures the Government and this august tribunal that there will be no appropriation asked for to build a public building there to house the court?

Mr. WILLIS. I assure the Senator that there will be no such request flowing from this.

Mr. KING. I think the word "Tuesdays," on line 13, and the word "Mondays," on line 14, should be changed to "Tuesday" and "Monday," respectively, in view of the elimination of the words "June and."

The PRESIDING OFFICER. The Secretary will state the amendment.

The READING CLERK. On page 2, line 13, to strike out the word "Tuesdays" and insert in lieu thereof "Tuesday," and line 14, strike out the word "Mondays" and insert in lieu thereof the word "Monday."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

THE MERCHANT MARINE.

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The READING CLERK. A bill (H. R. 12817) to amend and supplement the merchant marine act, 1920, and for other purposes.

Mr. WALSH of Montana. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Order of Business No. 1044, Senate bill 4061. It is a local matter of some very particular urgency. I ask the Senator from Washington [Mr. JONES] if he will not kindly lay aside the unfinished business temporarily?

Mr. JONES of Washington. If the measure to which the Senator refers can be passed without debate, I have no objection.

Mr. WALSH of Montana. If there is any debate, I shall withdraw the request.

Mr. JONES of Washington. I ask that the unfinished business be temporarily laid aside, in order that the Senator from Montana may present his request.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Washington? The Chair hears none, and it is so ordered.

WATERS OF THE BLACKFEET INDIAN RESERVATION.

Mr. WALSH of Montana. I now renew my request for the consideration of Senate bill 4061.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. 4061) authorizing the Secretary of the Interior to enter into an agreement with Toole County irrigation district, of Shelby, Mont., and the Cut Bank irrigation district, of Cut Bank, Mont., for the settlement of the extent of the priority to the waters of Two Medicine, Cut Bank, and Badger Creeks, of the Indians of the Blackfeet Indian Reservation, which was read, as follows:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to enter into an agreement, jointly or separately, with the Toole County irrigation district, of Shelby, Mont., and the Cut Bank irrigation district, of Cut Bank, Mont., and thereby to fix the extent of the prior right of the Indians residing and entitled to reside on the Blackfeet Indian Reservation, collectively, to the waters of Two Medicine, Cut Bank, and Badger Creeks: *Provided*, That said districts shall furnish in advance the entire cost to be incurred in determining the amount of the water of said streams to which such Indians are so entitled to priority.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

EMPLOYMENT OF PRISONERS IN PENITENTIARIES.

Mr. NELSON. Mr. President, I ask unanimous consent for the present consideration of House Concurrent Resolution 53. Its consideration will lead to no debate. I think it is an urgent matter. It provides for the appointment of a committee of three Members from the Senate and three from the House to ascertain what shall be done to provide work for the convicts at Leavenworth, Kans., and McNeil Island, Wash. I ask the Senator from New York if he will allow me to call up the measure?

Mr. WADSWORTH. I have no objection.

Mr. JONES of Washington. I desire to say that this will be the last measure to the consideration of which I shall consent. If this one leads to no discussion, I have no objection.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on the Judiciary with an amendment, on page 1, line 10, to strike out "1922" and insert "1923," so as to make the concurrent resolution read:

Resolved, etc., That a special joint committee of the Senate and House of Representatives be created, composed of three members of the Committee on the Judiciary of the Senate and three members of the Committee on the Judiciary of the House of Representatives, to be designated by the President of the Senate and the Speaker of the House of Representatives, respectively, that shall investigate and report to Congress, not later than the first Monday in December, 1923, as to employment of prisoners and what articles it is desirable to produce or manufacture in the United States penitentiaries at Leavenworth, Kans., and McNeil Island, Wash., the cost of erecting buildings and the equipment of such buildings with the necessary machinery for the production of any such articles, the probable cost of manufacture of such articles and the prices now paid under contract for such articles, and such other data as may be pertinent to the general inquiry. Such committee may employ clerical and stenographic assistance, and the expenses thereof and of the committee may be paid one-half out of the contingent fund of the Senate and one-half out of the contingent fund of the House of Representatives upon vouchers to be approved by the chairman of such joint committee, but such expenses shall not exceed $2,000.

The amendment was agreed to.

The concurrent resolution as amended was agreed to.

WAR DEPARTMENT APPROPRIATIONS.

Mr. WADSWORTH. I ask unanimous consent that the Senate resume consideration of the War Department appropriation bill.

There being no objection, the Senate as in Committee of the Whole resumed the consideration of the bill (H. R. 13793) making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1924, and for other purposes.

Mr. NORRIS. Mr. President, pursuant to the rule, I desire to give the following notice, which I send to the desk.

The PRESIDING OFFICER. The Secretary will read the notice.

The ASSISTANT SECRETARY. The Senator from Nebraska gives notice, in accordance with the provisions of Rule LX, that he will move to suspend paragraph 3 of Rule XVI, in order that he may propose the following amendment to the bill H. R. 13793, the Army appropriation bill:

On page 104, after line 24, insert the following:

For the improvement of nitrate plant No. 1 at Muscle Shoals, Ala., by the installation of new machinery therein, in order that said plant may be utilized for experimental purposes in extracting nitrogen from the air with the view of lessening the cost of explosives in time of war and fertilizer in time of peace, $2,000,000.

Mr. BORAH. Mr. President, may I ask the Senator in charge of the bill whether the committee amendments have been disposed of?

Mr. WADSWORTH. No. When we adjourned Saturday we were working on page 40 of the bill.

The PRESIDING OFFICER. The Secretary will state the pending amendment.

The ASSISTANT SECRETARY. On page 41, under the heading of "Roads, wharves, and drainage," in line 11, the committee proposes to strike out "$650,000" and insert in lieu thereof "$600,000," so as to make the paragraph read:

For the construction and repair by the Quartermaster Corps of roads, walks, and wharves; for the pay of employees; for the disposal of drainage; for dredging channels; and for care and improvement of grounds at military posts and stations, $600,000: *Provided*, That none of the funds appropriated or made available under this act shall be used for the permanent construction of any new roads, walks, or wharves connected with any of the National Army cantonments or National Guard camps.

The amendment was agreed to.

The reading of the bill was continued.

The next amendment was, under the subhead "Construction and repair of hospitals," on page 43, at the end of line 18, to strike out "$497,000" and insert "$772,000," so as to read:

For construction and repair of hospitals at military posts already established and occupied, including all expenditures for construction and repairs required at the Army and Navy Hospital at Hot Springs, Ark., and for the construction and repair of general hospitals and expenses incident thereto, and for additions needed to meet the requirements of increased garrisons, and for temporary hospitals in standing camps and cantonments; for the alteration of permanent buildings at posts for use as hospitals, construction and repair of temporary hospital buildings at permanent posts, construction and repair of temporary general hospitals, rental or purchase of grounds, and rental and alteration of buildings for use for hospital purposes in the District of Columbia and elsewhere, including necessary temporary quarters for hospital personnel, outbuildings, heating and laundry apparatus, plumbing, water and sewers, and electric work, cooking apparatus, and roads and walks for the same, $772,000.

The amendment was agreed to.

The next amendment was, on page 43, line 20, after the word "hospitals," to insert "except that not exceeding $275,000 may be used for the construction of a hospital at Fort Benning, Ga.," so as to make the proviso read:

Provided, That no part of this appropriation shall be used for the construction of new hospitals, except that not exceeding $275,000 may be used for the construction of a hospital at Fort Benning, Ga.

The amendment was agreed to.

The next amendment was, under the head "Office of the Quartermaster General," on page 44, line 16, before the word "messengers," to strike out "six" and insert "five," so as to make the clause read:

Five messengers at $840 each.

The amendment was agreed to.

The next amendment was, under the head "Office of the Quartermaster General," on page 44, line 18, in the total, to strike out "$532,060" and insert "$531,220."

The amendment was agreed to.

Mr. HARRISON obtained the floor.

Mr. TRAMMEL. Mr. President, will the Senator yield?

Mr. HARRISON. I yield to the Senator from Florida.

Mr. TRAMMELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Ashurst	France	Moses	Smoot
Ball	Frelinghuysen	Nelson	Spencer
Bayard	George	New	Stanfield
Borah	Gooding	Nicholson	Stanley
Brookhart	Harris	Norbeck	Sterling
Broussard	Harrison	Norris	Sutherland
Bursum	Heflin	Oddie	Swanson
Cameron	Johnson	Page	Townsend
Capper	Jones, Wash.	Phipps	Trammell
Caraway	Kendrick	Poindexter	Underwood
Couzens	Keyes	Pomerene	Wadsworth
Culberson	Ladd	Ransdell	Walsh, Mass.
Curtis	Lenroot	Reed, Pa.	Walsh, Mont.
Dillingham	Lodge	Robinson	Watson
Ernst	McKellar	Sheppard	Weller
Fletcher	McNary	Shields	Willis

The PRESIDING OFFICER. Sixty-four Senators having answered to their names, there is a quorum present.

Mr. CURTIS. Mr. President, I ask unanimous consent that when the Senate conclude its business to-day, it take a recess until 11 o'clock to-morrow morning.

The PRESIDING OFFICER. Is there objection? There being no objection, it is so ordered.

SENATE LEADERSHIP AND POLITICAL SITUATION.

Mr. HARRISON. Mr. President, we have all known that the Republican Party was very much on the down grade, because it has been evidenced in so many ways. We could read it in the faces of the distinguished leaders on the other side as well as in the returns of all elections that have been held in recent months. We thought that the Democratic Party was pretty militant and had rendered great service to the people in pointing out the defects of much of the legislation proposed in this body and in the House of Representatives and in constructive suggestions and cooperation, but we did not realize that the majority in this Chamber realized that we were so militant until Saturday last. We did not know that there was to be a confession upon the part of the Republican majority in this body that it was impotent, that it was leaderless, that it was "on the rocks," and that something must be done to rehabilitate it. No higher authority could be advanced to assure the truth of that statement than the action of the distinguished leader of the majority party in this body on last Saturday. I do not know, and I hope some one will be able to tell me before this discussion is over, whether he was acting single-handed and alone or after full conference with his colleagues; but this we do know, that there appeared in all the morning newspapers of yesterday a statement, evidently given out with authority from the rooms of the distinguished leader on the other side, that he had selected two Senators of the majority to act as assistant leaders in this body; that they were to enter more frequently into the debates in the Senate; and that he had not been able to be in his seat as often as he would have desired. The Senator did not in that statement say so, but between the lines you could read it. So he selects, without caucus action, two very distinguished and able Senators who are to be styled "assistant leaders of the majority party."

I am making these remarks in order to congratulate these two colleagues who have been so promoted by their leader, and at the same time to commiserate with others on the other side of the Chamber.

I had formed the idea from the action of my friend, the distinguished Senator from Kansas [Mr. CURTIS], that he was able to take care of himself; that he had earned the high honor that had been thrust upon him by his colleagues in the last

caucus, when he was named assistant leader of the Republican Party in the Senate, and that he had fulfilled every requirement and had made good in every detail.

I had thought that the distinguished senior Senator from Indiana [Mr. WATSON] had made pretty good as one of the assistant leaders on the other side of the Chamber, because we have read every other day in the newspapers that he has been at the White House conferring with the President and that he would express the views of the President on the following day upon the floor of the Senate. It seems, however, from the article which I have read, and which I am sure other Senators have read with an equal amount of interest, that those two distinguished Republican past masters in the art of debate are to be dethroned and that two others are to take their places.

Now, for what reason is that to be done, Mr. President? We are told in this statement that one of these Senators was selected because the conservative wing of the Republican Party must be taken care of and that the other was selected as the representative of the progressive wing of that party. If the distinguished leader of the Republican Party in the Senate is going to select Senators as his assistants to take care of the various wings and elements of the Republican Party he will need a good many more than just two assistants in this body, for there are about as many species of Republicans in the Senate at this time, and, perhaps, there will be just as many or more—no, not so many, because we got some of them in the last election—in the next Congress as there are species of birds found in that large cage out at the Zoo. There is a good deal of aptness in that comparison, for people come here as curiosity seekers to see the various species of Republicans comprising the Senate majority, and they likewise go out to the Zoo to see the different species of birds that are to be found there. [Laughter.]

I do not know whether or not the distinguished Senator from New York [Mr. WADSWORTH], who has been selected to represent the conservative wing of the party, appreciates the humor of the situation. I do not know that he will in the next campaign in New York admit that he is a conservative. Then, too, he will have to give his own definition of just what a conservative is.

Of course, if it were left to certain Senators on the opposite side of the Chamber to choose a progressive to represent the progressive element of the party, the choice might not have been different. If we should take, for instance, the group of Senators represented by the distinguished Senator from Iowa [Mr. BROOKHART]; the distinguished Senator from Michigan, who sits by his side [Mr. COUZENS]; the distinguished senior Senator from Wisconsin, who occupies a seat on the other side of the Chamber [Mr. LA FOLLETTE]; the distinguished Senator from Nebraska [Mr. NORRIS]; and other Senators making up that group; we know there would have been no question as to the selection of the junior Senator from Wisconsin [Mr. LENROOT] as the leader of that particular element in this body. Surely there would have been no doubt about it; it would have been unanimous. So I presume that the distinguished Senator from Massachusetts merely took it for granted that there would be no objection to the junior Senator from Wisconsin, as the assistant leader, representing that progressive group in this body.

I am sure that it was "glad tidings of good news" when those distinguished Senators read the statement that henceforth and forever in this body when some great progressive measure was to be championed upon the floor they must sit quietly in their seats; that the distinguished junior Senator from Wisconsin [Mr. LENROOT] would receive the nod of the distinguished Senator from Massachusetts, and he would come forward in debate to represent the great progressive principles of that group of the party. In other words, from now on we are going to have two kinds of music played. When progressive music, quick and devilish, whether "rag" or syncopated, is to be played, our friend the junior Senator from Wisconsin [Mr. LENROOT] is to come forward, throw himself in the fray, and dance by it; but when the slow and antiquated regular Republican music is to be played in this Chamber our friend the Senator from New York [Mr. WADSWORTH] is to receive the nod or the beck or the call of the Senator from Massachusetts, and he is to glide forward and take up the cudgel of debate.

I surmise, Mr. President, that there is more than I have indicated behind this movement. The word has gone down the line that Senators must not talk, that they must pass a ship subsidy bill, and that they must pass the Army appropriation bill; that Senators on the other side should keep quiet in order to hasten legislation. But they are evidently becoming so frightened at the chances for a vote on the ship subsidy that the policy is to be changed, and here, at the eleventh hour, in the closing hours of the Congress, these two talkative champions, one of the conservative and the other of the progressive element, are to come forward in the debate every time the Republican Party is attacked. It is peculiarly strange that the majority should start such a filibuster at this stage of the proceedings. [Laughter.]

Mr. President, why were the two Senators to whom I have referred selected as assistant leaders? The distinguished leader from Massachusetts says they were chosen to represent the two elements of the party. The same kind of statement appears in pretty nearly all of the newspapers, and care is taken to say that this did not mean the unhorsing of the Senator from Kansas [Mr. CURTIS]; but because he was whip and because he was assistant leader he had so much to do that he could not stay on the floor of the Senate and enter into these debates.

Mr. CARAWAY. Mr. President, may I ask the Senator a question?

Mr. HARRISON. Certainly.

Mr. CARAWAY. Did the Senator say because the Senator from Kansas was "whip" or was "whipped"? I did not understand him.

Mr. HARRISON. It seems now that the "whip" is to be "whipped." I do not know how the Senator from Kansas feels about this matter. I am going to watch developments, but I am sure that some of his friends will come to his rescue here, because no Senator sits in the Chamber more patiently all the time responding to his name and telling his Republican colleagues how to vote when they come in and do not know how to vote, than does the Senator from Kansas. He always answers to the roll call louder than any one else, so that there may be no mistake as to how to vote. I recall some months ago when a delicate question was under consideration respecting the Panama Canal, the Senator from Idaho [Mr. BORAH] I think having offered an amendment, Republican Senators were running around on their side of the Chamber like chickens with their heads off, not knowing how to vote. The Senator from Massachusetts voted one way, but the Senator from Kansas spoke out with the voice of a lion another way and presently I saw leaders change their votes and vote as did the distinguished Senator from Kansas. He has performed his mission well. Mr. President, in the circumstances, do you understand why he should be dethroned at this time?

It is said that the two Senators who have been appointed leaders—splendid men—are selected to represent the different elements. Are the selections made because of their views on tariff rates on wool? The distinguished Senator from New York fought the high rates on wool and the distinguished Senator from Wisconsin likewise fought those rates; so that they were not selected because they had different views on the tariff as far as the rates on wool are concerned. If some Senator were going to be selected to represent the wool element, why was my distinguished friend from Idaho [Mr. GOODING] left out, or my distinguished friend from New Mexico [Mr. BURSUM], or the distinguished Senator from Utah [Mr. SMOOT]? He is all wool and a yard wide. [Laughter.]

It is very sure that if the appointments were based on the tariff measure otherwise, representatives of different elements were selected, because the distinguished Senator from New York voted for the tariff bill while the distinguished Senator from Wisconsin voted against it. There were only about five or six Republicans, I think, who voted against it; so I suppose the Senator from Wisconsin was selected to represent that element which condemned the tariff bill, which was sponsored by my friend from Indiana [Mr. WATSON]. Certainly that was one time he cast a wise vote, and it may be the Republican leadership now appreciates his wisdom for that act.

Is it because of the ship subsidy bill? I understand that the distinguished Senator from New York is for that, and that the distinguished Senator from Wisconsin has been trying to amend it over the protest of Lasker and the President of the United States. It may be that they were both selected because they both had condemned in the strongest language that element in this body, composed in large part of Members on the other side, known as the farm bloc, because no one has waxed more eloquent than the distinguished Senator from Wisconsin and the distinguished Senator from New York in condemning the farm bloc, so they need representation as assistant leaders in this body.

Mr. President, I am inclined to believe that the distinguished Senator from Massachusetts awarded this promotion to the Senator from New York because the other day, when a very important matter was before the Senate, and the Chair ruled according to precedent—there was no other way to rule—the Senator from New York appealed from that ruling. The Chair had ruled that we could vote on the question of 5-cent fares on

the street cars in the District of Columbia. He knew that he was following precedent when he made that ruling; but the Senator from New York immediately appealed, and, with the help of the distinguished Senator from Massachusetts and his party colleagues over there, overthrew the efforts and decision of the distinguished Vice President, so I presume that the leader over there was merely rewarding the distinguished Senator from New York for helping out the street railways in the District of Columbia. Then, too, I presume that this new-found honor was laid upon the tender shoulders of my good friend from Wisconsin—he deserves it; he is a splendid statesman, a fine debater—because he put through this body the other day a bill with 62 votes for it and not a vote against it; and because of standing by the farmers as he had in that instance he is to be rewarded by this place as assistant leader in this body.

So, Mr. President, I rose to commiserate with my friend from Indiana [Mr. WATSON], who no more can rise here with all his force and eloquence and power to debate, because when he does he may be told: "Sit down! Other assistants have been found more worthy than you. You are to be squelched. You just keep your seat. You were one of my assistants, but no more." Then, when my friend from Kansas [Mr. CURTIS] gets up, they can say: "Sit down! You are the whip. You have so many duties that you can not attend to this." Then I can see the Senator from Massachusetts wink at my friend, the Senator from Wisconsin [Mr. LENROOT], and say: "Go forward. It is your time. Represent the progressive element in the Republican Party. Go to them"; and when he has finished, and they need a conservative speech, the distinguished Senator from New York is to respond. Thus it is, Mr. President, that a new order of things has come about in the Senate of the United States.

Mr. CARAWAY. Mr. President, may I ask the Senator a question?

Mr. HARRISON. Yes.

Mr. CARAWAY. What if the Senator from Massachusetts winks both eyes at once, and they both speak—will it be a joint debate? [Laughter.]

Mr. HARRISON. Well, I am afraid they are going to be tripping themselves up quite often.

It is a peculiar thing that in the same paper of yesterday, announcing the appointment of these two assistant leaders, there appeared an article from Indianapolis, Ind., headed in big letters: "Two presidential booms in Indiana. Beveridge and WATSON are mentioned as successors to Mr. Harding." And in the same paper there appears an article by Mr. Messenger headed: "President Harding's friends reject the idea that he can be Coued out of the renomination." They are putting something over on you. [Laughter.]

The PRESIDING OFFICER rapped with his gavel.

Mr. HARRISON. Mr. President, is this a movement to get the renomination of the Republican Party for Mr. Harding? Are they afraid of the distinguished Senator from Indiana? The papers are carrying the news that he may seek the nomination, and they are afraid to let him be assistant leader any longer. They are afraid his clarion voice will ring out, and he will make such a record in this body that it might "gum the cards" in the next Republican convention.

Over there sits my distinguished friend from Kansas [Mr. CURTIS]. There may be some method in this dethronement of him, because his distinguished colleague [Mr. CAPPER] is being mentioned in a large part of the press as one of the probable candidates for the Republican nomination for President, and he is liable to fool some of you over there. You had better begin to make up to him a little bit, like you are making up to the present President now. It may be that they thought that his colleague, the present whip and assistant leader in name only, not in practice any more, might be in too great a position here to help the junior Senator from Kansas secure the nomination for President. So it looks as though this must be a Harding proposition to blend all the elements in the Republican Party together to kill off opposition.

I wish you well. I hope that you have removed the discordant elements that have been playing so much within the Republican Party. Your leader now has fixed up the cards by the appointment as assistants of Senators WADSWORTH and LENROOT, one representing the progressive and the other the conservative element of your party. Everything is going to move along nicely. I suppose all are satisfied. There are going to be no more speeches from anyone over there except these two distinguished Senators, and they are going to be at the beck and call of the distinguished leader from Massachusetts [Mr. LODGE], who will tell them when to speak and when to hold their peace.

Mr. LODGE. Mr. President, when my friend from Mississippi [Mr. HARRISON] makes a comic speech he overlooks one proverbial saying, that "brevity is the soul of wit."

It would be quite possible for me, I think, with a little effort, to find the humorous side of the conflict now going on among my Democratic friends as to who shall be their leader. It would be perfectly possible for me to point out that variegated species of Democrats are, to say the least, quite as common as variegated species of Republicans. I do not care to waste the time of the Senate on matters so wholly trivial. It is enough for me to say that the only power that can create offices in the Republican organization is the Republican conference. They have created three officers there—the chairman of the conference, the vice chairman and whip, and the secretary. I have the honor to be chairman of the conference. The Senator from Kansas [Mr. CURTIS] is the vice chairman and whip; and I may say, after a long experience, that there never has been within my knowledge a more patient, diligent, dexterous, capable whip and vice chairman than the Senator from Kansas. The secretary is the Senator from New York [Mr. WADSWORTH].

Mr. President, I have no power whatever to create the offices of assistant leaders or any other offices for the conference, or to appoint such officers after their positions have been created. I have created none and I have appointed no assistant leaders. I try to consult with all the Republicans. I try to do everything I can to promote the business of the Senate and to promote harmony and teamwork on this side. I consult with all, and at different times I have asked many of the Republicans here to aid me, and shall continue to do so. As the Senator from Indiana [Mr. WATSON] has been particularly named, I believe, in some of the newspaper reports, let me take this occasion to say that there is no Senator on the Republican side with whom I have consulted more, or on whose advice I rely more than on that of the senior Senator from Indiana. Not a day passes that I do not consult with him and advise with him.

No statement was issued from my office, and from the confused reports in the newspapers almost any inference might be drawn. Their perfect unreliability is shown by a report I see this morning, that I am so enfeebled and so weary that I do not intend to be the leader of the Senate if my colleagues should be good enough to choose me again for that position. As that has been brought up, let me take the occasion to relieve the mind of the Senator from Mississippi and tell him there is no truth in it. There is no truth in any of these stories that have been filling the newspapers. The two Senators who have been named as having been designated assistant leaders are Senators who command in a high degree my confidence as well as my friendship, and whom I have repeatedly asked, as I have many other Senators, to assist me in the debates on this floor, as I shall continue to do. If the Senator is disturbed about divisions in our party, I suggest that he look at some of the divisions in his own.

Mr. WATSON. Mr. President, my jocose friend from Mississippi is always interesting and generally amusing, and never more so than on the present occasion. I do not know why he sought to bring me into this controversy, if there be controversy, because I am only an innocent bystander, one who always gets shot, beyond doubt.

I never know just how far to be facetious in replying to a speech by the Senator from Mississippi and how far to be serious. If the people of the United States understood the situation, and could see it here just as it has been portrayed to us, I should either not respond at all or else be jocular in my response; but when a speech by the Senator is carried out in cold type, and is read by the people, they may look upon it as a serious proposition and think that in reality there are some facts to substantiate the statements made by the Senator.

Let me assure my friend in the beginning that he need have no uneasiness about the future of the Republican Party in the Senate or in the country. I have heard my friend make these speeches before, on occasions quite similar to that which now confronts us, and always with the same result.

When 1924 comes around, the forces of the Republican Party, notwithstanding any seeming division which my friend may find in the ranks at this time, will be united and militant. They will stand upon a platform that will command the respect of the great body of the American people, and they will nominate as their candidate, in my judgment, the present President of the United States without any opposition in the Republican convention. My friend has been kind enough to mention my name in connection with that exalted position, largely in order to make his speech more facetious and more jocular.

Mr. HARRISON. I was in hopes it was true.

Mr. WATSON. I have no doubt that the Senator would be glad to see any sort of opposition created to the President of the United States, but it will not be. My own thought is that if Mr. Harding wants to be renominated for President he ought to be and will be, because the Republican Party must stand on

the record we have made, the record of his administration, and it is not possible to stand on the record of the administration and yet repudiate the head of the administration.

We stand upon the record made by Congress and by the President, by the legislative and by the administrative branches of the Government, and it is not possible for any party to nominate somebody else than the President of the United States and yet appeal to the people to support the party on the record made by the administration of which the President is the head. I have no doubt in my mind that the President of the United States will be a candidate for renomination, nor have I any that he will be renominated by the convention when it meets. So much for that. I am obliged to my good friend for having mentioned my name in connection with that exalted position. It is a compliment, even from him, in a jocular and facetious speech.

Mr. HARRISON. I am very glad that the Senator stopped at the renomination of Harding and did not venture to go farther.

Mr. WATSON. That is as far as is necessary to go now. The other details will be looked after in the future.

I may say to my friend, who was talking about the last election, that it might be well for him to look at the results of the very last election that was held, the by-election in New York, held only last week, where the Democratic candidate received but 206 majority, whereas in the November election he had 3,526 majority.

Mr. HARRISON. Will the Senator yield?

Mr. WATSON. Yes.

Mr. HARRISON. The Senator recalls that President Harding carried that district by something between thirty and forty thousand, does he not?

Mr. WATSON. Yes; I do.

Mr. HARRISON. A pretty big loss, from 40,000 down to 206.

Mr. WATSON. In November the Democratic candidate carried it by 3,526 majority, but last week by 206 majority. In other words, as Lincoln said, "You can fool all the people some of the time, but you can not fool all of the people all of the time," which, after all, is saving grace for this Republic; otherwise the Democratic Party would be in power all the time.

Permit me to say this in connection with the proposition of an assistant leader: I have not been the assistant leader here, nor have I ever sought to be at any time. If the Senator from Massachusetts wants to be leader—and there is no reason why he should not be—I am for him to continue as such in this Congress and in the next that is to come. Everybody understands about the ability of the Senator and his great knowledge of parliamentary law, his statesmanship, and his capacity for leadership, and I do not intend, in so far as I am concerned, even in a facetious speech, to permit my friend to have go out to the country that there is any division or discord on this side with reference to the leadership of the Senator from Massachusetts.

So far as I am concerned, the Senator from Kansas may be the assistant leader if he so desires. There is no more competent man. He and I served together in the House many years. I happened to be the whip over there, and at that time he was my first assistant whip, and we worked together admirably. So far as his work in the Senate is concerned, it has spoken, does speak, and will continue to speak for itself. In all respects he is admirably equipped and qualified for the position he holds. It is not necessary to have assistant leaders on this side, but if assistant leaders are to be chosen, where may we find two worthier than my distinguished friend from New York [Mr. WADSWORTH] and my other equally distinguished friend from Wisconsin [Mr. LENROOT]. It may be true that these men have not always voted together on various propositions which have been submitted, but after all each man on this side is a law unto himself. He thinks for himself, and while we get together in conference and thrash out our various propositions, and usually go along in harmony, after all, if no conference is held on a proposition, it is up to each man to determine his own course for himself as a free and independent Senator of the United States in this the greatest legislative body of the world.

Therefore I want to say to my good friend, of whom I am personally so very fond, that he is building up a beautiful man of straw, and then tearing it down with his usual skill, in the presence of filled galleries and of all the fine boys in the newspaper gallery. But let it be understood that, so far as the future of the Republican Party is concerned, there will be no division as to national leadership, and no discord as to leadership in the Senate of the United States.

ISLE OF PINES.

Mr. POMERENE. Mr. President, if the Senate will bear with me just a minute on a matter which is perhaps not directly in order, on January 3 I offered a resolution calling upon the Secretary of State for certain information with respect to American interests in the Isle of Pines. On January 29, the Secretary responded to that resolution, and his reply has been printed as Senate Document No. 295.

Without taking time to read the communication, it develops, in substance, that there are 10,000 American property holders in the Isle of Pines; that they own 90 per cent of the whole island; that there are 700 Americans now residing permanently on the island; that the citrus fruit groves in that island are worth about $1,000 per acre; that there are 10,470 acres of those groves, valued at about $10,470,000; that there are other lands owned by Americans estimated as worth $11,280,000, making the American holdings in all worth $21,750,000. General Crowder, who was also asked as to the value of those lands, said, in substance, that he thought they did not exceed $15,000,000 in value.

The area of this island is about 800 square miles, or 512,000 acres. Americans own 90 per cent, or 460,800 acres. The other 10 per cent is owned by Cubans and others. Most of that land was acquired by the Americans shortly after the Spanish-American war, and under the representation and belief that the Isle of Pines belonged to the United States. There has been considerable contention about it, and it is now an open question, to say the least, as to what Government owns this island.

Whether the title belongs to Cuba or not ought to be finally determined. The State Department has been of the opinion that the island belongs to Cuba. There is a treaty pending before the Senate in executive session virtually quitclaiming to the Government of Cuba the title to this island. Without attempting to discuss this question, I want to submit to the Senate this proposition: With 10,000 Americans owning 90 per cent of the acreage of the island, valued at from $15,000,000 to $21,000,000 and over, should we not, out of deference to the rights of those American citizens, try to secure sovereignty over that island? To that end I submit the following resolution, and ask that it may be read for the information of the Senate.

The VICE PRESIDENT. The Secretary will read the resolution.

The resolution (S. Res. 433) was read as follows:

"Whereas there is a dispute as to whether the Isle of Pines is territory of the United States or of Cuba; and

"Whereas a large number of American citizens purchased and acquired land and other property in and on the Isle of Pines under the representations and belief that it was territory of the United States; and

"Whereas it is estimated from the best available sources of information that 10,000 American citizens own in the aggregate 90 per cent of the whole island, or about 460,800 acres, variously estimated to be worth from $15,000,000 to $21,750,000; and

"Whereas only about 10 per cent of the area of said island, or about 51,200 acres, is now owned by Cubans, or others than citizens of the United States: Therefore be it

"*Resolved*, That the President be, and he is hereby, requested to enter into negotiations with the Republic of Cuba for the cession of the Isle of Pines to the United States upon such terms and conditions as may be equitable and just to the Governments and peoples of the United States and of Cuba and to the residents and property holders of the Isle of Pines."

MR. WALSH of Massachusetts. Mr. President, will the Senator yeild?

Mr. POMERENE. I yield.

Mr. WALSH of Massachusetts. I would like to ask the Senator where he got his figures about the number of Americans who own property on the Isle of Pines. Residents of the Isle of Pines who have been visiting in this country have furnished information which would indicate that the number is very much less.

Mr. POMERENE. The facts contained in the preamble to the resolution I have taken in substance from the communication which was sent to the Senate in response to my resolution by the Secretary of State. In view of the fact that the question is raised, I ask that the communication from the Secretary of State, which is found in Senate Document 295, may be printed in the RECORD as a part of my remarks.

The VICE PRESIDENT. Without objection, it is so ordered.

The communication is as follows:

To the Senate:

I transmit herewith a report by the Secretary of State in response to the resolution adopted by the Senate on January 3 (calendar day, January 4), 1923, requesting him to inform the Senate "how many citizens of the United States have landed or other property interests in the Isle of Pines, and the amount and value of such lands and other property owned by them."

WARREN G. HARDING.

THE WHITE HOUSE,
Washington, February 2, 1923.

The PRESIDENT:

The undersigned, the Secretary of State, has received through the Secretary of the Senate an attested copy of a resolution adopted by the Senate on January 3 (calendar day, January 4), 1923, as follows:

"*Resolved*, That the Secretary of State be, and he is hereby, directed to inform the Senate how many citizens of the United States have landed or other property interests in the Isle of Pines, and the amount and value of such lands and other property owned by them."

In response thereto, the Secretary of State has the honor to lay before the President the following information with a view to its transmission to the Senate, if his judgment approve thereof:

The latest information received by the Department of State on the subject matter of the Senate resolution is contained in a dispatch, dated January 13, 1923, from the American consul at Nueva Gerona, Isle of Pines, and a telegram from Maj. Gen. Enoch H. Crowder dated January 26, 1923.

In his dispatch the consul reports as follows:

"It is manifestly impossible to estimate accurately the value of the land and other property belonging to American citizens without a long and expensive survey, but it may be possible to deduce from available data some idea of the amount and value of their holdings.

"As many land titles have never been recorded by American landowners in the local registry office, it is only possible to estimate the total number. From the best available sources of information it is estimated that about 10,000 Americans own Isle of Pines land and that their holdings aggregate 90 per cent of the whole island. As only about 700 Americans reside permanently in the island, it is obvious that the great majority of the landowners reside in the United States.

"A citrus fruit grove may be estimated as worth $1,000 per acre, on an average. As there are 10,740 acres of groves their value would be $10,470,000. The other land owned by Americans is estimated as worth $11,280,000, including the growing crops and timber, making the total value of American-owned land $21,750,000.

"The value of the land not grove property is arrived at as follows: The area of the island in round figures is 800 square miles, or 512,000 acres, of which Americans own 90 per cent, or 460,800 acres. Deducting from this 10,470 acres of grove property leaves 450,330 acres of other land. This is valued at anywhere from $25 to $75 an acre. Taking it at the lowest valuation it is worth $11,258,250 without timber or crops. The growing crops of vegetables, etc., and the pine timber and other timber would easily bring this figure up to $11,280,000. This does not take into account the value of mining rights owned by Americans.

"Besides lands Americans own a great variety of other property, such as buildings, hotels, fruit-packing houses, stores, dwellings, barns, warehouses, schools, and churches, also stocks of merchandise, household goods, and personal effects, the steamboat line with three steamboats, other boats and vessels, motor vehicles, farming equipment, stock in the bank and in the telephone company, all of which may be roughly estimated as worth not less than $1,000,000. This is believed to be a very conservative estimate."

In his telegram of January 26, 1923, Maj. Gen. Enoch H. Crowder states as follows:

"From best available information the estimates made by the consul at Nueva Gerona are correct, with the exception of valuation. The value of American-owned property in the Isle of Pines would not exceed $15,000,000.

Respectfully submitted.

CHARLES E. HUGHES.

DEPARTMENT OF STATE,
Washington, February 1, 1923.

Mr. McKELLAR. Mr. President, my attention was momentarily directed to something else, and I did not hear the request of the Senator from Ohio with reference to the Isle of Pines matter. Would the Senator kindly restate it briefly?

Mr. POMERENE. I have just presented a preamble and resolution rquesting the President to enter into negotiations with the Government of Cuba for the purpose of securing the cession of that island to the United States under such terms and conditions as may be just and equitable, both to the Government of the United States, the Government of Cuba, and the residents and property holders of the island.

Mr. McKELLAR. As I recall, there is quite a dispute as to the present ownership of the Isle of Pines. It is held by some authorities that it is not Cuban territory and was not ceded to Cuba in the treaty which we entered into some years ago with Spain. Would not the passage of the resolution be an admission on the part of the Senate that we had no right to the Isle of Pines?

Mr. POMERENE. No; it would not. I have expressly recited in the preamble that there is a dispute with respect to the matter.

Mr. McKELLAR. I did not hear the preamble read.

Mr. POMERENE. The Senator will find it in the RECORD. I have a copy of it here, if the Senator would like to look at it.

Mr. WALSH of Massachusetts. Do the American residents go further than to claim that they located there under the apprehension that it was American territory? I do not understand them to claim that it really is American territory.

Mr. POMERENE. It was claimed by them that it was American territory. Senators who may be interested in the subject will find in Senate Document 205, Fifty-ninth Congress, first session, a majority report from the Committee on Foreign Relations, by Senator Foraker, former Senator from Ohio, and also a minority report which was presented by former Senator Morgan of Alabama and former Senator Clark of Montana.

I did not intend to discuss the matter, and I am not going to take time in view of the legislation that is pending. I may say, however, that about the time the Americans began to become interested in the island letters and telegrams were addressed to the War Department, and the War Department answered some of the letters to the effect that the island was United States property. A map was issued by the War Department containing different colors, representing the sovereignty of the several countries and the islands of the Caribbean Sea, and the map showed this island to be United States territory. I think it is fair to say that upon further investigation by one of the committees of the Senate, and I think it was the Committee on Foregn Relations, it was contended that there was no authority for the printing of the map.

It was claimed by some of those people that the late President McKinley said that the island was American territory.

I have not been able to satisfy myself that President McKinley ever made such a statement. The Secretaries of State have contended, dating from the Roosevelt administration, that it was Cuban territory. The controversy arises rather out of the reading of the protocol with Cuba, following the cessation of hostilities with Spain, and later in the Paris treaty, where it was stated—and now I am speaking from memory—that Spain relinquished her title to Cuba.

Then the question arose as to what was meant by the construction of the word "Cuba." It was contended on the part of property holders and others who believed this to be American territory that the word "Cuba" in the Paris treaty and in the protocol meant only the island of Cuba. On the other hand it was contended that the word "Cuba" in the treaty and protocol included not only the island of Cuba but all of the lesser islands more or less immediately connected with this island. It is contended in favor of that construction that during the days when Cuba was a part of Spain they had a government of the province of Cuba, and they sent their representatives to the Parliament of Spain. It was claimed that the Isle of Pines was always subject to the jurisdiction of the province of Cuba, so that it is said that when our commissioners drafted the protocol and later the treaty of Paris with Spain, they had in mind the previous history of the island and its connection with Cuba.

It was the acceptance of that position, I think, that led the several Secretaries of State to hold that the Isle of Pines was, in fact, Cuban territory. Nevertheless, when the question came up afterwards in the Senate, I think it was in connection with the ratification of the treaty, the title to the Isle of Pines was reserved for future consideration. It also is a fact that from that day to this the Isle of Pines has been under the jurisdiction of the Cuban Government. Now, whether we should be of the opinion that the Isle of Pines is Cuban territory or United States territory, it has seemed to me, in view of the fact that many of our people—and they are distributed more or less all over the country—have acquired their title——

Mr. WALSH of Massachusetts. And were solicited by the Government to go there.

Mr. POMERENE. I was not advised of that, but I accept the statement. In any event, it was represented that this was United States territory, and I know that many of our people, and particularly residents of Ohio, made purchases in the Isle of Pines believing it was United States territory. I dare say they never would have made a purchase in the Isle of Pines had they not so believed. My distinguished colleague [Mr. WILLIS] will recall former Chief Justice John A. Shauck, now dead, who was for many years one of the leading jurists of Ohio and chief justice of the supreme court of that State for many years. He was one of the men who acquired some property in the Isle of Pines. He presented to me some years ago a brief on the subject. He seemed to have no doubt whatsoever, as a matter of law, that the isle really belonged to the United States. I have had my doubts about it.

I felt, under these circumstances, knowing that 90 per cent of the acreage belonged to American citizens, and because there are other large investments down there in the form of public utilities and manufacturing plants, that our Government ought to enter into some negotiation with the Government of Cuba looking to the ceding of that island to the United States.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. POMERENE. I yield.

Mr. McKELLAR. The majority report, as I understand it, holds that it is not United States territory.

Mr. POMERENE. Yes; that it is Cuban territory.

Mr. McKELLAR. And the minority report that it is not United States territory?

Mr. POMERENE. That is correct.

Mr. WALSH of Massachusetts. Is the Senator asking for the immediate consideration of the resolution?

Mr. POMERENE. Oh, no. I could not do that now, because under the rule I think the resolution should go to the

Committee on Foreign Relations. I ask that it may be referred to that committee.

The VICE PRESIDENT. The resolution will be so referred.

Mr. TRAMMELL. Mr. President, I am not familiar with the history of the Isle of Pines from a legal standpoint, but I had rather gained the impression that possibly some of the American citizens, who are very anxious to have it placed under the jurisdiction of the United States, would like to relieve themselves from the imposition of the tariff duties imposed upon products of the Isle of Pines which come in competition with similar American products. I would like to have that point considered in connection with any investigation that is made of the subject.

I dare say that many of those citizens went there to grow products that would come in competition with American products just with the hope that they might have that territory become territory of the United States and thus be relieved of the tariff duties which are imposed. If we take into consideration the last tariff act and the rates which were increased upon a number of products, and properly so, because it was the general policy of the Congress to increase tariff rates, we might go to their help; but if we had allowed the tariff to remain as it was previously on products coming from the Isle of Pines coming in competition with the products of certain parts of the country, we would not do so. I am just a little apprehensive that a good many of those American citizens down there want it to be annexed to the United States so that they can be relieved of the imposition of the present tariff rates.

Mr. WILLIS. Mr. President, will the Senator permit an interruption?

Mr. TRAMMELL. Certainly.

Mr. WILLIS. Would the Senator object? I recall that he voted against all those tariff duties.

Mr. TRAMMELL. I would object to it most strenuously under the operation of a high tariff on the products coming from every other section of the country and coming in competition with the products produced in every other section of the country. I think the Senator himself would object to any such discrimination.

Mr. WILLIS. Certainly I should, for I voted for the tariff. I believe in it.

Mr. TRAMMELL. I voted to try to equalize the tariff. I do not believe in selling goods produced in one part of the United States in a free-trade market, and being compelled to purchase goods from a territory that enjoys protection. Nobody could contend that that policy is right. If we are going to have a system of high tariff, it must not be applied to the products of only one section, ignoring the products of another section.

Mr. POMERENE. Mr. President, if I may say a word in reply, I desire to say that I think it is true that some of these people are interested in getting their citrus fruits into this country. It is a sort of human desire to get a market. There are in the island, I think, 800 square miles or thereabouts. Its people raise pineapples, and some oranges and grapefruit, but the season for the Isle of Pines is over before the season begins in Florida, so I am advised, and all of their fruit should be marketed and could be marketed in the United States without in the least interfering with the Florida product.

I have a sort of an old-fashioned idea that the people here in some of the other States ought to be permitted to eat oranges or grapefruit once in a while without paying tribute by way of high tariff taxes to other people. It may be that is an old-fashioned view but, nevertheless, it is mine.

WAR DEPARTMENT APPROPRIATIONS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 13793) making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1924, and for other purposes.

The reading of the bill was resumed. The next amendment of the Committee on Appropriations was, on page 44, line 18, to decrease the total appropriation for the "Office of the Quartermaster General" from $532,060 to $531,220.

The amendment was agreed to.

The next amendment was, on page 44, line 19, after the words "sum of," to strike out "$25,000" and insert "$35,000," so as to read:

The sum of $35,000 of the appropriation available for the fiscal year 1924 for the "Disposition of remains of officers, soldiers, and civilian employees" may be expended for personal services in the cemeterial division, office of the Quartermaster General, for compiling, recording, preparing, and transmitting data incident to bringing home and disposition of remains from abroad.

The amendment was agreed to.

The next amendment was, under the head "Air Service," on page 51, line 19, after the word "plants," to strike out "for the Regular Army," so as to make the proviso read:

Provided, That not less than $50,000 of this amount shall be used for continuation of airplane bombing tests against obsolete naval craft; not exceeding $500,000 may be expended for the production of lighter-than-air equipment; and not exceeding $300,000 may be expended for improvement of stations, hangars, and gas plants.

The amendment was agreed to.

The next amendment was, on page 52, line 11, before the word "title," to strike out "the" and insert "this," and in line 13, after the name "War Department," to strike out "upon Government flying fields, and no public exhibition flights shall be given unless a bond of indemnity, in such sum as the Secretary of War may require for damages to person or property, shall be furnished the Government by the parties desiring the exhibition," so as to make the additional proviso read:

Provided further, That none of the funds appropriated under this title shall be used for the purpose of giving exhibition flights to the public other than those under the control and direction of the War Department.

The amendment was agreed to.

Mr. KING. I should like to ask the Senator from New York if we have now reached the provisions dealing with the Air Service?

Mr. WADSWORTH. We have.

Mr. KING. I wish to ask the Senator with respect to that service whether, in his judgment, the appropriation carried in the bill is sufficient for any practical or useful purpose; whether the appropriations which have been made during the last two or three years have resulted in any benefit; and, finally, whether the War and Navy Departments or the administration have recommended any plan or have any plan for consolidation of all of the air activities under a new bureau or a new department, or under some sort of Federal agency, so that there may be a coordination of all activities in relation to aircraft?

Mr. WADSWORTH. Mr. President, I know of no plans being made by the administration to unite all the aircraft activities of the Army or the Navy with any other branch of the Government. I will say to the Senator that I believe the appropriations which are carried in the pending bill are too small, but the condition of the Treasury is such that we can scarcely afford any larger ones.

The Senator has asked me if anything has been accomplished for the Air Service by appropriations which have been previously made. I think a great deal has been accomplished in the last two or three years. The new types of planes which have been developed since the World War in this country, under the guidance in part of the experts of the Army, assisted, of course, by experts in civil life, are probably unexcelled. The Martin bomber, as is well known, is one of the finest heavy machines in the world. The Thomas-Morse fast scout plane, which is the last approved design to be put into quantity production, is one of the best machines of its kind in the world. I also call the Senator's attention to the fact that at the races near Detroit last autumn the American flying machines, in part owned or operated by the Army and its personnel, broke five world records for speed. I think an instance of that kind is somewhat eloquent of the progress which has been made in this country.

It is true we have not enough machines to equip an adequate force, nor have we enough flying officers to man the machines that would be required for an adequate force, but, with the money which we have had, in spite of the very heavy restrictions, I think rather remarkable progress has been made.

Mr. KING. May I inquire of the Senator whether the progress made has been through the efforts of the Air Service of the War Department or through the efforts of private corporations engaged in the production of these machines?

Mr. WADSWORTH. It has been through the efforts of both. Of course, it is only the War Department that spends money out of this appropriation.

Mr. KING. Of course, I understand that.

Mr. WADSWORTH. Designs of new planes are invited from private manufacturers. Planes are also being made from time to time by the Government's own designers. When finally a very advantageous design is evolved a couple of machines are manufactured in accordance with the design as experimental types. Then they are tested, and if they meet the tests—and only the War Department can determine the nature of the tests—contracts are let for their production in quantity if the Congress appropriates the money.

Mr. KING. I have been advised by one or more persons that contracts recently were let for, I think, 100 machines, and there

was some question as to the utility of those machines. Is the Senator advised as to that?

Mr. WADSWORTH. I have never heard of it.

Mr. KING. Mr. President, without indulging in any criticism of the amounts we are appropriating for aeronautics both for the Army and for the Navy, I think those appropriations do not bring adequate results, and that we never will get adequate results with the present divided responsibility. It is obvious, to me at least, that there should be one organization, one agency to control the subject of aeronautics; that such agency, of course, should have representation upon it from the Army and the Navy and perhaps from the Post Office Department; that there should be developed perhaps some suitable factory for the construction of machines, and that the efforts of all the aeronautical agencies or activities of the Government should be focused and centralized in the interest of economy and in the interest of securing the best results. We spent last year, I think, some twenty-odd million dollars for the Air Service of the Navy and perhaps from $12,000,000 to $15,000,000 for the Air Service of the Army, and this year this bill will carry, directly and indirectly, in all more than $20,000,000 for the Army for aeronautics.

Mr. WADSWORTH. There is nothing appropriated indirectly; it is all carried right here.

Mr. KING. I refer to the compensation of officers.

Mr. WADSWORTH. Oh, yes.

Mr. KING. And to the civilian employees as well as officers.

Mr. WADSWORTH. The appropriation is nothing like $20,000,000. The civilian employees are provided for in the item which we are discussing.

Mr. KING. I refer to the overhead expenses and the number of officers and enlisted men whose compensation will be met by some other item of the bill; so that the aggregate doubtless will approach $20,000,000. Whether more or less, at any rate it is a considerable sum; and I have some doubt as to whether or not under the appropriations of last year and this year and preceding years we have received any benefit commensurate with their magnitude, and, in my judgment, we will not do so until we have a reorganization and consolidation of these activities.

The reading of the bill was resumed. The next amendment of the Committee on Appropriations was, in the item for salaries in the office of the Surgeon General, on page 56, line 16, before the words "of class three," to strike out "fourteen" and insert "fifteen"; in the same line, before the words "of class two," to strike out "thirty-four" and insert "thirty-five"; in line 17, before the words "of class one," to strike out "fifty-six" and insert "fifty-seven"; and, at the end of line 24, to strike out "$215,080" and insert "$219,280," so as to make the paragraph read:

Salaries: Chief clerk, $2,250; principal assistant librarian, $2,250; principal clerk, $2,000; pathologist, $1,800; microscopist, $1,800; 2 assistant librarians, at $1,800 each; anatomist, $1,600; entomologist, $1,600; photographer, $1,500; translator, $1,800; clerks—15 of class 4, 15 of class 3, 35 of class 2, 57 of class 1, 9 at $1,000 each, 2 at $900 each; multigraph operator, $1,200; engineer, $1,400; skilled mechanic, $1,000; 2 messengers, at $840 each; 6 assistant messengers, at $720 each; chauffeur, $840; 3 firemen, at $720 each; 3 watchmen, at $720 each; superintendent of building (Army Medical Museum and Library), $200; 6 laborers, at $660 each; 4 charwomen, at $240 each; in all, $219,280.

Mr. KING. I should like to ask the Senator from New York why there is such a large personnel required in the shape of clerks of various grades for the office of the Surgeon General?

Mr. WADSWORTH. Mr. President, of course it is a very large office, and it has highly important work to do. I hardly know how to answer the Senator's question, which seems to me to be rather vague; but the Surgeon General, as the Senator knows, has charge and supervision of the entire medical department of the Army, which extends from Portland, Me., to Manila. Everything that is done by the Medical Corps is done under the direction of this office, and its records necessarily are voluminous and its correspondence is great. There has been a steady reduction in the number of employees since the war. The figure at the foot of the page, $219,280, is the Budget estimate.

Mr. KING. Of course, I appreciate the importance of this organization, and I would be the last one to restrict it by failing to give sufficient appropriations; but in view of the fact that we have but one hundred and twenty-odd thousand soldiers I was rather curious to know why it would require such a large number of clerks in order to dispose of the clerical work of the organization. May I inquire of the Senator whether the War Department avails itself of the services of the Public Health Service.

Mr. WADSWORTH. Not at all.

The VICE PRESIDENT. The question is on agreeing to the amendment reported by the committee.

The amendment was agreed to.

The reading of the bill was resumed. The next amendment of the Committee on Appropriations was, on page 59, at the end of line 23, to insert the word "purchase" and a comma, so as to read:

ENGINEER OPERATIONS IN THE FIELD.

For expenses incident to military engineer operations in the field, including the purchase of material and a reserve of material for such operations, the rental of storehouses within and outside of the District of Columbia, the purchase, operation, maintenance, and repair of horse-drawn and motor-propelled passenger-carrying vehicles, and such expenses as are ordinarily provided for under appropriations for "Engineer depots," "Civilian assistants to engineer officers," and "Military surveys and maps," $90,000.

The amendment was agreed to.

The next amendment was, under the head "Corps of Engineers," on page 62, at line 6, to insert the following subhead: "Seacoast Defenses, Insular Possessions."

The amendment was agreed to.

Mr. KING. Mr. President, I should like to inquire of the Senator respecting the item here for the protection and repair of fortifications. There was considerable literature on the subject, the Senator will recall, during and following the war, by reason of the development of submarines, and so forth, as to whether our plan of fortifications was archaic, whether there was any necessity for the maintenance of many of these forts and fortifications along the Atlantic coast, particularly, and along the Gulf. May I inquire of the Senator whether this bill keeps all of those fortifications in esse and preserves them, or whether a new plan has been devised?

Mr. WADSWORTH. Mr. President, the majority of our seacoast fortifications are manned only by two or three caretakers. The guns in many of them, such as they are—and some of them are fairly modern guns—are covered with tarpaulins or wooden sheds, for the simple reason that we have not the personnel left in the Regular Army to man more than half the seacoast defenses of the United States. The most valuable ones, the most important ones, are still fully manned. I imagine that the General Staff and the Coast Artillery officers, together with the Navy, are constantly planning and revising concerning the seacoast defenses. I know of no new plan having been adopted which would result in the total abandonment of all the seacoast defenses. The amount appropriated here for repair and maintenance and preservation, $274,000, is, of course, exceedingly small.

Mr. KING. Yes.

Mr. WADSWORTH. It is cut to the last limit. The committee's information is that a great deal of the Government's most valuable property is steadily going downhill in condition.

Mr. KING. The Senator refers to guns in fortifications?

Mr. WADSWORTH. Guns, range-finding apparatus, electric power plants to operate the guns and the ammunition hoists, the barbettes themselves, and the structures so necessary for keeping a seacoast defense in proper order. Severe complaint has been made by the Ordnance Department, especially, over the lack of funds to keep valuable property actually in repair.

Mr. KING. I was somewhat surprised at the smallness of this appropriation if it was to care for all of our seacoast fortifications.

Mr. WADSWORTH. This takes care only of the structural part of the fortifications under the Engineer Corps. There is another item under the Ordnance Department to keep in repair the guns themselves.

Mr. KING. I had in mind the fact that several years ago there was considerable talk about new plans being required, in view of the developments of the war, which would dispense with the necessity of maintaining many of our fortifications, and would perhaps call for the development of a different method of fortification.

The VICE PRESIDENT. The Secretary will continue the reading of the bill.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, on page 62, after line 13, to insert:

For the installation and replacement of electric light and power plants at the defenses of the Philippine Islands, $200,000.

Mr. KING. Mr. President, I should like to inquire of the Senator—and before we leave the bill I may offer an amendment on the subject, as I indicated the other day—if the War Department is devising any further fortifications in the Philippine Islands, other than those which seemed to be provided for here?

Mr. WADSWORTH. As I recollect, the four-power treaty forbids us to engage in the further fortification of the Philip-

pine Islands. I may be mistaken about that, but I think that is the fact.

Mr. KING. Nothing has been brought to the attention of the committee?

Mr. WADSWORTH. Oh, no; no money is being spent there on new construction. This item is in the nature of a replacement.

Mr. KING. Does the Senator believe that if we were to leave the Philippine Islands within a year, this appropriation of $200,000 would be required?

Mr. WADSWORTH. It most certainly would not be; but we are not going to leave within a year.

Mr. KING. That is probably the view of the Senator, and probably the view of the administration. I hope, however, that both the Senator and the administration will change their point of view and will make provision for the United States to surrender the Philippine Islands and their government to the inhabitants on the 1st of January, 1924.

Mr. WADSWORTH. That is a very interesting suggestion.

Mr. KING. I shall offer that as an amendment to this bill if I can, and if a point of order is not raised against it.

Mr. WADSWORTH. It will be.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, under the subhead "Field Artillery armament," on page 67, at the end of line 7, to strike out "$425,000" and insert "$448,500," so as to make the paragraph read:

For alteration and maintenance of the mobile artillery, including the purchase and manufacture of machinery, tools, and materials necessary for the work and the expenses of the mechanics engaged thereon, $448,500.

The amendment was agreed to.

The next amendment was, under the subhead "Chemical Warfare Service," on page 71, at the end of line 19, to increase the appropriation for the purchase, manufacture, and test of chemical warfare gases or other toxic substances, gas masks, or other offensive or defensive materials or appliances required for gas warfare purposes, etc., from "$650,000" to "$700,000."

Mr. KING. Mr. President, I should like some explanation from the Senator in regard to the increase in this item, and then generally an explanation as to the activities of this organization, and whether, in his opinion, the results are commensurate with the expenditures which have been made, and which are called for in this bill.

Mr. WADSWORTH. I assume that the Senator refers to the Chemical Warfare Service.

Mr. KING. Yes. The Secretary has just announced that as the heading.

Mr. WADSWORTH. As the Senator probably knows, nearly all this expenditure takes place at the Edgewood Arsenal, which is the experimental and research laboratory, as it were, of the Chemical Warfare Service. The Budget estimate was $740,000. The House appropriated $650,000, and the Senate committee proposes to appropriate $700,000.

The great proportion of this expenditure is in the direction of research work, experimenting, of course, with gases of various kinds, and evolving methods of defense against such gases if our troops should ever be called upon to confront an enemy that uses so-called poison gases.

The work at the Edgewood Arsenal has been remarkably successful, and truly astounding improvements have been made in some of the things which some day may be of vital importance to the soldiers of the United States, and, indeed, to the country as a whole. The committee is convinced that the expenditure of $700,000 a year for experiment and research, especially for the development of defensive articles, is well worthy of our support, and for that reason the committee suggests the sum.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Appropriations was, in the items for the office of Chief of Chemical Warfare Service, on page 72, line 5, after the word "exceed," to strike out "$15,000" and insert "$21,600," so as to read:

The services of chemists and such other services as the Secretary of War may deem necessary may be employed only in the office of the Chief of the Chemical Warfare Service to carry into effect the appropriation for Chemical Warfare Service, to be paid from such appropriation: *Provided*, That the total expenditures for this purpose for the fiscal year 1924 shall not exceed $21,600, and the Secretary of War shall each year in the Budget report to Congress the number of persons so employed, their duties, and the amount paid to each.

The amendment was agreed to.

The reading of the bill was resumed, and the reading clerk read to line 22 on page 72, the last item read being as follows:

NATIONAL BOARD FOR PROMOTION OF RIFLE PRACTICE.

QUARTERMASTER SUPPLIES AND SERVICES FOR RIFLE RANGES FOR CIVILIAN INSTRUCTION.

To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for the Promotion of Rifle Practice and approved by the Secretary of War; for the employment of labor in connection with the establishment of outdoor and indoor rifle ranges, including labor in operating targets; for the employment of instructors; for clerical services; for badges and other insignia; for expenses incidental to instruction of citizens of the United States in marksmanship and their participation in international matches, $20,000.

Mr. BROOKHART. Mr. President, on the item for the National Board for Promotion of Rifle Practice, I thought I understood the Senator from New York to say that that was raised by committee amendment to $89,000.

Mr. WADSWORTH. Yes. Mr. President, on behalf of the committee I offer an amendment to the paragraph headed "National Board for Promotion of Rifle Practice."

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. On page 72, it is proposed to strike out lines 12 to 22, inclusive, and to insert in lieu thereof the following:

To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for the Promotion of Rifle Practice and approved by the Secretary of War; for the employment of labor in connection with the establishment of outdoor and indoor rifle ranges, including labor in operating targets; for the employment of instructors; for clerical services; for badges and other insignia; for the transportation of employees, instructors, and civilians to engage in practice; for the purchase of materials, supplies, and services, and for expenses incidental to instruction to citizens of the United States in marksmanship, and their participation in national and international matches, to be expended under the direction of the Secretary of War, and to remain available until expended, $89,900: *Provided*, That out of the said sum of $89,900 there may be expended for the payment of transportation, for supplying meals, or furnishing commutation of subsistence of civilian rifle teams authorized by the Secretary of War to participate in the national matches, not to exceed $80,000.

Mr. WADSWORTH. Mr. President, the language just read by the Secretary, with the appropriation proposed, is the exact language and the exact appropriation proposed by the Budget for 1923. It constitutes, in effect, a proposed increase over the appropriation carried in the bill as printed of $89,900 for this purpose, and broadens the purposes for which that money can be used, and brings it back to the status of 1922 and years prior to that time.

Mr. BROOKHART. Mr. President, in reference to that appropriation, in 1922 for that amount we were only able to bring about 30 of the civilian teams to the national rifle matches. That made it necessary to rule out arbitrarily a considerable number of the States. In order to take care of all the States, about $120,000 will be required for this item, instead of $89,000. We had even more than that prior to that time, but from the experience we have had it will require that much, or else we will probably have the same trouble that we had before, and will have to say arbitrarily to this State or that State: "You can not come, because we have not the funds." I know that that was true in 1922, so I should like to move that that amount be raised to $120,000.

Mr. WADSWORTH. Mr. President, the Senator from Iowa is better informed upon this subject than any other man in the Senate. I am very glad to take his word for the condition which he described as having existed at the national rifle matches, at which he has often been a principal instructor, and, so far as I may, I am willing to accept the amendment which he proposes, which would make the appropriation $120,000. But the limitation in the amendment should probably be raised if the total sum is raised. The amendment reads that the appropriation shall be $89,900, of which not more than $80,000 shall be used for transportation, and so forth.

Mr. BROOKHART. That should be raised to $100,000.

Mr. WADSWORTH. Yes. I accept those two modifications.

The VICE PRESIDENT. The Secretary will report the modified amendment.

The READING CLERK. On page 2, line 6, of the amendment, strike out "$89,900" and insert in lieu thereof "$120,000," and on line 11 strike out "$80,000" and insert "$100,000."

The VICE PRESIDENT. The question is on agreeing to the amendment as modified.

The amendment as modified was agreed to.

The reading of the bill was continued. The next amendment was, on page 73, at the end of line 11, to increase the appropriation for the purpose of furnishing a national trophy and medals and other prizes to be provided and contested for annually, etc., from "$6,500" to "$7,500."

Mr. BROOKHART. With reference to that item, for many years we had an appropriation of $10,000 for these purposes. The matches are much larger now than they were in those days, and I think that item should go back to the $10,000, at least. There is no part of the national matches more valuable than the distribution of trophies and medals. At one time some of that was used for cash prizes, but that was abandoned years ago and trophies and medals adopted instead. I move that the appropriation be raised to $10,000, as it was for so many years.

The VICE PRESIDENT. The Secretary will state the amendment.

The READING CLERK. On page 73, line 12, in lieu of the amendment proposed by the committee, fixing the amount at $7,500, the Senator from Iowa proposes to make the amount $10,000.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. BROOKHART. Should there not be an amendment in that next item?

Mr. WADSWORTH. That does not involve a committee amendment. Will the Senator postpone offering an amendment to that paragraph until amendments generally are in order? Under the unanimous-consent agreement, under which we are proceeding now, only committee amendments are in order.

Mr. BROOKHART. Very well.

The next amendment was, under the subhead "Chief of Infantry," on page 74, line 1, after the word "of," to strike out "technical, special, clerical, and temporary" and insert "temporary, technical, special, and," so as to make the paragraph read:

For the purchase of textbooks, books of reference, scientific and professional papers; instruments and material for instruction, employment of temporary, technical, special, and clerical services, including the services of one translator at the rate of $150 per month, and for the necessary expenses of instruction at the Infantry School, Fort Benning, Ga., $35,000.

The amendment was agreed to.

The next amendment was, under the subhead "Chief of Cavalry," on page 74, line 18, after the word "and," to strike out "materials" and insert "material"; in line 19, after the word "of," to strike out "technical, special, clerical, and temporary" and insert "temporary, technical, special, and," so as to make the paragraph read:

For the purchase of textbooks, books of reference, scientific and professional papers, instruments, and material for instruction; employment of temporary, technical, special, and clerical services; and for other necessary expenses of instruction at the Cavalry School, Fort Riley, Kans., $17,600.

The amendment was agreed to.

The next amendment was, under the subhead "Chief of Field Artillery," on page 74, at the end of line 26, to strike out "matériel" and insert "material"; and, on page 75, line 1, after the word "of," to strike out "technical, special, clerical, and temporary" and insert "temporary, technical, special, and"; and, in line 4, after the word "Artillery," strike out "Schools" and insert "School," so as to make the paragraph read:

For the purchase of textbooks, books of reference, scientific and professional papers, instruments, and material for instruction; employment of temporary, technical, special, and clerical services; and for other necessary expenses of instruction, at the Field Artillery School at Fort Sill, Okla., $18,000.

The amendment was agreed to.

The next amendment was, under the subhead "Militia Bureau, Arming, Equipping, and Training the National Guard," on page 79, line 11, to increase the appropriation for procurement of forage, bedding, etc., for animals, from "$1,250,000" to "$1,465,000."

The amendment was agreed to.

The next amendment was, on page 79, line 13, to increase the appropriation for compensation of help for care of matériel, animals, and equipment from "$1,850,000" to "$2,500,000."

The amendment was agreed to.

The next amendment was, on page 79, line 14, to increase the appropriation for expenses, camps of instruction, from "$10,000,000" to "$11,000,000."

The amendment was agreed to.

The next amendment was, on page 79, line 17, to increase the appropriation for expenses, selected officers and enlisted men, military service schools, from "$300,000" to "$350,000."

The amendment was agreed to.

The next amendment was, on page 79, line 19, to increase the appropriation for pay of property and disbursing officers for the United States from "$70,000" to "$75,000."

The amendment was agreed to.

The next amendment was, on page 80, line 4, to increase the appropriation for transportation of equipment, from "$375,000" to "$400,000."

The amendment was agreed to.

The next amendment was, on page 80, at the end of line 23, to strike out "$2,250,000" and insert "$3,250,000," so as to read:

ARMS, UNIFORMS, EQUIPMENT, ETC., FOR FIELD SERVICE, NATIONAL GUARD.

To procure by purchase or manufacture and issue from time to time to the National Guard upon requisition of the governors of the several States and Territories, or the commanding general National Guard of the District of Columbia, such number of United States service arms with all accessories, Field Artillery and Coast Artillery matériel, Engineer, Signal, and sanitary matériel, accouterments, field uniforms, clothing, equipage, publications, and military stores of all kinds, and a reserve supply of such arms, matériel, accouterments, field uniforms, clothing, equipage, and military stores of all kinds, as are necessary to arm, uniform, and equip for field service the National Guard of the several States, Territories, and the District of Columbia, $3,250,000.

The amendment was agreed to.

The next amendment was, on page 81, line 13, after the word "arms," to strike out "Field Artillery, Engineer, or Signal matériel," so as to read:

Provided, That the Secretary of War is hereby directed to issue from surplus or reserve stores and matériel now on hand and purchased for the United States Army such articles of clothing and equipment and Field Artillery, Engineer, and Signal matériel and ammunition as may be needed by the National Guard organized under the provisions of the act entitled "An act for making further and more effectual provision for the national defense, and for other purposes," approved June 3, 1916, as amended by the act approved June 4, 1920. This issue shall be made without charge against militia appropriations, except for actual expenses incident to such issue, which shall be charged against militia funds for both the fiscal years 1923 and 1924. None of the funds appropriated in this paragraph shall be used for purchase of arms, public animals, or chevrons.

The amendment was agreed to.

The next amendment was, in the items for salaries, Militia Bureau, War Department, on page 81, line 21, after the words "Chief clerk," to strike out "$2,250" and insert "$2,000"; at the end of the same line, to strike out "finance clerk, $2,000;"; in line 22, before the words "of class three," strike out "four" and insert "five," and at the end of line 25, strike out "$82,850" and insert "$82,200", so as to make the paragraph read:

Salaries: Chief clerk, $2,000; clerks—three of class four, five of class three, ten of class two, twenty-six of class one, eighteen at $1,000 each; messenger, $840; two assistant messengers, at $720 each; two laborers, at $660 each; in all, $82,200.

The amendment was agreed to.

The next amendment was, under the head "United States Military Academy," on page 82, line 5, to strike out "constructing quartermaster, in addition to his regular pay, $1,000"; and at the end of line 8, to strike out "$55,968" and insert "$54,968," so as to read:

PAY OF MILITARY ACADEMY.

Permanent Establishment: For eight professors, $30,000; chaplain, $2,750; master of the sword, $3,500; additional pay of professors and officers for length of service, $13,900; subsistence allowance of professors and officers, $4,818; in all, $54,968.

The amendment was agreed to.

The next amendment was, on page 86, at the end of line 4, to reduce the total appropriation for pay, Military Academy, from "$1,664,585" to "$1,663,586."

The amendment was agreed to.

The next amendment was, in the items for miscellaneous and incidental expenses, at the Military Academy, on page 91, after line 8, to strike out "For supplying materials and painting and cleaning the cadet barracks, $3,500," and in lieu thereof to insert:

For supplying materials, repairing, painting, and cleaning furniture in cadet barracks, $3,500.

The amendment was agreed to.

The next amendment was, on page 95, after line 21, to strike out:

No part of the funds appropriated in this act for the supply, maintenance, and upkeep of athletic grounds and stands at the United States Military Academy shall be used for such purposes, unless the authorities at the Military Academy charge an admission to the principal public athletic contests on such grounds in which the cadets take part, and the funds so received shall be used solely for the improvement of athletic facilities at the said academy.

The amendment was agreed to.

The next amendment was, under the subhead "Finance Department," on page 96, line 17, after the figures "$1,200," to strike out the comma and insert the following words: "but one-half of each monthly payment shall be deducted until an

amount equal to the aggregate of the amount of the pension which has been paid to him by the Pension Office contrary to law shall have been reached," so as to read:

For amount required to make monthly payments to John R. Kissinger, late of Company D, One hundred and fifty-seventh Indiana Volunteer Infantry, also late of the Hospital Corps, United States Army, $1,200.

The amendment was agreed to.

The next amendment was, under the subhead "National cemeteries," on page 97, at the end of line 4, to strike out "$350,000" and insert "$370,220," so as to make the paragraph read:

For maintaining and improving national cemeteries, including fuel for superintendents, pay of laborers and other employees, purchase of tools and materials, and including care and maintenance of the Arlington Memorial Amphitheater and Chapel and grounds in the Arlington National Cemetery, Va., $370,220.

The amendment was agreed to.

The next amendment was, on page 97, line 10, to reduce the appropriation for repairs to roadways to national cemeteries which have been constructed by special authority of Congress from $24,000 to $12,000.

Mr. BROOKHART. Was there not a committee amendment to be offered on page 95?

Mr. WADSWORTH. The committee amendment will be offered when the printed committee amendments are finished. Then it is my purpose to go back and propose six or eight committee amendments, which are legislative in character, but which must be proposed on the floor and unanimous consent asked for their consideration.

Mr. BROOKHART. Very well.

The amendment was agreed to.

The next amendment was, on page 100, line 4, after the name "France," to increase the appropriation for disposition of remains of officers, soldiers, and civilian employees from $150,000 to $160,000.

The reading of the bill was continued to line 22, page 101, the last paragraph read being:

For defraying the cost of such extensions, betterments, operation, and maintenance of the Washington-Alaska military cable and telegraph system as may be approved by the Secretary of War, to be available until the close of the fiscal year 1925, from the receipts of the Washington-Alaska Military Cable and Telegraph System which have been covered into the Treasury of the United States, the extent of such extensions and betterments and the cost thereof to be reported to Congress by the Secretary of War, $140,000.

Mr. KING. A number of Senators are absent who are interested in some of the items we are approaching, and I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Ball	Hitchcock	New	Stanley
Bayard	Johnson	Nicholson	Sterling
Borah	Jones, N. Mex.	Norbeck	Sutherland
Brookhart	Jones, Wash.	Norris	Townsend
Bursum	Kendrick	Oddie	Trammell
Cameron	Keyes	Page	Underwood
Capper	King	Phipps	Wadsworth
Curtis	Lenroot	Pittman	Walsh, Mass.
Ernst	Lodge	Pomerene	Walsh, Mont.
Fernald	McCormick	Ransdell	Warren
Fletcher	McCumber	Reed, Pa.	Watson
George	McKellar	Robinson	Williams
Hale	McKinley	Sheppard	Willis
Harris	McNary	Smoot	
Harrison	Moses	Spencer	
Heflin	Nelson	Stanfield	

Mr. BROOKHART. I wish to announce that the Senator from Wisconsin [Mr. LA FOLLETTE] is necessarily absent attending a hearing before the Committee on Manufactures.

The PRESIDING OFFICER (Mr. WILLIS in the chair). Sixty-one Senators having answered to their names, a quorum is present.

Mr. WADSWORTH. Mr. President, I understand very well that many Senators are particularly interested in the so-called river and harbor item. We are now on page 104 of the bill, considering committee amendments. The rivers and harbors item appears on page 106. I desire to announce that when the rivers and harbors item is reached this afternoon, if it is reached, I shall ask that consideration thereof be postponed until to-morrow, and that the Senate shall proceed as long as it may be willing to stay in session to clean up what might be regarded as less important amendments in the bill.

Mr. BORAH. Then the rivers and harbors item will go over until to-morrow?

Mr. WADSWORTH. Yes.

The PRESIDING OFFICER. The Secretary will report the next amendment.

The next amendment of the Committee on Appropriations was, in the items for the Lincoln Memorial, on page 104, line 1, before the word "watchman," to strike out "three" and insert "four," and at the end of line 8, to strike out "$11,320," and insert "$12,040," so as to make the paragraph read:

Lincoln Memorial: Custodian, $1,200; four watchmen, at $720 each; three laborers, at $660 each; heat, light, miscellaneous labor, and supplies, $3,910; extra services of employees and additional supplies and materials to provide for opening the Lincoln Memorial to the public on Sundays and legal holidays, $1,750; for purchasing and supplying uniforms to the four Lincoln Memorial watchmen, $320; in all, $12,040.

The amendment was agreed to.

The next amendment was, on page 105, at the end of line 24, to increase the appropriation for construction and maintenance of military and post roads, bridges, and trails, Alaska, from "$465,000" to "$1,000,000."

The amendment was agreed to.

The next amendment was, on page 106, at the end of line 3, to reduce the appropriation for cost of survey and the preparation of plans and estimates for a Government dock at Juneau, Alaska, from "$1,000" to "$600."

The amendment was agreed to.

Mr. WADSWORTH. There is only one committee amendment having to do with rivers and harbors. I think in view of my statement a moment ago, that amendment should be postponed until to-morrow. The committee amendment, however, is not connected with the general rivers and harbors appropriation.

The PRESIDING OFFICER. The amendments on lines 15 and 17 on page 106 will be passed over together with the whole section, in accordance with the statement made by the Senator from New York, in charge of the bill.

The reading of the bill was continued at page 108, line 4.

The next amendment of the Committee on Appropriations was under the head "National Home for Disabled Volunteer Soldiers," on page 115, at the beginning of line 25, to strike out "general" and insert "surplus"; so as to make the paragraph read:

For the fiscal year 1925 and annually thereafter moneys allotted to the Board of Managers of the National Home for Disabled Volunteer Soldiers by the Veterans' Bureau for support, maintenance, and care of World War veterans shall not be used to augment or reimburse the appropriations made for the support of the National Home for Disabled Volunteer Soldiers, but shall be covered into the surplus fund of the Treasury, and the Budget for the fiscal year 1925 and thereafter shall contain itemized estimates covering the entire cost of the operation and maintenance of the National Home for Disabled Volunteer Soldiers, including the cost of the maintenance, support, and care of beneficiaries of the United States Veterans' Bureau in such homes.

The amendment was agreed to.

The next amendment was, under the head, "The Panama Canal," on page 117, after line 15, to strike out:

The limitations on the expenditure of appropriations for salaries and wages of civilian employees hereinbefore made in this act shall not apply to the appropriations for the Panama Canal.

The amendment was agreed to.

Mr. McKELLAR. Mr. President, what is the purpose of striking out the language on page 117? Will the Senator in charge of the bill explain the purpose?

Mr. WADSWORTH. I am glad the Senator called attention to that. I desired to offer a modification of the committee amendment. I first ask unanimous consent that the vote by which the amendment was agreed to may be reconsidered.

The PRESIDING OFFICER. Without objection, the vote is reconsidered.

Mr. WADSWORTH. The committee, in striking out lines 15, 16, 17, 18, and 19, on page 117, made an error. The intention was to strike out only the words "for salaries and wages of civilian employees," and to retain the rest of the language so that it would read:

The limitations on the expenditure of appropriations hereinbefore made in this act shall not apply to the appropriations for the Panama Canal.

The Panama Canal is an entirely separate business institution. It is under the direct jurisdiction of the President, who delegates the task to the Secretary of War.

Mr. McKELLAR. I recall how that is.

Mr. WADSWORTH. We do not want limitations as to salaries in the War Department made applicable to the salaries of civilians on the Panama Canal Zone, for a different set of statutes takes care of that.

Mr. McKELLAR. If the amendment were disagreed to, then the Senator from New York could offer his amendment.

Mr. WADSWORTH. That is what I am going to do.

Mr. McKELLAR. The amendment to strike out the four lines has just been agreed to.

Mr. WADSWORTH. My purpose is to restore the language and then strike out the words "for salaries and wages of civilian employees."

The PRESIDING OFFICER. The Chair suggests to the Senator from New York that the Senate disagree to the committee amendment, which would restore the House language.

Mr. WADSWORTH. I ask that that may be done.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the committee.

The amendment was rejected.

Mr. WADSWORTH. I move to amend, on page 117, in line 17, by striking out the words "for salaries and wages of civilian employees," so the paragraph would read:

The limitations on the expenditure of appropriations hereinbefore made in this act shall not apply to the appropriations for the Panama Canal.

The amendment was agreed to.

Mr. SMOOT. Mr. President, will the Senator from New York allow me to submit a Senate resolution and ask for its present consideration? If it leads to any debate whatever I will withdraw it.

Mr. WADSWORTH. I yield for that purpose.

LEASES UPON NAVAL OIL RESERVES.

Mr. SMOOT. I ask for the present consideration of the resolution which I send to the desk.

The PRESIDING OFFICER. The Senator from Utah asks unanimous consent for the present consideration of a resolution which will be read for the information of the Senate.

The reading clerk read the resolution (S. Res. 434), as follows:

Resolved, That Senate Resolution Numbered 282, agreed to April 21, 1922, and Senate Resolution Numbered 294, agreed to May 15, 1922, authorizing and directing the Committee on Public Lands and Surveys to investigate the entire subject of leases upon naval oil reserves, with particular reference to the protection of the rights and equities of the Government of the United States and the preservation of its natural resources, and to report its findings and recommendations to the Senate, and providing that the expenses of such investigation be paid from the contingent fund of the Senate, be, and the same hereby are, continued in full force and effect until the end of the Sixty-eighth Congress.

Mr. WALSH of Montana. Mr. President, I suggest to the Senator that there be added language authorizing the committee to sit during the recess of Congress.

Mr. SMOOT. I think the original resolution takes care of that. Senate Resolution 294 was an amendment to Senate Resolution 282, and provides as follows:

That the said committee is hereby authorized to sit and perform its duties at such times and places as it deems necessary or proper and to require the attendance of witnesses by subpœnas or otherwise; to require the production of books, papers, and documents; and to employ counsel, experts, and other assistants, and stenographers, at a cost not exceeding $1.25 per printed page. The chairman of the committee or any member thereof may administer oaths to witnesses and sign subpœnas for witnesses; and every person duly summoned before said committee, or any subcommittee thereof, who refuses or fails to obey the process of said committee or appears and refuses to answer questions pertinent to said investigation shall be punished as prescribed by law. The expenses of said investigation shall be paid from the contingent fund of the Senate on vouchers of the committee or subcommittee, signed by the chairman and approved by the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. WALSH of Montana. The Senator will observe that it does not cover the provision I suggested.

Mr. SMOOT. I thought the last provision mentioning the subcommittee authorized the subcommittee to sit, but it does not. Therefore if the Senator will offer his amendment I am perfectly willing to accept it.

Mr. WALSH of Montana. I offer the following amendment. Add to the resolution the following language:

The committee or any subcommittee thereof is authorized to sit during the sessions or the recesses of the Senate.

The amendment was agreed to.

The resolution as amended was agreed to.

Mr. WALSH of Montana subsequently said: Mr. President, the purpose which was intended to be accomplished by the resolution offered by the Senator from Utah [Mr. SMOOT] a few moments ago is not fully accomplished; and I desire to ask unanimous consent to reconsider the vote by which the resolution was adopted for the purpose of perfecting the resolution.

The VICE PRESIDENT. Is there objection to the reconsideration? The Chair hears none. The question is on agreeing to the resolution.

Mr. WALSH of Montana. I move to reconsider the vote by which the amendment offered by myself was agreed to.

The motion to reconsider was agreed to.

Mr. WALSH of Montana. Then, in lieu of that, I offer the following:

The committee, or any subcommittee thereof, may sit during the sessions or recesses of the Senate, and after the expiration of the present Congress until the assembling of the Sixty-eighth Congress, and until otherwise ordered by the Senate.

The amendment was agreed to.

The resolution, as amended, was agreed to.

CORONER'S INQUESTS IN DISTRICT OF COLUMBIA.

Mr. FLETCHER. Mr. President, I have had some inquiries respecting the method of holding coroner's inquests in the District where people have been killed by accident or otherwise. I have a letter from Commissioner James F. Oyster on that subject. It is a matter in which a few people feel a very deep interest. I think it is of some general concern likewise. It gives certain information which a great many people do not seem to have and, I might say, is somewhat at variance with the information I have on the subject. I ask unanimous consent that the letter may be printed in the RECORD.

The PRESIDING OFFICER. Without objection that order will be made.

The letter is as follows:

COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, January 31, 1923.

Hon. DUNCAN U. FLETCHER,
United States Senate, Washington, D. C.

DEAR SENATOR FLETCHER: I have your favor of January 30 making certain inquiries regarding the office of coroner, and have endeavored to answer the questions you ask. In this connection I would like to invite your particular attention to the relatively small salary attached to this position of coroner when consideration is taken of the many duties of the office.

Answering your specific questions, I beg to reply as follows:

1. The coroner views all bodies and makes preliminary investigations, determines if autopsy is necessary, and conducts inquests. The deputy coroner performs autopsies and reports results to the coroner and coroner's jury.

2. The United States District Attorney is advised in advance of inquests, and a representative of his office attends all inquests. He examines all witnesses.

3. Captains of various police precincts supply the coroner with lists of names for jury service. The law fixes the number of jurors at six. The jury is discharged at the end of each inquest and not continued for a fixed period. Jurors receive $3 a day for services.

4. Records of inquests are kept on file. Testimony is taken in shorthand only in exceptional cases; otherwise in long hand. Testimony so taken is submitted to the United States District Attorney's office.

5. Legal representatives of all parties concerned are permitted to attend and allowed unlimited scope in the conduct of their questioning.

6. Coroner's compensation is $1,800 per annum. The deputy coroner receives no compensation.

If there is any further information you desire I will be very glad to obtain it for you if you will let me know.

Yours sincerely,
JAMES F. OYSTER,
Commissioner, District of Columbia.

FUNDING OF THE BRITISH DEBT—ARTICLE BY JOSEPHUS DANIELS.

Mr. McKELLAR. Mr. President, since the consideration of the War Department appropriation bill has been interrupted, I ask unanimous consent that an article by the Hon. Josephus Daniels, former Secretary of the Navy, on the British debt settlement may be printed in the RECORD in 8-point type.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The article is as follows:

BRITISH HAVE GALL TO BEG OFF DEBT, ASSERTS DANIELS—FORMER SECRETARY OF THE NAVY DECLARES THAT AMERICA GREW IMPATIENT AT LONG DELAY IN SENDING MISSION TO ARRANGE SETTLEMENT OF DEBT.

(By Josephus Daniels.)

The return to London of the British mission which came to Washington to confer about the debt it owes to the United States, without reaching any agreement, recalls the fact that when the United States entered the World War in April, 1917, missions composed of distinguished statesmen and soldiers from the allied nations came to Washington for conference with American Government officials.

The able and charming Mr. Balfour headed the British delegation, which was the first to arrive. It was the first to come then to discuss how America could in the best and quickest way render its largest contribution to the allied cause.

Great Britain was the first country which secured a large loan of money. It was warmly welcomed and all that we could do to aid that Government was as freely given as they freely put at our disposal then and afterward all the information and aid they could render.

The first agreement of cooperation between the two English-speaking nations was made between Admiral Browning and the Secretary of the Navy on April 10, 1917.

Following closely came Mr. Balfour and his party and the beloved Joffre and the French leaders. What impressed me most about the British mission was the thorough and expert knowledge possessed by its members.

If Mr. Balfour wanted any information from the highest finance to the building of a dreadnought he had an expert at hand whose knowledge was full and accurate.

It is this thoroughness which has distinguished the British Government. Where other nations have as noble aims and even greater zeal, the British go into the minutest detail and that gives them a great advantage. They had more men in Washington at the conferences in the early days than any other nation and again the same thing was true at Paris.

Accurate information and thorough knowledge wins battles as truly as guns and ships. Full knowledge has won many victories.

BRITISH FIRST LOAN.

I have said that the British secured the first loan made by this Government to an allied nation. It had hitherto borne the brunt of financing the war.

Our declaration removed the strain that was almost to the breaking point. The big thing it asked the United States to do, in answer to our request to be advised what aid we could best render at once, was to supply money and patrol the coast from Halifax to Panama, so their ships could be released to go to European waters. We did both at once, beginning in April and carrying on to our utmost until victory.

As a British mission was the first to obtain money from us to finance the costly war—I had almost said extravagant war, for modern wars eat up money—so the British financial mission was the first to come to Washington to talk about paying its debt.

The visit had been postponed time and again. It was scheduled to reach Washington when Mr. Houston became Secretary of the Treasury and again toward the close of the Wilson administration. But it got here on a late train, so to speak.

It was in daily conference with the authorities at Washington for weeks. Then it sailed away. The people of both countries had little inkling of what was talked about in the meeting.

They had expected that at least in this matter, understandable to the average citizen, there would be "open covenants openly arrived at." But neither Congress nor the people knows any more than before they came. "Like the King of France, they marched up the hill and then marched down again."

The gossip around Washington is that they asked for a very long time to pay the debt, which request Congress would no doubt have granted upon the giving of bonds of their Government; but in addition to that they also requested that the rate of interest be fixed at 3 per cent.

I call that request, if the gossip is correct, unadulterated gall. The British know the United States did not have a dollar to lend them except what was obtainable from loans from the people or taxes imposed on them. Our taxes did not bring in near enough for our enormous expenditures to arm our own soldiers and sailors and pay the expense of a war 3,000 miles from home.

In order to obtain the billions we loaned Britain and the other allied nations, it was necessary to issue our own bonds and for Mr. McAdoo to carry on the most remarkable campaign in history to sell them to the American people.

In order to obtain the largest amount for these bonds, they were made tax exempt. That was a mistake if our own country was to be considered.

We entered upon this policy, not permissible on sound principles except in war, largely to give our allies the benefit of getting par when no other nation could float its securities without some reduction or commissions. It was done to aid Britain and the other allies to every cent possible.

FIRM AND POLITE NO.

We agreed to charge Britain no interest except what we actually paid to those who bought the bonds. After the war, when it was clear that the United States had withdrawn from European settlements, there came a near panic, saved only by the Federal Reserve Board, and bonds went below par because the interest rate rose from 6 to 8 per cent at the lowest.

In view of the fact that Britain obtained this loan at such a low rate of interest, the people were astounded when it was reported that the British mission had asked a reduction to 3 per cent. Of course, the Washington Government could do nothing but give a polite and firm no to the preposterous request.

We are ready to give every reasonable consideration to Britain with reference to the debt it owes, but its course has served to chill the feeling entertained for it.

I refer to its whole course with reference to debts; its delay in coming, preceded by Mr. Balfour's tactless statement that Britain would cancel all debts due it if the United States would do likewise. That was a world proclamation virtually putting up to us to shoulder the debts which should be paid by others.

We have gotten tired of hearing "America entered late and should assume its share of the debt contracted before it came in, and should wipe out all indebtedness due from us." Mr. Balfour "passing the buck" to the United States, followed by the British financial mission's request in the year 1923 to reduce the interest to a sum far less than we are actually paying, was not calculated to leave a good taste in the mouth.

BRITAIN SHOULD PAY.

It has done exactly the opposite. It has stiffened the backbone of Americans to say plainly that we will give every proper consideration, but we must insist upon payment of the same interest the Treasury is paying the holders of the bonds.

There is no reason why Britain should not pay. We bore our expenses of the war and we neither asked nor received anything in the way of money, coal, oil, or colonies, or anything else, even though at the time Senator LODGE said we ought to demand reparation from Germany. Later he was wiser and gloried that Woodrow Wilson had demanded nothing.

The people generally are not informed as to what Britain has received as a result of the war. The propaganda that France is the only country getting or trying to get reparations has made people forget the incomparably great things that Britain obtained. France asked too much and blundered in so doing.

What has Britain received? I have not the data as to the oil concessions and the advantages in countries that have large oil fields that will enrich Britain and be of inestimable value to its world commerce. When we reflect upon what it did obtain, we may well ask, What nation received most out of the war?

Here is what the war added to the British Empire: Five hundred thousand square miles of German Southwest Africa, 680,000 square miles of German West Africa, 75,000 square miles of Togo and Cameroon, 180,000 square miles of New Guinea and Bismarck. In addition many square miles in the colonies of Angola and Mozambique, 1,000,000 square miles in Persia, and 2,000,000 square miles in Mesopotamia have come under British influence.

BRITAIN'S ATTITUDE.

It is unfortunate that the British did not come to Washington long ago, or even on its recent visit, and say frankly: "While we have received great benefit in German colonies as a result of the war they are now liabilities and not present assets. While we are to receive 22 per cent of whatever sum Germany pays as reparation, Germany has as yet paid us nothing. Our oil concessions are yet to be realized upon. The cost of our armies to prevent wars in Europe imposes a heavy burden. We therefore would be glad to defer payments to a time when we can pay without the strain early payments would impose. We, of course, expect to pay the same rate of interest you must pay the owners of the bonds you issued to obtain the money to lend to us."

If the mission had come in that spirit and made the request, everybody would have approved acquiescence.

It was a mistake equal to a blunder, as was Mr. Balfour's tactless passing the buck to this country. However, these mistakes should not affect the cordial relations between the countries, and we should proffer to extend the loans for a long period. Britain has walked through deep waters, fought a great fight, and the two countries must be ever prepared to prevent such another holocaust of war as almost destroyed the world in 1914–1919. (Copyright, Twenty-first Century Press.)

THE MERCHANT MARINE.

Mr. BROOKHART. Mr. President, I ask unanimous consent to have printed in the RECORD in 8-point type an article entitled "Economic geometry versus legislative ship subsidy in the making," with reference to the operations of the Shipping Board.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The article is as follows:

ECONOMIC GEOMETRY VERSUS LEGISLATIVE SHIP SUBSIDY IN THE MAKING.

The U-boat moved westward the center of gravity of the world's carrying trade. That center of gravity is still potential. A few more years of depreciation of the governmental fleet rotting in lay up precludes the conversion of potential to kinetic.

The World War also moved westward the international bullion center of gravity. Just so long as that bullion center of gravity rests with us, they (the alien), not we, will sweat. Therefore, why assist the eastward movement momentum of said center of gravity through the medium of a half-billion-dollar yearly ocean freight bill, distributed largely among foreign bottoms. Ditto, American marine cargo and hull insurance premiums.

The yearly appropriations for our national defense approximate one-half a billion dollars. Annual British unemployment doles are now of similar amount. America contributes in direct ratio to the building of British battleships, French submarines, and Japanese light cruisers, as is the proportion of her ocean-borne freights carried in the bottoms of the named nationals.

Island empires are international economic middlemen situated tangential to the ebb and flow of sea commerce from producer to ultimate consumer. Their adverse trade balances must be restored by carrying other peoples' goods in island bottoms by the expenditures of tourists and by the proceeds of international marine insurance, banking, and investments. If they fail to restore such adverse balances, they still have three other alternatives, to wit, war, starvation, or emigration. Britain's population has doubled in 100 years.

Displacement of foreign bottoms by idle American tonnage may smash Norwegian and British triangulation. There are more Norwegians in the United States than there are in Norway, Denmark is

currently reported as arranging emigration of her surplus workers to Madagascar and South America.

Section 34, Jones Act, sought, through imposition of 10 per cent discriminatory duties upon imports, to deflect return cargoes to American bottoms, and thus aid in the upbuilding of our merchant marine. Treaty complications have apparently been a deterrent to enforcement. Correct in principle, it apparently fails to articulate with present economic fact. Of what avail would it be against an increasing volume of imports capable of breaking through mountain-high tariff walls? The provision in the original pending ship subsidy bill of a 5 per cent of freights paid deduction from net income tax to American shippers shipping in American bottoms provided precise and effective impetus. Such deduction might well be 10 per cent for imports and 5 per cent for exports, as by value and volume our exports are three times our imports. The pulling effect of such percentage deduction should be in inverse ratio to volume movement. Legislative regulation of ocean freight rates becomes redundant.

Deductions to industrials shipping in their own vessels need not obtain. Not because they are rich. The nature of the traffic demands it not.

At present some three hundred and odd Government vessels are operated upon a cost-plus plan at a $50,000,000 yearly deficit. The Government fleet totals some 1,400 vessels. The cost-plus plan of operation perpetuates economic farce. Many of the vessel operators operating Government tonnage are alleged to have a direct or an indirect interest in the various subsidiaries that furnish service to the plying merchant vessels touching our ports. Among these is stevedoring. If the boss stevedore complains to the vessel operator that stevedoring wages are insufficient, why quarrel when the Public Treasury pays all the bills? Both boss stevedore and vessel operator know that profits to subsidiaries are derived alike from American and foreign vessels, and that if the major portion of American vessels are tied up the foreign vessel will fill the vacancies within the limitations of the ability of the ultimate consumer to absorb high terminal charges plus ocean freights and insurance. The cost-plus effect upon terminal service is to keep it high, and to precisely that extent stultify the flow of commerce. A chain is no stronger than its weakest link, and interference with the law of supply and demand will be reflected up the line. The pending bill presupposes that a portion of the profit in excess of 10 per cent will be deflected back into the Treasury of the United States where a vessel participates in money subsidy. A subsidiary is prone to pump off profit from the parent company if the necessity demand. It may not be amiss to refer to subsidiaries and the railroads in a period not beyond the memory of man.

Aside from the capital-cost differential American versus foreign vessels, it may be well to take into account the ability of some foreign combinations to operate their vessels at a 5 per cent loss whilst deriving a 20 per cent profit from interlocking subsidiaries. With this in mind, visualize the mass effect of pegging American Government tonnage at a valuation lower than it ever was or ever again can be in world history. If it be so pegged, not for one year but for its lifetime, and a fixed earned double depreciation equivalent be yearly made tax exempt upon the passage of this tonnage to private ownership, then adverse capital-cost differential will be eliminated and replacement and reequipment will be stimulated—five-year trust fund—in perpetuity if vessel progeny by direct lineal descent be accorded like exemption.

Couple with such basic economic foundation the compelling pull of cargoes into American bottoms by the 5 per cent deduction from net income tax of freights paid as already outlined, the potential energy of 1,400 Government vessels becomes kinetic. There can be but one deterrent, and that an ocean freight rate breaking through the meshes of the net exemplified in the above 5 per cent deduction. With terminal charges remaining as they are, a further reduction in ocean freight rates is improbable, for, ergo, had such been possible, that fact would have been recorded in yet a higher governmental shipping deficit or the further displacement of privately owned American tonnage and governmental tonnage by foreign bottoms.

Pegging the Government's dry steel cargo tonnage, some 1,261 vessels, at $30 per dead-weight ton and then renting these vessels to American citizens at 15 cents per dead-weight ton per month over a period of 15 to 17 years with the understanding that when accumulated rentals equal the pegged price of the vessel and that the vessel becomes such citizen's property without further governmental lien or encumbrance is rational solution. Rental equities to be not transferable nor capable of stock issue. Under this plan capital outlay by rentee reduces to minimum. The small-vessel operator with the backing of his local community can attain sound achievement. The tendency will then truly be to make us once more a seafaring nation. The Government should require the rentee to carry insurance to cover above valuation and inclusive of an adequate collision clause. Rentee should also be required to furnish approved surety bond of $200,000 per vessel, protecting the Government against marine liens, domestic or foreign, and abandonment of voyage in a foreign port.

Pegging the Government's tanker tonnage, some 90 vessels, at $80 per dead-weight ton and fixing the monthly rental along above lines at 45 cents per dead-weight ton per month leaves the passenger tonnage still to be dealt with. The refrigerator tonnage, comprising a few vessels, might also be fixed separately.

Pages 507 and 644, Volume I, joint hearings, pending bill, sets forth an informative table. This testimony of record upon which proponents base plea for money subsidy for cargo carriers discloses an adverse yearly differential of some $15,000. We quote verbatim the informative two columns of said table and alongside same place a third column, ours, illustrating the practicability of the rental plan of disposing of the governmental tonnage:

	Per month.		Taxpayers' plan.
	American.	British.	
Depreciation, at 5 per cent	$1,100	$1,100	
Insurance, at 5.5 per cent	1,210		
Insurance, at 5 per cent		1,100	$1,100
Interest, at 7 per cent	1,540		
Interest, at 6 per cent		1,320	
Monthly rental, at 15 cents per dead-weight ton			1,320
Total	3,850	3,520	2,420

	Per month.		Taxpayers' plan.
	American.	British.	
Wages	$3,165	$2,299	$3,165
Subsistence:			
41, at 75 cents per day	861		861
41, at 60 cents per day		738	
Repairs	900	900	900
Stores	750	750	750
Total	5,676	4,687	5,676
Grand total	9,526	8,207	8,096
For voyage:			
Owner's expense for 2 months	19,052	16,414	16,192
Fuel	9,614	9,614	9,614
Port charges	12,862	12,862	12,862
Total	41,528	38,890	38,668

Present adverse marine hull insurance differential is about one-half of 1 per cent. By fractional governmental participation this can be overcome and decisively reversed.

The foregoing table is the comparison of gross expenses of an American and a British steamer of 8,800 dead-weight tons (6,000 gross tons) on a single trans-Atlantic voyage—Gulf-Havre-Hamburg range—and return; book value of both ships, $30 per dead-weight ton, or $264,000; steaming days, 46; port days, 14; total, 60; burning 36 tons of coal per sea day; 5 tons per port day; coal at $5.57 t. i. b.; standard pay roll as of May 1, 1922, for British ship, and American Steamship Owners' scale of January 1, 1922, for American ship; pound sterling converted at $4.40.

The reduced involved capital outlay is obvious. The assertion that present vessel operators will not take the vessels for nothing, much less rent them for 15 cents a dead-weight ton per month, is bunk. They are now operating the cream of the cargo fleet, vessels adapted to their individual needs and organizations. They know well that if they did not, within the limits of the cargoes offered them or procurable, rent these vessels upon above basis that other domestic competitors would. On the contrary, it would be to their great initial advantage to have the first choice in the permanent retention of these vessels. Contrarywise, if the submitted method be adopted in lieu of a money subsidy it is equally palpable that with the increase in value of world tonnage in the face of a pegged nucleus that more money subsidy and yet more money subsidy will not be required to balance reflected mounting capital operating costs. That is one of the many fallacies of the pending bill concealed behind the inadvertent smoke screen of predicted ultimate greater return to the Public Treasury by the sale of Government tonnage under the stimulus of a direct money aid.

Page 506, joint hearings, apparently fails to adequately explain the port charges item of $12,862 of foregoing table, other than to aver that the handling of cargo at both terminals is thereby covered. If under that table full cargoes both ways are included, an astounding profit is immediately disclosed in these days of extreme depression in ocean shipping. Page 644, joint hearings, gives a freight rate of $4.10 per ton for above voyage. Assuming this vessel to fuel at both terminals, the available cargo capacity is 7,600 tons. The one-way gross voyage revenue is $31,160. Twice that is $62,320. Deducting gross voyage expense, $38,668, the total of the third column foregoing table, there remains a net profit of $23,652 for the voyage.

On the basis of five voyages a year, this net amounts to $118,260 per year. If the handling charges for the return cargo have been omitted, we would be happy to have them deducted. A company operating 10 such vessels would clear, according to above figures, a yearly net of $1,182,600. Page 406 of the CONGRESSIONAL RECORD of December 13, 1922, quotes the average September, 1922, revenue per ton for a million tons as $5.45. On that basis, a company running 10 vessels as above would clear a yearly net of $2,208,600. An inquisitive mind now desists, and assuming only one-third of cargo capacity filled for the return voyage on the first basis of $4.10 per ton, there is deduced a voyage net of $2,877 and a yearly net of $14,385 and a further yearly net of $143,850 for a company running 10 such vessels. Individual appertaining subsidiaries, of course, continuing to profit as at present. The foregoing deductions are not all necessary. The results displayed in the established columns are sufficient unto the day thereof. However, desired emphasis that the small ship operator has a chance is not amiss.

Fifty per cent of the world tonnage is currently reported to be more than 15 years old. At the age of 15 years a vessel commences to run out of her class. Marine insurance premiums rise. An indiscriminate money subsidy would thus subsidize inefficiency. An overcapitalized 20-year-old lame duck could continue forcing a virile 5-year-old vessel to rust in lay up.

One of the weak points in the pending bill is the large personnel that undoubtedly must thereunder be retained by the Government in the matter of audit. A large administrative overhead will be incurred in chasing the ephemeral 50 per cent of the excess over 10 per cent profit around desk corners and into waste-paper baskets. The substitute plan here advanced practically cuts out the present $10,000,000 administrative overhead and quickly reduces that personnel from 4,500 to less than 500. This exclusive of the caretakers of the laid-up fleet. Governmental deficits are replaced by positive revenue. It has the further advantage of gradually absorbing into the trades laid-up Government tonnage, no matter what the degree of reasonable depreciation in the next few years. Such absorption would be accentuated if vessel operators and vessel owners were granted additional income-tax exemption to precisely the extent that they invested tax savings in any one year in betterments. A minimum of governmental supervision could quickly and accurately draw the line between betterments and normal depreciation inclusive of ordinary voyage repairs. Proper certification of such betterments would be sufficient evidence to the collector of internal revenue as to allowable deductions.

Under the submitted plan, geographical divisions of our coasts should have tentatively allocated to them such proportion of the whole Government tonnage as the total volume of their exports and imports bears to the national volume. The solely fuel-oil-burning geographical divisions would, of course, not draw coal burners. The number of our

transocean oil burners preponderates. If for reasons of state the Chief Executive should temporarily deem inexpedient the additional release of idle Government tonnage to the trades, he has but to call upon the commissioner of navigation, Department of Commerce, for the latest percentages of American commerce carried in American bottoms and thence issue control orders accordingly. Careless infringement of the well-being of privately owned American tonnage by the too fast release of idle Government tonnage is likewise controllable and statistically discernible. Firm control of governmental nucleus remains until all that is usable is absorbed from idleness.

There remains the problem of the passenger vessels. These should be subsidized with money. The equivalent of 5 per cent of our yearly custom dues would seem ample. A 10 per cent of passenger fare paid deducted from net income tax to American citizens traveling to or from abroad in American passenger vessels can not but help. The mails might be carried free. Subsidy should preferably be at a flat rate beginning at the 16-knot level of speed. Vessels of less speed may well be absorbed into the coastwise or island tourist trades when unable to maintain competition elsewhere. To neglect upbuilding a great passenger-carrying trade is tantamount to neglect of national defense. Fast passenger vessels have other uses than that of troop transports. If there be another war, it is not apt to be against a contained enemy or an enemy capable of being contained. One hundred fast surface raiders can each in time of war account for 10 enemy merchantmen within the short period of six weeks or three months. The loss of 1,000 merchant vessels is decisive. A proud people secure from invasion may be greatly disturbed, aye, brought to heel, by having their exportable surplus thrown back on them, and in the aftermath of another Versailles, through the medium of extortion by alien bottoms, pay a helot's tribute to an alien conqueror.

GEORGE JOERNS,
Lieutenant Commander, United States Navy (Retired),
Apartment No. 107, The Wyoming, Washington, D. C.

(Twenty-seven months with Division of Operations, United States Shipping Board Emergency Fleet Corporation, Washington, D. C.)

NOTE.—General cargo rate north Atlantic, $6. (Letter chairman United States Shipping Board * * * December 8, 1922, CONGRESSIONAL RECORD, December 19, 1922.) Applying same to foregoing voyage estimate on basis of return cargo of one-third vessel's capacity it is obvious that resultant net leaves ample funds for steamship administrative overhead plus dry-docking expense of some $2,000 * * * per vessel every eight months. However, income-tax deduction to shippers as outlined should insure full cargoes both ways most of the time.)

FISCAL RELATIONS BETWEEN THE UNITED STATES AND THE DISTRICT OF COLUMBIA.

Mr. PHIPPS. Mr. President, for the joint select committee created under the act of June 29, 1922, to investigate the fiscal relations as between the Federal Government and the District of Columbia, I ask leave to submit a report, which I ask shall be printed in 8-point type in the CONGRESSIONAL RECORD. This report has been signed by five of the six committee members. I further ask that the report itself, with the report of the auditors and the comments made thereon by the auditor for the District of Columbia, representative of the Comptroller General's office, and of the Department of Justice, and other comments, together with the hearings and minutes of the committee, be printed as a public document, under one cover, for the use of the House and Senate, and that 1,500 extra copies be printed for distribution through the document room.

The VICE PRESIDENT. Without objection, it is so ordered.

The report was ordered to be printed in the RECORD in 8-point type, as follows:

FISCAL RELATIONS BETWEEN THE UNITED STATES AND THE DISTRICT OF COLUMBIA.

To the Senate and the House of Representatives of the United States of America:

Your committee, appointed pursuant to the act of Congress approved June 29, 1922, which contains the following provision—

"A joint select committee, composed of three Senators to be appointed by the President of the Senate, and three Representatives to be appointed by the Speaker of the House of Representatives, is created and is authorized and directed to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874, with a view of ascertaining and reporting to Congress what sums have been expended by the United States and by the District of Columbia, respectively, whether for the purpose of maintaining, upbuilding, or beautifying the said District or for the purpose of conducting its government or its governmental activities and agencies, or for the furnishing of conveniences, comforts, and necessities to the people of said District. Neither the cost of construction nor of maintenance of any building erected or owned by the United States for the purpose of transacting therein the business of the Government of the United States shall be considered by said committee. And in event any money may be or at any time has been by Congress or otherwise, found due, either legally or morally, from the one to the other, on account of loans, advancements, or improvements made, upon which interest has not been paid by either to the other, then such sums as have been or may be found due from one to the other, shall be considered as bearing interest at the rate of 3 per cent per annum from the time when the principal should, either legally or morally, have been paid, until actually paid. And the committee shall also ascertain and report what surplus, if any, the District of Columbia has to its credit on the books of the Treasury of the United States which has been acquired by taxation or from licenses. And the said committee shall report its findings relative to all the matters hereby referred to it to the Senate and House, respectively, on or before the first Monday in February, 1923. The chairman or acting chairman of said committee hereby is empowered to administer oaths or affirmations. The committee also is empowered to compel witnesses to attend its meetings and to testify, and also to compel the production of such books and papers as it may deem desirable. Any person who has been duly notified to appear before the committee either as witness or witness duces tecum, and fails so to do, shall be deemed guilty of contempt of Congress, and therefore may be punished to such extent as either the Senate or the House may determine; and said committee shall determine whether the proceeding for contempt shall lie with the House or the Senate. The committee may employ such accountants and stenographers to assist in the work as may be necessary, but the same qualifications for such accountants shall be required as was required of accountants by section 6 of the act of June 30, 1874, entitled "An act for the government of the District of Columbia and for other purposes," and no one shall be so employed as accountant who is or has been heretofore an officer or employee of the District of Columbia or the United States. No employee of said committee shall be paid more than $25 a day while actually at work. The Attorney General of the United States hereby is authorized and directed to assign a competent attorney from his regular force of attorneys to represent the United States before said committee; and any Member of Congress shall be permitted to examine any witness and argue any question before the committee. For the payment of salaries of accountants and stenographers, for printing and binding, and other necessary expenses of the committee, there is appropriated 40 per cent out of the Treasury of the United States and 60 per cent out of the revenues of the District of Columbia, the sum of $20,000, to be paid out upon vouchers approved by the chairman or acting chairman of the committee"—

begs leave to submit the following report:

TITLE I.—FUNCTIONS OF THE COMMITTEE.

The committee met on July 1, 1922, organized, and elected LAWRENCE C. PHIPPS, a Senator from the State of Colorado, as chairman. Since said date numerous meetings and hearings have been held in the city of Washington. At a subsequent meeting, the chairman reported the appointment of C. Brooks Fry as secretary, under the authority conferred upon him by the committee, and the appointment was confirmed.

In accordance with the powers conferred under the terms of said act of June 29, 1922, the committee employed Messrs. Haskins & Sells, accountants and auditors, with general offices in New York City and Baltimore, Md., who have stated the account between the United States and the District of Columbia, in accordance with the instructions of the committee, as hereinafter disclosed.

Among others there were called into conference the following: James F. Oyster, Cuno H. Rudolph, and Col. C. Keller, Commissioners of the District of Columbia; D. J. Donovan, District auditor; Herman J. Galloway, special assistant to the Attorney General, selected pursuant to the provisions of the act to represent the United States; Earl Taggart, of the general accounting office; L. G. Graesle, of the Division of Bookkeeping and Warrants, Treasury Department; and the Citizens' Joint Committee of the District of Columbia. The committee also had before it certain Members of Congress, including Senators JONES of Washington and GLASS and Representatives CRAMTON, and JOHNSON of Kentucky.

Messrs. Haskins & Sells made a preliminary report in writing on November 20, 1922, and filed a final report, containing conclusions, recommendations, and tables, on January 11, 1923. Subsequently written reports were received from Messrs. Galloway, Taggart, and Donovan, the citizens' joint committee, and Mr. Thomas Hodgson.

Your committee, after careful consideration of the entire subject, including more particularly the matters referred to in said reports of the accountants and others, has come to certain definite conclusions which are contained in this report.

At the outset the committee considers a brief statement of the peculiar relations existing between the Federal and the District Governments to be not only helpful, but necessary, in order to comprehend fully and fairly the questions involved.

Washington, the Capital of the Nation, is a city altogether under the control of the United States Government. Its administrative officials are appointed by the President, by and

with the consent of the Senate, and its laws are enacted by the Congress. From the start it has been the desire of that legislative body, as well as for that matter of the residents of the city and certain officeholders here who maintain a legal residence elsewhere, to make it a beauty spot of America of which our citizens might be justly proud. Hence the expenditures for public improvements have been inordinate as compared to those of other communities of approximately the same size and population.

In some cases these expenditures have been authorized upon the recommendation of the District Commissioners, who are local residents selected by the President. In many other instances the Congress in the exercise of its rightful prerogative, refusing to follow such recommendations, has appropriated more or less than desired, as the case may be, and for different purposes.

From 1878 to 1921, as a rule, 50 per cent of all the District expenses were borne by the Federal Government, and 50 per cent came from the residents of the city. However, the law at present provides that the share of the United States shall be 40 per cent, and that of the District 60 per cent. As in the case of the actual appropriations themselves, these proportions have been fixed by the Congress, in which citizens of Washington have no representation.

For many years liberal appropriations were made to carry out the program of city beautification, during which period of time the District was in debt to the Federal Government. The accountant's report shows that prior to 1914 there was a balance due the United States, but that at the end of that fiscal year the District had a credit balance of $68,300.

Then came the war period and expenditures for further development were necessarily limited, yet no reduction was made in the rate of tax assessments. The District tax receipts increased, as a matter of fact; the money was deposited in the United States Treasury and a surplus created, largley due, as will be observed, from failure to continue the proper extension of streets, their paving and repaving, the building of public schools, and the upkeep of other city activities corresponding to the growth of the city.

It is with this surplus that your committee has to deal, among other things. On the one hand it is urged by some that the spirit of the entire system of fiscal relations between the two Governments, existing since 1878, was violated by the creation of such a fund. It is pointed out that had the 50–50 rule been adhered to, as provided by law, there would be no such surplus, as the money in question would have been expended for schools, streets, and other municipal activities and improvements. It is therefore claimed that the District is entitled to the entire fund, which should be applied to the maintenance of its government and other activities, and should be matched by Federal money, according to law.

On the other hand, it has been asserted that the District has no legal claim against any money now in the United States Treasury which has been accumulated in this fashion.

It is argued that there is no law upon which the District can predicate a legal claim to any sums of money in the Treasury, whether ascertained as to amount or not; such a claim is, to say the least, unenforceable at law and hence equitable or moral in its nature. Being merely equitable it follows from this reasoning that equitable defenses, counterclaims, offsetts, and credits may be asserted to reduce the amount of said surplus, to wipe it out altogether, or possibly to show that the District is equitably or morally indebted in large sums to the Federal Government. Parenthetically, no one has urged before your committee, irrespective of the magnitude of the claim or offset insisted upon, that, inasmuch as the equitable balance might be considered as being in favor of the United States, collection of such balance from the District, therefore, should be recommended to the Congress.

The foregoing reveals the occasion for the creation of your committee, and is illuminating when the language of the act is under consideration, to determine the scope of the committee's work and the nature of the report which should properly be made to the Congress.

Briefly, it is the understanding of your committee that it is required to make such findings and recommendations as would bear directly upon this primary question of the District surplus, and could be used by the Congress, in its discretion, as a basis for settling for all time the claims and contentions arising out of this matter.

Of course, the scope of the committee's work has also been determined in other ways, including a close examination of the language of the act. On this point the committee submits its views, subject to the judgment of the Congress. A statement of same is deemed necessary at this time because it has been contended that under the language of the act this is little more than a fact-finding committee, and that its object is mainly accomplished if it furnishes the Congress with a vast array of tabulated figures from which Members of that body may draw their own conclusions, with few, if any specific recommendations on the part of the committee. The following portion of the act is emphasized in this connection:

"A joint select committee * * * is directed to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874, with a view of ascertaining and reporting to Congress what sums have been expended by the United States and by the District of Columbia, respectively, whether for the purpose of maintaining, upbuilding, or beautifying the said District or for the purpose of conducting its government or its governmental activities and agencies, or for the furnishing of conveniences, comforts, and necessities to the people of said District."

Certain witnesses have contended that this language properly includes all expenditures made by the United States for maintaining, upbuilding, and beautifying the District since July 1, 1874, whether or not the same had ever been considered by the Congress as in any way affecting the fiscal relations between the District of Columbia and the United States; and that it includes such activities as the erection of the Lincoln Memorial, statues of national heroes, the Congressional Library, and various other large expenditures.

At least one of the witnesses has declared that, while it was not incumbent upon the committee to recommend that such items as the Lincoln Memorial be considered under the above language, as matters to which the 50–50 or 60–40 ratio was properly applicable, yet it was the duty of the committee to report on all such items for the consideration of the Congress in the determination of this question.

Another witness, Congressman JOHNSON of Kentucky, after mentioning the Lincoln Memorial and similar public works, stated that "It is my unqualified opinion that the cost of the Congressional Library, and everything in it, and 3 per cent interest, must be offset against any claim of surplus. This language is mighty plain, when you come to read it carefully."

Other witnesses have insisted with equal emphasis that such things should not be considered for a moment in a report on the fiscal relations existing between the District of Columbia and the Federal Government.

Your committee has had the subject under advisement, and in this connection called upon Mr. Galloway, as the representative of the Department of Justice and of the United States, for his opinion. The committee submits to the judgment of the Senate and of the House of Representatives its conclusion that this provision of the act should not be given a strict literal interpretation, in disregard of the purpose and intention of the act as a whole and of other provisions of the act. In his opinion Mr. Galloway states:

"I am fortified in this conclusion by a consideration of the act as a whole, the title of which indicates that it is an act dealing with proportional appropriations for the Government and other activities of the District of Columbia. It is an act directed wholly toward the consideration of those things which are primarily and solely for the interest of the District of Columbia. All of the act preceding the paragraph quoted deals with an arrangement for proportional appropriations and for expenses primarily for the support of the District of Columbia. The committee is created 'to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874.' All past legislation upon the fiscal relations between the District of Columbia and the United States, so far as I have been able to ascertain, involves expenditures primarily for the benefit or for the maintaining, upbuilding, or beautifying of the District of Columbia and conducting its activities, and Congress seems to have had such things always in mind when it considered these fiscal relations.

"There is nothing in any of the acts indicating that Congress ever intended that such expenditures as for the Lincoln Memorial or the Congressional Library were made for the primary purpose of beautifying the District of Columbia, and even some of those urging a construction which would include such expenditures have stated that they do not think that the District should bear any proportion thereof. Can it be logically contended that Congress was directing this committee to do a useless thing? Further, should not this act have such construction as would make it reasonable and susceptible of execution? If it is held to include all of these expenditures it is conceded by most all that the task would be so enormous and the expense so great that the same could not be accomplished either within the time fixed by Congress or with the amount of money appropriated. All of these things sustain

the conclusion which I have heretofore expressed that this act should not have a strict literal interpretation in disregard of the act as a whole. It is my opinion that this requires your committee to report to Congress what sums have been expended by the United States and by the District of Columbia, respectively, whether expended primarily for the purpose of maintaining, upbuilding, or beautifying the said District or primarily for the purpose of conducting its government or its governmental activities and agencies, or for the furnishing of conveniences, comforts, and necessities to the people of the District, excluding the cost of construction or of maintaining any building erected or owned by the United States for the purpose of transacting therein the business of the Government of the United States and that your report need not include expenditures which do have the effect of upbuilding or beautifying the District of Columbia but which were erected by Congress primarily for another purpose and which incidentally did in fact upbuild or beautify said District."

In a few words, your committee believes that the language contained in the clause in question, which reads "A joint select committee * * * is directed to inquire into all matters pertaining to the fiscal relations between the District of Columbia and the United States since July 1, 1874," not only defines but limits the scope of the committee's investigation to matters that properly pertain to such fiscal relations; that the words "for the purpose" mean "for the purpose," and not "for the secondary purpose" or "having the incidental effect"; that in the act reference to the surplus is made in apt words; that the act must be construed as a whole; that the task assigned must be considered as possible of accomplishment; and that when all these factors are taken into consideration, including the occasion for the creation of the committee, the intent and meaning of all the language of the act is clear.

Your committee is anxious to carry out completely the mandate of the Congress, and hence deems it its duty to call attention to the various constructions which have been urged and to set forth its conclusions in some detail.

As a part of the findings required under the law, your committee has included in this report tabulated figures, secured as a result of its inquiry into all matters pertaining to the fiscal relations between the two Governments from July 1, 1874, to June 30, 1922, inclusive, which show what sums have been expended by the United States and the District of Columbia, respectively, for the purposes enumerated.

On the merits of the particular question which has been used as an illustration, it is the sense of your committee that no portion of expenditures made wholly out of Federal funds for the purpose of the construction of national memorials or monuments in honor of any national hero or character, or in commemoration of any national event shall, in making up the fiscal balance, be chargeable to the District of Columbia.

TITLE II.—WORK OF THE COMMITTEE.

At the beginning of its labors, your committee had its attention called to the fact that investigations had already been made under authority of the Congress, intending to cover the fiscal relations between the two governments during the period up to June 30, 1911, and that the reports on such investigations had been acted upon by the Congress. Messrs. Haskins & Sells were, therefore, directed to make a detailed audit and examination of the District accounts from June 30, 1911, to June 30, 1922, inclusive, and in addition to bring to the consideration of the committee any other items pertinent to the inquiry to which their attention was called or which came under their observation, and which existed during the period between July 1, 1874, and June 30, 1911. This detailed audit has been made, and a report submitted by the accountants, which includes references to certain outstanding items arising prior to the latter date.

It has been suggested, however, that the investigations made relative to these earlier years were not as thorough or comprehensive as they should have been; that errors may not have been detected in every instance, and that the reports of the investigators could not be considered complete. Your committee, therefore, after the report of Messrs. Haskins & Sells was received, seriously reconsidered the advisability, not to say the necessity, under the direction of the act of June 29, 1922, of authorizing the same kind of an intensive audit over the period already covered by these prior investigations. In that event it would have been necessary to ask the Congress for a year's additional time, at least, within which to make a final report, and for an additional appropriation of many thousand dollars. As will be recalled, $20,000 was originally set aside for this purpose, a small portion of which remains unexpended.

In this respect also your committee desires to submit its conclusions with a brief statement of its reasons to the judgment of the Congress.

The act of March 3, 1909, enumerated certain advances made from time to time to the District government and directed that within five years the money should be repaid by the District into the United States Treasury, together with interest at the rate of 2 per cent per annum. The principal of the sum refunded was $2,665,081.81, and the interest amounted to $101,313.28. It was, therefore, desired to clear up all remaining questions, and certain accountants were detailed by the Sixty-second and Sixty-third Congresses, through the proper committee, to make an audit which would be final and conclusive.

One of these investigations was made into the general account of the District of Columbia with the United States by Messrs. L. Scott Mayes and J. R. Mayes, accountants who were employed by and reported to the special committee investigating the affairs of the District of Columbia under House Resolutions 154 and 200, of the Sixty-second Congress, and House Resolution 203, of the Sixty-third Congress (H. Doc. No. 1627). Said report stated the balance in the general fund of the District of Columbia on July 1, 1911, and was described by the committee as "a finished report." This was an investigation of the accounts between the two governments as they relate to the revenues of the District and to the appropriations made from the revenues of the United States to the District and the advances made from both by the Secretary of the Treasury of the United States, as authorized by the various acts of Congress since the passage of the act of June 11, 1878, to and including the fiscal year ended June 30, 1911; and also all appropriations and advances made by the United States to the District of Columbia from June 20, 1874, to June 30, 1878, inclusive, which affect the account between the two Governments. Said investigation required approximately three years' time and resulted in the discovery of certain items in considerable amount for which reimbursement was required by the United States from the District of Columbia. These were as follows:

Reimbursement on account unpaid balance of advances to defray District expenses for fiscal year 1878, required under act of July 11, 1919	$75,000.00
Reimbursement on account of advances for support public schools, 1877, required under act of July 11, 1919	75,000.00
Reimbursement on account of constructing school building in Georgetown, required under act of July 11, 1919	50,865.00
Reimbursement for interest on 3.65 District of Columbia bonds for 1877 and 1878, required under act of Mar. 4, 1915	586,067.23
Reimbursement on account of Freedman's Hospital, required under act of Aug. 1, 1914	37,996.70
Reimbursement on account of support of insane in St. Elizabeths Hospital, 1881 to 1911, act of Mar. 4, 1913	719,536.07
Reimbursement on account of support of insane in St. Elizabeths Hospital, as in full, required under the act of July 1, 1916	282,764.26
Reimbursement on account of construction of District jail, required under act of Aug. 31, 1918	125,000.00
Reimbursement on account of advances to pay teachers in public schools in 1874, required under act of Aug. 31, 1918	97,740.50
Making a total of	2,049,969.76

A second investigation was made by W. W. Spalding, accountant, who examined the miscellaneous and general revenue accounts between the United States and the District of Columbia from 1874 to the date of the inquiry. These accounts were checked up carefully by Mr. Spalding, who was employed intermittently between the years 1913 and 1918. His recommendations were in every instance favorably acted upon by the Congress, and certain refunds to the United States were required from the District, as follows:

Reimbursements account of Washington Market Co., rentals 1878 to 1914, required under act of Mar. 4, 1915	$158,437.50
Reimbursement account of fines in United States cases in criminal division of Supreme Court, District of Columbia, between July 1, 1878, and June 30, 1908, required under act of Apr. 17, 1917	24,300.76
Reimbursement account of fines in United States branch of police court between July 1, 1878, and Jan. 1, 1902, required under act of Apr. 17, 1917	211,450.12
Making a total of	394,188.38

Mr. Spalding appeared before your committee and testified that the work was done as thoroughly as practicable, but that he believed at the conclusion of his labors, and believes now, that certain other items, totaling possibly $60,000 or $70,000, should be investigated. Later on he furnished your committee with a memorandum of these items, and it was disclosed that, except in three instances, they had already been considered by it.

These three remaining items have since been investigated by your committee and are set forth under the head of Title IV of this report.

As heretofore stated, Messrs. Haskins & Sells were also required to call attention to any items noted by them arising during the period between July 1, 1874, and June 30, 1911, which might have a bearing on this investigation. In a summary of their report, dated January 17, 1923, they state:

"Certain of the items referred to in the foregoing synopsis would be affected by transactions prior to July 1, 1911. In order to complete the inquiry into such questions it would therefore be necessary that the examination be extended prior to July 1, 1911, so as to cover the entire period comprehended by the act creating your committee."

But as to each of said items arising prior to 1911 your committee has found, as will be hereinafter shown under the head of Title IV, that they were properly charged, and that there is nothing due from one government to the other. The ones concerning which adjustment is recommended by your committee, and which are listed under Title III, have no possible relation to transactions prior to June 30, 1911. Also, the committee's consultants, Messrs. Galloway, Taggart, Donovan, and the citizens' joint committee, are in complete agreement as to the existence of the surplus, and practically in accord as to the propriety of rejecting possible equitable credits between 1874 and 1911, suggested for consideration by the committee's accountants.

Again, your committee is advised that many of the official records and memoranda necessary to a satisfactory audit have long since been destroyed, and that, however great might be the diligence of the accountants, a complete and thorough audit for the entire period in question could hardly be secured.

We submit that the above statement of what the facts actually are speaks for itself, and we are content to leave it to the judgment of the Congress whether or not another audit at this late date would be at all justified. As practical men we can not escape the conclusion that the investigations made in this and prior audits are as thorough as required for the purposes of the act, and that, in the absence of certain records, they are as satisfactory and complete as any audit could ever be.

No witness appearing before the committee has testified that a further detailed audit would be advisable, while on the other hand the citizens' joint committee, Representative JOHNSON of Kentucky, and Mr. Thomas Hodgson, an employee of the Treasury Department who stated the account of the District for more than 30 years, have all spoken against the necessity for or advisability of the same. No witness who has testified before the committee has been able to bring up any items of dispute which have not been investigated.

Your committee, therefore, believes that a further detailed audit would be a decided waste of time and money, and would serve no good purpose. Neither is the same necessary, according to our belief, under the provisions of the act of June 29, 1922, which must be considered with reference to their practical effect.

Your committee, therefore, recommends that the investigations already made be taken as a basis upon which definite and final action should be had by the Congress.

TITLE III.—CLAIMS RECOMMENDED FOR ADJUSTMENT.

As a result of the inquiry, your committee finds that the various items appearing in the annual appropriation bills for the District of Columbia, enacted during the entire period specified in this act, have been properly allocated between the District of Columbia and the United States, with the exception of several small items. These have either been corrected by prior action of Congress or are included under this title in this report.

Your committee also finds that certain other items, which can not properly be considered as accounting and bookkeeping errors, and which are considerably larger in amount, have either been settled by prior legislation or are covered by the recommendations contained under this title in this report.

Your committee also submits that certain additional items, which have been called into question, have been considered by its members and reported under the head of Title IV of this report, with the recommendation that they should be held to have been properly accounted for, and that no changes in the account between the District of Columbia and the United States should be made in respect to the same.

1. The committee reports, as its first finding, that at June 30, 1922, the credit balance, District of Columbia general fund, in the United States Treasury, certified to by the Comptroller General of the United States, and as shown in Exhibit A of the report of Messrs. Haskins & Sells, certified public accountants, which is $5,260.67 less than that shown by the records of the auditor of the District of Columbia. The committee understands that the difference is being investigated and will be properly adjusted.

Your committee also finds that the records of the District appropriation ledgers show encumberances against that balance on account of unexpended appropriations, aggregate $2,077,616.24, and also further obligations to the amount of $825,603.69, which will eventually have to be paid out of this fund.

That, subject to the correctness of the liability above stated, which can be accepted for all practical purposes, the free surplus at June 30, 1922, was $4,671,196.97.

2. The accountants have called attention to certain errors in stating the account between the two governments and have recommended that the net amount of $665.46 be credited to the District. Messrs. Galloway and Taggart also suggest adjustment of these matters on the basis of figures submitted by Messrs. Haskins & Sells, and in this recommendation the committee concurs.

3. As a partial offset against these credits the committee recognizes that the United States is entitled to reimbursement on account of the $240 annual bonus paid to certain classes of District employees, and which, up to the present fiscal year, came solely from Federal funds.

The accountants, without definitely committing themselves, call attention to the fact that such general increases in compensations of certain employees have been charged wholly against Federal appropriations, while the regular salaries, other than the increases, have been charged proportionately against the United States and the District of Columbia.

Here is an evident oversight by the Congress, due, no doubt, to the fact that provisions for such bonus have been inserted from time to time in measures other than the District of Columbia bill. The appropriation act for the present fiscal year made the necessary correction as to the future. There is no doubt concerning the policy of Congress in the matter, and your committee recommends that the District should pay its proportionate share of increased compensation in such cases as enumerated by the accountants in their report. This share amounts to $191,890.35.

The above is in accordance with the recommendations of Mr. Galloway and Mr. Taggart, while Mr. Donovan and the citizen's joint committee make no argument on the question.

4. Another item of somewhat similar nature arises in connection with appropriations of $80,000 and $2,500 made in the acts of June 5, 1920, and March 4, 1921, respectively, for the purchase of land in connection with the National Zoological Park. The cost of land previously secured for this purpose was charged proportionately to the Federal and the District Governments; and your committee can see no reason for an exception in these two cases. It is believed that this is another oversight, caused by the fact that the appropriation in question was not contained in the District bill.

In this position your committee has the support of Mr. Taggart and, by inference, of the accountants. Mr. Galloway states that the moral question is the only one involved, as legally the matter is settled, while Mr. Donovan is content to leave the matter to the determination of the Congress.

The citizens' joint committee, on the other hand, advocates not only that this sum be charged wholly against the Federal Government but also that there should be a refund to the District of moneys heretofore contributed for such park purposes. Your committee, however, is unwilling to disturb the evident intention of Congress in this respect, and, in addition, believes that sufficient benefits are derived from the park by local residents to justify the District's share in the expenditures involved.

The recommendation, therefore, is that $41,500 be charged against the District as its proper proportion of such expenses.

5. The accountants show that the amount of $634.33 was paid out of Federal revenues for the relief of Eldred C. Davis on account of loss occasioned by a larceny in the office of the collector of taxes. As there is no equitable reason why the United States should have borne the entire cost, your committee recommends that $317.17, one-half of said amount, should now be charged against the District.

Mr. Taggart views the matter in this light, while Messrs. Donovan and Galloway make no recommendation. The citizens' joint committee can not understand why the District government should have anything to do with the matter.

TITLE IV.—ITEMS ALREADY PROPERLY CHARGED.

Certain other items have been pointed out by Messrs. Haskins & Sells, with the comment that although they may not be proper matters for adjustment, yet they should at least be interesting in connection with future legislation dealing with District fiscal relations.

In the opinion of your committee, all of the following have been properly charged and it is recommended that in all of such cases no sums shall be considered as being due, either legally or morally, from the one government to the other.

1. The first one is summarized by the committee's accountants in a letter to the chairman dated January 17, 1923:

In our opinion, the general fund should be charged with as follows:		$545,484.54,
Redemption of District 5 per cent bonds issued under the act of Congress approved June 10, 1879 (exclusive of participation in interest payments and premiums paid on redemption), charged against the United States in violation of provisions of the act of Congress, as shown on page 33 of our report (50 per cent of $1,092,300)	$546,150.00	
Less adjustment of errors, as enumerated on page 9 of our report	665.46	
Remainder	545,484.54	

The act in question authorized the District commissioners to issue certain bonds of the District, redeemable 20 years after date, to an amount not exceeding $1,200,000. The committee's accountants base their contention on a provision contained in the act to the effect that it should not be construed to make the Federal Government liable for any part of the principal or interest on the bonds, and they point out that such payments were eventually made jointly from the revenues of the United States and of the District.

However, such reimbursement was made on the 50–50 basis, in accordance with the express authorization of the Congress, contained in several subsequent acts. In the opinion of this committee, Congress had knowledge, actual as well as constructive, of the provision contained in the act of June 10, 1879, and deliberately intended to place payment of the principal and interest of these bonds on the same basis as other District expenditures. Such is the view expressed by the District auditor and the Citizens' Joint Committee, while Mr. Taggart, of the General Accounting Office, does not give his opinion, because he believes the question is one of legal interpretation. Mr. Galloway, representing the Department of Justice, reiterates that in subsequent appropriation acts it is expressly recited that so much money be appropriated, 50 per cent from the revenues of the District and 50 per cent from the moneys of the United States, "for the payment of interest and sinking fund of the District." He adds that Congress certainly had a right to do this, and even though the provisions of former acts were in conflict with such appropriations the subsequent action of Congress must be held to control, the question being now legally settled. This position is supported by decisions of the Comptroller of the United States Treasury.

Your committee inclines strongly to this view and believes it worthy of note that the Mayes-Spalding investigations brought this matter fully to the attention of the Congress, which failed to include the item in those for which reimbursement was then required from the District.

2. The next principal item to which the committee's accountants invite consideration also dates back to the time when the present form of government was established in the District of Columbia by organic act of Congress. The United States then assumed 50 per cent of the debt of the District outstanding on June 30, 1878. There were, however, uncollected taxes amounting to $1,622,739.75, which were later deposited in the United States Treasury solely to the credit of the District. The question arises whether such action was proper, or whether the Federal Government should have been credited with 50 per cent of such tax collections.

Here, again, in the opinion of your committee, the law controls, reflecting as it does the evident intention of the Congress. The purpose of the organic act was to wipe the slate clean; to provide for the payment of prior and future obligations on a 50–50 basis; and to turn over to the District authorities what assets existed at the time. Messrs. Galloway, Donovan, and the citizens' joint committee are in accord with this view, while Mr. Taggart takes a neutral position.

The following extract from the Galloway report states the situation clearly:

"The organic act of June 11, 1878, provides that the Commissioners of the District shall have power to apply the taxes and other revenues of the District to the payment of the expenses thereof, and that they shall take over the books, papers, records, money, credit, securities, assets, and accounts belonging or appertaining to the business or interests of the District, and another part of the same act provides that all taxes shall be paid in the Treasury of the United States, and the same as well as the appropriations to be made by Congress, shall be disposed for the expenses of said District on itemized vouchers, etc. In other words, it seems that there was an intention to change the forms of Government, giving to the new form whatever assets that had accrued or were in the process of accruing for the purpose of beginning and carrying on the new plan. Even actual money then on deposit was transferred, to be used in accordance with the new plan, and it certainly was not the intention of Congress to deprive the District of all means during the first year of carrying out its duties under this new plan. Had these taxes, uncollected at June 30, 1878, been used for other purposes than the purposes of the new form of government, the District would have been unable to contribute one cent toward carrying out its part of said plan until it was able to assess and levy a new tax. Certainly Congress did not intend that by this legislation, and, in fact, the express provisions of the statute above referred to indicate a contrary intent; so that it is my opinion that from a legal standpoint this question is also settled, as Congress clearly showed that it intended that these uncollected taxes be deposited in the Treasury to the credit of the District exactly as they were deposited."

The above is another item which was called to the attention of the Congress in the Mayes-Spalding investigations.

3. The largest item to which the accountants refer, without making definite recommendation, consists of receipts from licenses, privileges, etc., totaling $6,300,058.57 for the fiscal years 1912 to 1922, inclusive. These, in the opinion of your committee, fall clearly in the same category as local taxes, and were properly collected and deposited wholly to the credit of the District of Columbia. The organic act is specific on that point. After the requirement that annual estimates of proposed District expenditures should be transmitted to Congress, it provides that:

"To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of 50 per cent thereof, and the remaining 50 per cent of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and the District of Columbia."

District Auditor Donovan, in his report, cites several decisions of the Comptroller of the Treasury which refer to this language and appear to settle the question conclusively in the District's favor. The arguments advanced under this head in the brief of the citizens' joint committee also appeal to your committee as being sound and based upon correct rules of legal construction.

It is, of course, quite within the province of the Congress to provide for a different disposal of future collections, and from time to time the receipts from certain privileges have been placed, by act of law, jointly to the credit of the District and the Federal Government. But except in cases where such specific provision is made the District has been entitled, according to your committee, to the full amount of such receipts.

Mr. Galloway, in his report, confirms this view that legally such fees and licenses should be credited wholly to the District, as has been done. Mr. Taggart "can see no reason why the District should now be charged with any part of these collections," with the exception of a small item known as special reimbursable taxes, amounting, during the period covered by the accountants' report, to $9,014.23. It is admitted that according to the law these latter items should be collected in the same manner as general taxes in the District of Columbia, and the committee can not see how a valid distinction can be made as to this class of miscellaneous collections.

4. Another matter referred to by the accountants, without any specific recommendation, arises from the fact that certain United States Army officers have been assigned from time to time to duty in the District Government. Their compensation, consisting of pay and allowances, comes wholly out of the revenues of the United States. This is also true of civil employees of the General Accounting Office who have been called upon to work on District accounts. The full amount of such Army officers' compensation between the years 1912 and 1922 is given as $282,422.18.

There is no question but that there is specific legislative authority for the payment of such Army officers by the United States and for their detail to the District government; neither is there any doubt as to the existence of statutes creating the positions held by employees in the General Accounting Office and the Treasury Department who keep the District accounts. These employees, of course, are selected primarily to safeguard the interests of the Federal Government.

More than this, the arrangement relating to Army officers carries out the general policy of the Congress. As pointed out by Mr. Taggart, who declines to make a recommendation, it has not been the policy to charge for the services of such engineer officers for river and harbor improvements, and for other purposes, even where the whole cost of the work is paid by States, municipalities, or by private interests.

Mr. Galloway, Mr. Donovan, and the citizens' joint committee concur in the views of your committee, that no part of this item should be properly charged to the District.

5. An item, to which the accountants have also called attention, is that certain collections made by the clerk of the Supreme Court of the District for the issuance of certain licenses and for fines assessed against jurors are covered into the Treasury wholly to the credit of the Federal Government. The accountants recommend that the committee consider the item, while Mr. Taggart suggests an apportionment between the United States and the District as to such collections subsequent to June 30, 1922, which the committee understand is covered under the terms of the District appropriation act for the present fiscal year.

There is no question but that there was sufficient authority of law to justify the deposit of these funds wholly to the credit of the United States, and your committee believes it consistent to recommend that they should not be disturbed. A ruling in support of this position was made by the Comptroller of the Treasury under date of December 13, 1920. The entire sum involved is $175,870.99.

6. The cost of erecting and furnishing the District of Columbia Court of Appeals Building, provided for by the Act of May 30, 1908, aggregated $263,600, all of which was paid by the Federal Government. Salaries of employees and miscellaneous expenses of this building since its completion have been apportioned between the United States and the District of Columbia.

Your committee's attention has been called to the fact that in addition to considering appeals from the Supreme Court of the District, this appellate court also has original jurisdiction in cases involving patents, and that this business is of considerable volume. Many suits are also brought in or carried to this court on account of the fact that one of the parties is an official of the United States Government. Neither of these classes of cases can be properly considered as District matters.

In view of the various phases of this question which have been presented, your committee does not feel justified in recommending that the matter of the cost of erecting this Court of Appeals Building should be reopened.

This item, as well as those which follow, has been brought to the attention of your committee in the conduct of its hearings, but was not commented upon in the various reports hereinbefore referred to.

7. The annual report of the Commissioners of the District of Columbia for the year 1896 (p. 96) refers to a judgment of $65,740.47 secured in the old case of the District *v.* The Metropolitan Railway Co. for paving done in the years 1871 to 1875. The entire amount was paid to the collector of taxes of the District, and the case closed.

It will be observed that the greater portion of this transaction arose prior to 1874 and that the work was all done some time before 1878. Under the head of item No. 2 of this title your committee takes the position that all of these assets prior to 1878, even if uncollected, were to go to the District under the provisions of the organic act. This case apparently falls in that category.

8. Section 7 of the act of May 18, 1916, provides for an appropriation of $25,000 for the repair and maintenance of the old Aqueduct Bridge until the bridge provided for in this same act should be completed. This money for such repair and maintenance was appropriated solely out of Federal funds.

In the preceding six sections of the chapter detailed reference is made to the erection of the new bridge, and what was appropriated in these sections was to be appropriated on the 50–50 basis. The amount appropriated to begin construction was $25,000 and the amount authorized $1,000,000.

It seems evident to your committee that the Congress clearly intended that the amount of $25,000 for repair and maintenance was to be paid by the United States.

9. The reclamation of that portion of Potomac Park on which the speedway has been built has also been brought to the attention of your committee. This reclamation project extended over a period of years, and was, of course, directly under the control of War Department engineers. It was paid for by the Federal Government, although the District shared proportionately in the building and maintenance of the improvements constructed thereon, such as the Speedway itself.

Concerning the primary purpose or original object of this reclamation project there may be some question. One leading reason which has been assigned is the improvement of navigation in the Potomac River, while sanitation may also have had something to do with the matter. After consideration of the facts as disclosed your committee does not believe that it was the intention to call upon the District to share in this expense or that any proportion of same should be charged at this time. However, it was deemed proper to make reference to the matter in this report for the information of the Congress.

TITLE V.—MORAL LIABILITY AND INTEREST.

In making its findings and recommendations, moral as well as legal obligations have been taken into consideration by the committee pursuant to the instructions of the act of June 29, 1922. The question of moral obligations has given its members some concern, as the language may conceivably be construed to cover an extremely wide field. In this, as in other matters, the scope of the committee's authority and duty is so broad under the terms of the act that its members felt impelled to submit the question to its legal adviser and the representative of the United States, Mr. Galloway, who rendered an opinion, which is here quoted in part:

"It happens that in this investigation practically all of the questions upon which it is contended a moral obligation should be predicated, as shown either by the report of your accountants or as suggested to your committee from other sources, are matters upon which Congress has by specific legislation provided or plainly pointed out the manner in which they intended that the certain expenditures therein provided for should be paid. This would seem to settle the question from a legal standpoint, even though there was prior legislation indicating a contrary intent upon the part of Congress, because the familiar rule is that the last legislation must control. Therefore the moral question involved would amount to little else than a determination by your committee as to whether or not Congress acted wisely when it enacted the specific legislation which is in question. In considering this question it is my opinion that you should closely question all suggestions that Congress in enacting certain legislation overlooked any facts or legislation upon the same subject and that you should not rely upon such suggestions until they are conclusively proven to you, but, on the contrary, you should indulge to a great extent in the presumption that Congress acted wisely with all of the facts before it, and after giving all of them due consideration and weight, and especially that Congress acted with a full knowledge of all prior legislation. While, of course, these considerations would not affect the right or wrong of the question in its inception, certainly they should have some bearing upon the equities of the question as it now exists, in view of the fact that the legislative body has once passed upon such question and that both of the parties to the controversy have long continued their activities in their reliance upon the settlement as therein provided.

"The application of the above rules would seem to remove from your consideration practically all of the moral questions except those wherein rather flagrant injustices appear to exist, and upon such questions as those it is my opinion that it is your duty to report to Congress with recommendations."

Your committee has had in mind the above opinion, to which it is bound to give most serious consideration, and believes that it contains a proper application of general principles to the particular case in hand.

There remains the question of interest. The language of the act of June 29, 1922, is quite specific, and reads:

"And in event any money may be, or at any time has been, by Congress or otherwise, found due, either legally or morally, from the one to the other, on account of loans, advancements, or improvements made, upon which interest has not been paid by either to the other, then such sums as have been or may be found due from one to the other shall be considered as bearing interest at the rate of 3 per cent per annum from the time when the principal should, either legally or morally, have been paid until actually paid."

Thus it is made a part of the duty of this committee to calculate interest at 3 per cent per annum on the sums concerning which readjustment is recommended in Title III of this report, and to report the amount thereof to the Congress. This has been done, and a detailed statement of such interest calculations may be found in part 2 of this report. It is assumed that interest should be figured on annual and not daily balances, as the latter would be a practically impossible task.

It is also the duty of your committee under the act to calculate interest at the same rate on any sums which have heretofore been found due by the Congress at any time since 1874 from one government to the other. As set forth under Title II of this report, all such sums on which a settlement has been made, with or without payment of interest, consist of reimbursements by the District to the Federal Government.

Items are expressly excluded, by the language of the act, on which interest has already been paid, irrespective of the rate. Such an item would be the one for moneys advanced by the

United States to the District for extraordinary improvements between 1902 and 1910. In this case, as hereinbefore set forth, the Congress not only required the payment of the principal, $4,144,696.35, but also interest at 2 per cent, which amounted to $586,702.83.

Between the years 1910 and 1920 the United States was apparently quite active in securing reimbursement from the District on account of advances made by the Federal Government, or for other reasons. In addition to the above item of $4,144,696.35 and interest, at least 14 distinct items were collected, their total being $2,814,947.76. On most of this amount interest was never paid, and it is now proposed that such obligations, long since settled, shall be resurrected for the purpose of calculating and charging interest. This, at any rate, was the contention of Congressman JOHNSON of Kentucky before your committee, and the language of the act would appear to bear out that construction. Your committee had no alternative but to prepare such tables, and has acted accordingly.

It will be observed that three of the items in question, enumerated in part 2 of this report, in the principal sum of $125,865, on which it is now advocated by some that interest be collected, date prior to 1878, being for general expenses and the construction and maintenance of schools; while the majority of the others run through a period of years but have their inception prior to 1880.

Attention is also called to the fact that in the case of "reimbursement account of Washington Market Co. rentals, 1878 to 1914, $158,437.50," the act in question, that of March 4, 1915, contained the expression "such sum being in full settlement of the amount due the United States for said market rentals."

Two other items should be noted, both headed, "Reimbursement account of support of insane in St. Elizabeths Hospital," and being for $719,536.07 and $282,754.26, respectively. In the case of the latter item, the language of the act is as follows: "To further reimburse the United States and in full." More than this, the accountant calculated interest and included it in his report; yet no interest was charged. What could be clearer than this to show that the Federal Government deliberately intended to waive and did waive any claim to interest?

This entire statement, as well as the others appearing in part 2 of this report, should be carefully examined by Members of the Congress.

While the Congress has, of course, extensive powers with relation to the District of Columbia, it is our firm conviction that the collection of interest on these paid-up accounts, particularly when it is specified that settlement is "in full" or "in full settlement" can not be supported, either on legal or equitable principles. In this connection the views of Mr. E. F. Colladay, of the citizens' joint committee, as expressed in the hearings, are quoted below:

"I would like to present just a few words by way of quotation from volume 15 of Ruling Case Law, which I believe is the best compendium of American law extant. I read from page 13, on the subject of interest as incident to or separable from the principal debt. (Reading:)

"The right to recover interest after the payment of the principal sum due, depends upon whether the interest is due by the terms of the contract, or whether it is merely implied and allowed by way of damages in an action for the principal.

"If interest is due by the terms of the contract, the payment of the principal is no bar to its subsequent recovery; but if it is not due by the terms of the contract, the payment of the principal sum is a bar to recovery.

"The reason for the rule is that interest being a mere incident to the debt, can not exist without it, and the debt being extinguished, the interest must necessarily be extinguished also.'

"The relation between the District of Columbia and the Federal Government is such that the District of Columbia can only act as Congress acts for it, in the matter of payments or demands. Congress has acted in the matter of requiring the District of Columbia to pay back certain items. In one instance Congress requires 2 per cent interest on an item, and the interest was paid, with the item.

"In other instances Congress required the payment of principal without requiring the payment of interest. There was no contract obligation nor statute obligation to take the place of the contract obligation, prescribing interest. There was no interest separate and distinct from the principal obligation."

Your committee recommends that in all such cases where the Congress has acted and enforced collections of the principal sum such action should be treated as final and no interest whatever be charged at this time.

As to the other matters concerning which adjustment is recommended in this report, your committee takes the same view, though for different reasons. The argument has been made, with much force, that if the United States has on hand money belonging to the District it should be considered a demand deposit, which would not be due until demand is requested in accordanace with the law. Legally, therefore, interest could not be charged prior to such demand. Taking this view of the matter it would, of course, be inequitable to make interest charges against the District government, if interest was not collected when the balance was in the District's favor.

Furthermore, if equitable principles be held to apply, the doctrine of dilatory creditor could certainly be urged against the United States in any attempt to collect interest from the District of Columbia, even though time limitations may not run against the Federal Government.

Legal and equitable consideration, so far as they may be held to apply to the peculiar relationship existing between these two governments, cause this committee to recommend that, in making any settlement upon the basis of facts disclosed in this report, no interest should be held to be due from the one government to the other.

TITLE VI.—CONCLUSION.

Before concluding part 1 of its report, your committee wishes to call attention to part 2 thereof. This contains, as required under the provisions of the act by which the committee was created, a statement of the sums which have been expended by the United States and the District of Columbia, respectively, from July 1, 1874, to June 30, 1922, inclusive, for the purposes enumerated, as ascertained through the authorized inquiry into all matters pertaining to the fiscal relations between the two governments. In our opinion, the statement in question shows clearly, for the purposes required, the relative participation or contributions by the United States and the District.

Part 2 also contains the interest tables called for by the act of June 29, 1922. Among other valuable matters can be found in part 2 a statement of estimates submitted by the District Commissioners for the past 10 fiscal years, together with the amounts actually allocated in the annual District appropriation bills. It will be noted that the estimates total $172,117,932.63, and the appropriations $147,089,156.08. One-half of the difference of $25,028,776.55 (or $12,514,388.27) may be contrasted with the total amount of the free surplus now under consideration, namely, $4,671,196.97.

It is believed that from the foregoing statements made by your committee a clear understanding of the situation, as revealed by its investigation, may be secured, and confirmation of same may be found in the documents which have been ordered to be printed. Among these documents are: The reports of Messrs. Haskins and Sells, containing tabulations; of Messrs. Galloway, Taggart, Donovan, Hodgson, and the citizens' joint committee; also your committee's hearings and other papers.

To summarize: Your committee recommends that the Senate and House of Representatives recognize the existence of a free surplus in the United States Treasury to the credit of the District of Columbia, as of June 30, 1922, in the—

Sum of	$4,671,196.97
That there shall also be credited the sum of	665.46
(To correct certain errors in stating the account between the two governments)	4,671,862.43
That from these amounts should be deducted the following:	
The District's proportion of the $240 bonus paid to its employees	191,890.35
The District's proportion of cost of additional land for the National Zoological Park	41,500.00
One-half of amount appropriated by special act for relief of Eldred C. Davis	317.16
	233,707.51
And that the net balance of	4,438,154.92

shall be held to be in the Treasury of the United States, subject to appropriation by the Congress, as a part of the District's share of the expenses of maintaining its government, in accordance with the law.

In connection with the items on which reimbursement has already been required by the Federal Government, and the items on which adjustment is recommended in this report, your committee recommends that no interest charges shall be made, either against the District of Columbia or the United States.

Your committee reports that the investigations which have been made into fiscal relations between the two governments are as full and complete, for all practical purposes, as can ever be secured, and recommends action by the present Congress that will definitely and finally set at rest existing contentions and conflicts between the District and Federal Governments.

From an accounting and bookkeeping standpoint, and giving due consideration and weight to the organic law of 1878, as well as other laws passed by Congress from time to time, and the rulings of the Comptroller of the Treasury, we believe this report to all practical purposes reflects the fiscal relations between the United States and the District of Columbia, and shows the surplus to the credit of the District in the Treasury of the United States. Some members of the committee believe that these laws, although binding, were in many instances more favorable to the District than they should have been, if due consideration had been given to the taxpayers of the United States, and that under these laws the United States has for a long time and is now contributing more than its just proportion to the administration of the District government and the upkeep of the District; and that this is especially true when consideration is given to the limited activities and interests of the United States in the District, which are not wholly maintained at the expense of the United States, as compared to the large, expansive, and growing interests of the residents of the District or those owning property therein, and taking into consideration also the low tax rate paid on property located in the District.

Respectfully submitted.

LAWRENCE C. PHIPPS,
L. HEISLER BALL,
WM. J. HARRIS,
GUY U. HARDY,
WILLIAM C. WRIGHT,
Committee.

PART TWO.

THE DISTRICT OF COLUMBIA.

Expenditures by the United States and the District of Columbia, 1874 to 1922, inclusive.

	United States.	District.
1874 to June 30, 1878, as furnished by the auditor of the District	$3,427,477.27	$8,902,044.33
Fiscal years 1879 to 1911, inclusive, from the report of T. Scott Mayes and J. R. Mayes	111,110,030.08	117,177,292.84
Fiscal years 1912 to 1922, inclusive, from the report of Haskins & Sells, certified public accountants	74,326,258.17	93,993,465.64
Increased compensation paid by the United States	345,102.52	.....
Relief of Eldred C. Davis	634.33	.....
Total	189,209,502.37	220,072,802.81

Approximate simple interest at 3 per cent per annum on advances, reimbursements, credit balances, in general fund, etc., computed in accordance with the requirements of the act of June 29, 1922.

DEBITS.

	Amount of interest.
Advance to defray District expenses of fiscal year 1878, $75,000, 1878 to 1919, inclusive	$94,500.00
Advance for support of public schools, $75,000, 1878 to 1919, inclusive	94,500.00
Advance to construct and equip school building in Georgetown, $50,865, 1875 to 1919, inclusive	68,667.75
Advance to pay interest on 3.65 bonds, 1877–78, $586,067.23, 1878 to 1914, inclusive	632,952.61
Washington Market rentals, 1878 to 1914, $158,437.50	51,975.00
Freedman's Hospital, 1906 to 1913, $37,996.70	6,332.05
Support of insane at St. Elizabeths Hospital, $719,536.07 and $282,754.26, interest as computed by J. R. Mayes in his report to former congressional committee	203,770.01
Supreme court fines, 1878 to 1908, $24,300.76	19,636.62
Police court fines, 1878 to 1902, $211,450.12	174,907.72
Construction and equipment, District jail, $125,000, June 25, 1866; reimbursed in 1919	202,500.00
Advance, pay of teachers of public schools, 1874, $97,740.50, 1874 to 1918, inclusive	131,949.68
Relief of Eldred C. Davis, $317.17, 1898 to 1922, inclusive	237.88
National Zoological Park:	
$40,000, 1921 to 1922, inclusive	$2,400.00
$1,500, 1922	45.00
Increased compensation, bonus, $191,890.35, paid in fiscal years 1918 to 1922, inclusive	7,515.01
Total debit interest	1,691,889.33

CREDITS.

Errors in stating account:	
$49.60, fiscal year 1917; 1917 to 1922, inclusive	8.93
$215.86, fiscal year 1920; 1920 to 1922, inclusive	19.43
$400, fiscal year 1922	
Credit balances in general fund:	
$68,300.24, beginning fiscal year 1915	2,049.01
$731,786.74, beginning fiscal year 1916	21,953.60
$2,664,717.77, beginning fiscal year 1917	79,941.53
$4,056,547.40, beginning fiscal year 1918	121,696.42
$6,053,634.98, beginning fiscal year 1919	181,609.05
$7,142,189.70, beginning fiscal year 1920	214,265.69
$7,376,244.49, beginning fiscal year 1921	221,287.33
$7,573,235.84, beginning fiscal year 1922	227,197.08
Total credit interest	1,070,028.07

Statement showing total of estimates of appropriations for the District of Columbia, submitted by the Commissioners of the District, for each fiscal year beginning with 1912 and ending with 1922; and the appropriation granted for each of said years as contained in the regular District of Columbia appropriation acts.

Fiscal year.	Estimates.	Appropriations.
1912	$12,741,450.90	$10,524,096.50
1913	12,818,935.50	10,550,998.50
1914	12,739,737.60	11,257,054.00
1915	14,354,754.49	12,042,825.06
1916	12,771,054.23	11,734,429.45
1917	15,343,196.34	12,581,117.20
1918	16,278,092.66	13,548,567.85
1919	17,091,029.99	14,234,138.66
1920	15,781,259.90	14,613,211.00
1921	18,242,006.03	17,436,654.87
1922	23,956,414.99	18,566,062.99
Total	172,117,932.63	147,089,156.08
Excess of estimates submitted by the commissioner over annual appropriations granted on the basis of such estimates	.....	25,028,776.55

[NOTE.—The foregoing figures do not include estimates submitted by Federal authorities nor appropriations based on such estimates. Beginning with the fiscal year 1923 all appropriations, of whatsoever character, chargeable in any part to the District are included in the District appropriation act. Prior to the current year, appropriations under the jurisdiction and control of Federal agencies were carried in the sundry civil and legislative appropriation acts. Neither are any deficiency appropriations included. The statement as submitted, therefore, merely presents the actual annual estimates prepared by and approved by the commissioners and the action of Congress in granting appropriations based thereupon.]

STATEMENT SHOWING REIMBURSEMENTS MADE TO THE UNITED STATES FROM THE REVENUES OF THE DISTRICT OF COLUMBIA BETWEEN 1919 AND 1920.

For moneys advanced by the United States to the District of Columbia for extraordinary improvements between 1902 and 1910	$4,144,696.35
For interest at 2 per cent on above advances	586,702.83

(NOTE.—The above indebtedness, both principal and interest, liquidated in full between 1910 and 1916.)

Reimbursement under section 8 of District of Columbia act for 1920 (reimbursed in 1920)	75,000.00

"That the sum of $75,000 shall be transferred to the credit of the United States from the amount in the Treasury of the United States to the credit of the District of Columbia to pay the indebtedness of the District of Columbia to the United States on account of the unpaid balance of the advances to defray District of Columbia expenses of the fiscal year 1878, as pro-

vided by section 17 of the act providing for the support of the District of Columbia for said fiscal year, approved March 3, 1877; and said sum shall be transferred to the credit of the United States from the amount in the Treasury to the credit of the District of Columbia immediately upon the approval of this act. (District of Columbia appropriation act for 1920, approved July 11, 1919, sec. 8.)

Reimbursement under section 9 of the District of Columbia act for 1920 (reimbursed in 1920)..... $75,000.00

"That the sum of $75,000 shall be transferred to the credit of the United States from the amount in the Treasury of the United States to the credit of the District of Columbia to pay the indebtedness of the District of Columbia to the United States on account of advances for the support of public schools of the District of Columbia, as provided by a clause of the sundry civil appropriation act, approved March 3, 1877; and said sum shall be transferred to the credit of the United States from the amount in the Treasury to the credit of the District of Columbia immediately upon the approval of this act." (District of Columbia appropriation act for 1920, approved July 11, 1919, sec. 9.)

Reimbursement under section 10 of District of Columbia act for 1920 (reimbursed in 1920).... 50,865.00

"That the sum of $50,865 shall be transferred to the credit of the United States from the amount in the Treasury of the United States to the credit of the District of Columbia to pay the indebtedness of the District of Columbia to the United States on account of advances to defray the expenses of constructing and equipping a school building in Georgetown, District of Columbia, as provided in the act approved March 3, 1875; and said sum shall be transferred to the credit of the United States from the amount in the Treasury to the credit of the District of Columbia immediately upon the approval of this act." (District of Columbia appropriation act for 1920, approved July 11, 1919, sec. 10.)

Reimbursement for interest on 3.65 District of Columbia bonds for 1877 and 1878 (reimbursed in 1915)..... 586,067.23

"The Secretary of the Treasury, through the accounting officers of the Treasury, is authorized and directed to charge to the District of Columbia the sum of $586,067.23, as a debt due the United States from the District of Columbia on account of money advanced by the United States to the District of Columbia with which to pay the interest on the 3.65 bonds of the District of Columbia for the fiscal years of 1877 and 1878; and in stating the account between the United States and the District of Columbia, the accounting officers of the Treasury and the accounting officers of the District of Columbia shall charge the District of Columbia with said sum; and the said sum of $586,067.23 must be paid to the United States by the District of Columbia on or before June 30, 1915, out of the revenues of the District of Columbia derived from privileges and from taxation upon the taxable property in the District of Columbia." (Deficiency act approved Mar. 4, 1915.)

Reimbursement account of Washington Market Co., rentals 1878 to 1914 (reimbursed in 1915).. 158,437.50

"Washington Market Co. rentals: For amount due the United States from the District of Columbia for collections made on account of the franchise rental of the Washington Market Co., fiscal years 1879 to 1914, inclusive, there shall be transferred from the revenues of the District of Columbia to the United States the sum of $158,437.50, such sum being in full settlement of the amount due the United States for said market rentals under the decision of the Comptroller of the Treasury, Dec. 2, 1914, and to be covered into the Treasury as miscellaneous receipts." (Deficiency act approved Mar. 4, 1915.)

Reimbursement account of Freedman's Hospital, 1906 to 1913 (reimbursed in 1915)..... 37,996.70

"To reimburse the United States the amount due on account of one-half of the per capita cost of maintenance of indigent patients in Freedman's Hospital from the District of Columbia in excess of the number charged to and paid for by said District during the fiscal years 1906 to 1913, inclusive, there shall be transferred from the revenues of the District of Columbia to the United States, beginning with the fiscal year 1915, the sum of $37,996.70, which amounts so transferred shall be covered into the Treasury as miscellaneous receipts." (Sundry civil act, Aug. 1, 1914.)

Reimbursement account of support of insane in St. Elizabeths Hospital, 1881 to 1911 (reimbursed in 1913 and 1914)..... $719,536.07

"The reimbursement required to be made to the United States by the District of Columbia under the provisions of the sundry civil appropriation act approved August 24, 1912, on account of deficiencies in payments for the care and maintenance of the insane of said District during the fiscal years 1881 to 1911, inclusive, is hereby fixed at $719,536.09." (District of Columbia appropriation act for the fiscal year 1914, approved Mar. 4, 1913.)

Reimbursement account of support of insane in St. Elizabeths Hospital (reimbursed in 1917)..... 282,754.26

"To further reimburse the United States, and in full, the amount due on account of one-half of the per capita cost of maintenance of indigent patients in the Government Hospital for the Insane from the District of Columbia in excess of the number charged to and paid for by said District during the fiscal years 1879 to 1912, inclusive, there shall be transferred from the revenues of the District of Columbia to the United States the sum of $282,754.26." (Sundry civil act, approved July 1, 1916.)

Reimbursement on account of fines in United States cases in criminal division of Supreme Court, District of Columbia, between July 1, 1878, and June 30, 1908 (reimbursed in 1917).. 24,300.76

"Court fines: The sum of $24,300.76, representing fines in United States cases collected on judgments of the criminal division of the Supreme Court of the District of Columbia during the period from July 1, 1878, to September 30, 1908, inclusive, and deposited in the Treasury of the United States to the credit of the District of Columbia, shall be transferred from the credit of the District of Columbia to the United States." Deficiency act approved Apr. 17, 1917.)

Reimbursement on account of fines in United States branch of police department between July 1, 1878, and Jan. 1, 1902 (reimbursed in 1917)..... 211,450.12

"The sum of $211,450.12, representing fines in United States cases collected on judgments of the police court of the District of Columbia during the period from July 1, 1878, to January 1, 1902, inclusive, and deposited in the Treasury of the United States to the credit of the District of Columbia shall be transferred from the credit of the District of Columbia to the United States." (Deficiency act approved Apr. 17, 1917.)

Reimbursement under section 7 of District of Columbia act for 1919 on account of the construction and equipment of the District Jail (reimbursed in 1919)..... 125,000.00

"That the sum of $125,000 shall be transferred to the credit of the United States from the amount in the Treasury of the United States to the credit of the District of Columbia to pay the indebtedness of the District of Columbia to the United States on account of the construction and equipment of the District Jail, as provided in section 1097 of the Revised Statutes of the District of Columbia." (District of Columbia appropriation act for the fiscal year 1919, approved Aug. 31, 1918.)

Reimbursement under section 8 of District of Columbia act for 1919 on account of advances to pay teachers in the District public schools in 1874 (reimbursed in 1919)	$97,740.50
"That the sum of $97,740.50 shall be transferred to the credit of the United States from the amount in the Treasury of the United States to the credit of the District of Columbia to pay the indebtedness of the District of Columbia to the United States on account of advances to pay teachers in the District public schools, as provided by the act entitled 'An act making appropriation for the payment of teachers in the public schools of the District of Columbia, and providing for the levy of a tax to reimburse the same,' approved April 18, 1874." (District of Columbia appropriation act for the fiscal year 1919, approved Aug. 31, 1918.)	
Reimbursement account of Maryland School for Blind, 1899 to 1906 (with interest at 2 per cent, $1,184.81) (reimbursed in 1907; interest paid United States in 1907)	52,973.64
Reimbursement account of Meridian Hill Park and Montrose Park (principal and interest at 3 per cent, $12,952.15) (reimbursed in 1912, 1913, 1914, and 1915 in four equal annual installments)	317,825.98
Total	7,546,346.94

WAR DEPARTMENT APPROPRIATIONS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 13793) making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1924, and for other purposes.

The reading of the bill was continued.

The next amendment of the Committee on Appropriations was, on page 120, line 4, after the word "practicable," to insert: "and the purchase of artificial limbs or other appliances for indigent persons who were injured in the service of the Isthmian Canal Commission or the Panama Canal prior to September 7, 1916," and in line 11, to strike out "$550,000" and insert "$584,422.28," so as to read:

For sanitation, quarantine, hospitals, and medical aid and support of the insane and of lepers and aid and support of indigent persons legally within the Canal Zone, including expenses of their deportation when practicable, and the purchase of artificial limbs or other appliances for indigent persons who were injured in the service of the Isthmian Canal Commission or the Panama Canal prior to September 7, 1916, and including additional compensation to any officer of the United States Public Health Service detailed with the Panama Canal as chief quarantine officer, $584,422.28.

The amendment was agreed to.

The next amendment was, on page 120, at the end of line 15, to strike out "$930,000" and insert "$1,006,200," so as to read:

For civil government of the Panama Canal and Canal Zone; district judge, $7,500; district attorney, $5,000; marshal, $5,000; and for gratuities and necessary clothing for indigent discharged prisoners, $1,006,200.

The amendment was agreed to.

The next amendment was, on page 120, line 16, to increase the total appropriation for the Panama Canal from "$6,559,683" to "$6,670,305.28."

The amendment was agreed to.

The next amendment was, on page 121, line 14, before the numeral "1922," to strike out "July 1" and insert "June 30," so as to read:

Except in cases of emergency or conditions arising subsequent to and unforeseen at the time of submitting the annual estimates to Congress, and except for those employed in connection with the construction of permanent quarters, offices, and other necessary buildings, dry docks, repair shops, yards, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances for the purpose of providing coal and other materials, labor, repairs, and supplies, there shall not be employed at any time during the fiscal year 1924, under any of the foregoing appropriations for the Panama Canal, any greater number of persons than are specified in the notes submitted, respectively, in connection with the estimates for each of said appropriations in the Budget for said year, nor shall there be paid to any such person during that fiscal year any greater rate of compensation than was authorized to be paid to persons occupying the same or like positions on June 30, 1922; and all employments made or compensation increased because of emergencies or conditions so arising shall be specifically set forth, with the reasons therefor, by the governor in his report for the fiscal year 1924.

The amendment was agreed to.

Mr. WADSWORTH. On behalf of the committee I offer the following amendment.

The PRESIDING OFFICER (Mr. WILLIS in the chair). The Chair is advised that one amendment of the committee, on page 21, lines 22, 23, 24, and 25, was passed over.

Mr. McKELLAR. Mr. President, the Senator from Utah [Mr. KING] desires that amendment to go over.

The PRESIDING OFFICER. The Senator from Mississippi [Mr. HARRISON] requested before that it go over.

Mr. McKELLAR. The Senator from Utah spoke to me about it a moment ago. Will the Senator from New York let that go over with the other amendment until to-morrow?

Mr. WADSWORTH. I am willing that the amendment at the bottom of page 21 shall go over until to-morrow.

Mr. HARRISON. Is that the Harbord amendment, so called?

Mr. WADSWORTH. Yes.

Mr. McKELLAR. The Senator from New York has agreed that it shall go over until to-morrow. The Senator from Utah asked me a little while ago to ask that it go over if it came up this afternoon. I have no objection to considering it now, so far as I am personally concerned.

The PRESIDING OFFICER. The amendment at the bottom of page 21 will be passed over.

Mr. WADSWORTH. In behalf of the committee I offer the following amendment.

The PRESIDING OFFICER. The amendment will be stated.

The READING CLERK. On page 10, line 18, after the numeral "$275,000," insert the following:

: Provided, That the mileage allowance to members of the Officers' Reserve Corps when called into active service for training for 15 days or less shall not exceed 4 cents per mile: *Provided further*, That the laws providing for land-grant deductions shall not apply to travel at 4 cents per mile heretofore performed by members of the Officers' Reserve Corps under the War Department appropriation act for the fiscal year 1923, approved June 30, 1922.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from New York on behalf of the committee.

The amendment was agreed to.

Mr. WADSWORTH. On behalf of the committee I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment proposed by the Senator from New York will be stated.

The READING CLERK. On page 35, after line 23, it is proposed to insert the following:

Hereafter the cost of transportation of civilian employees and of material in connection with the manufacturing and purchasing activities of the Signal Corps, Air Service, Medical Department, Engineer Department, and the Coast Artillery Corps, and in connection with the construction and installation of fire-control projects at seacoast fortifications by the Coast Artillery Corps may be charged to the appropriations for the work in connection with which such transportation charges are required.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. McKELLAR. Will the Senator explain the amendment which has just been read? The amendment was read so rapidly that I did not fully understand it.

Mr. WADSWORTH. Under present law when the War Department purchases anything, either by direct purchase or by contract, the cost of transporting the finished article from the factory door to the place where the Government wishes to use it is charged against the appropriation for transportation of the Army. There is no authority for the charges of that freight bill to the cost of the article. The result is that the transportation appropriations are tremendously overburdened with such charges in the nature of freight bills on finished articles which are to be delivered at the place where the War Department or the Army wishes to use them. The Government loses a great deal of money by it.

For example, in the Air Service the only way in which the Chief of the Air Service has been able to have the freight bills paid on newly made airplanes is to invite the bidders who are seeking the contract to include in their bids the transportation cost from the factory door to the flying field, which may be 2,000 miles distant.

The Chief of the Air Service can not receive a sufficient allotment under the transportation appropriation to pay for the cost of transporting those airplanes by railroad. If he is given authority to charge that cost against the appropriation for the purchase of the planes, then, if he wishes, he can transport the plane from the factory door to the flying field over a land-grant railroad and receive the benefit of the reduced freight rates which are allowed to the Government. It is perfectly obvious that the amendment, if adopted, would save money.

Mr. McKELLAR. The Senator's explanation is entirely satisfactory to me, and I have no objection to the amendment.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from New York on behalf of the committee.

The amendment was agreed to.

Mr. WADSWORTH. Mr. President, I offer the amendment which I send to the desk.

Mr. FLETCHER. May I inquire are the amendments now being offered by the Senator from New York offered on behalf of the committee, or are they individual amendments?

Mr. WADSWORTH. These are amendments which the committee have authorized the chairman of the committee to offer.

Mr. FLETCHER. But the Senator from New York himself had certain amendments which he proposed to offer which were printed, and I did not know whether or not the amendments which he is now offering were those amendments.

Mr. WADSWORTH. I have had most of the amendments printed for the information of the Senate. The amendment which I now offer, I will say to the Senator from Florida, has not been printed, but I can remind the Senator from Florida about the amendment as soon as it shall have been read.

The PRESIDING OFFICER. The amendment proposed by the Senator from New York will be stated.

The READING CLERK. On page 52, after line 18, it is proposed to insert the following:

The sum of $400,000 of the appropriation for the Air Service for the fiscal year 1921 contained in the "act making appropriations for the support of the Army for the fiscal year ending June 30, 1921, and for other purposes," approved June 5, 1920, shall remain available until June 30, 1924, for the payment of obligations incurred under contracts executed prior to June 30, 1921.

Mr. WADSWORTH. The amendment does not provide a new appropriation, but is merely to continue available an appropriation made two years ago, in order that the final payments on contracts for the building of airplanes, and which are almost finished, may be made this spring. If the former appropriation is not made available, it means that the War Department will not be able to pay the money which it owes to the contractors for the finished planes.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from New York.

The amendment was agreed to.

Mr. WADSWORTH. I offer another amendment on behalf of the committee.

The PRESIDING OFFICER. The amendment proposed by the Senator from New York will be stated.

The READING CLERK. On page 82, in line 4, after the numeral "$3,500," it is proposed to insert the following proviso:

Provided, That the present incumbent, upon the completion of his service, shall be entitled to be placed upon the retired list of the United States Army (with the rank of lieutenant colonel) under the same conditions as are prescribed by law for other officers of the Army.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from New York.

Mr. FLETCHER. Does that amendment refer to the master of the sword at the Military Academy?

Mr. WADSWORTH. It does.

Mr. McKELLAR. He has been there a long time.

Mr. WADSWORTH. He has been there for 40 years.

Mr. McKELLAR. And he should have this recognition, of course.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. WADSWORTH. On behalf of the committee I offer another amendment, to which I call the attention of the Senator from Iowa [Mr. BROOKHART].

The PRESIDING OFFICER. The amendment proposed by the Senator from New York will be stated.

The READING CLERK. On page 95, after line 21, it is proposed to insert the following new paragraph:

That no part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch, or other time-measuring device, a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from New York.

Mr. BROOKHART. I offer an amendment to the amendment of the Senator from New York.

The PRESIDING OFFICER. The Senator from Iowa offers an amendment to the amendment, which the Secretary will state.

The READING CLERK. After the word "work," at the end of line 9, it is proposed to insert:

nor shall any part of the appropriations made in this act be available to pay any premiums or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant.

The PRESIDING OFFICER. The question is on the amendment to the amendment.

Mr. BROOKHART. Mr. President, the amendment which I have offered to the amendment of the Senator from New York makes the same provision in the pending bill as that in the naval appropriation bill, which we have already passed. I believe also that the same words have been carried in former Army appropriation bills for a number of years.

Mr. McKELLAR. They have been carried in such bills for many years.

Mr. BROOKHART. Yes.

Mr. WADSWORTH. Mr. President, in the House of Representatives the provision relating to the so-called stop-watch method of factory management and relating to the payment of bonuses to workmen in Government arsenals and War Department arsenals was stricken out, as I recollect, on a point of order. The language, as the Senator from Iowa has stated, has been contained in Army appropriation bills for some time past.

The Committee on Appropriations reports to the Senate the provision prohibiting the use of the so-called stop-watch method but does not report to the Senate an amendment which would prohibit the payment of a bonus to an especially efficient workman. We do not believe that it is wise to install the so-called stop-watch or Taylor efficiency system in the arsenals; we join with those who want to have that prohibited by statute; but at the same time we do not believe that the Government should be denied by statute the right to give additional compensation to a workman for especially efficient work. That being the attitude of the committee, I can not, of course, accept on behalf of the committee the amendment offered by the Senator from Iowa, and I honestly believe that the amendment as proposed by the committee actually covers all conditions in the manufacturing plants of the War Department of which so many of the workmen are suspicious and to which they are antagonistic. I do not believe that the workmen of our arsenals have any real objection to the Government paying a little extra compensation now and then to their fellows who are especially efficient. So I hope the amendment offered by the Senator from Iowa to the amendment of the committee will not be adopted.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Iowa [Mr. BROOKHART] to the amendment offered by the Senator from New York on behalf of the committee.

Mr. McKELLAR. Mr. President, the amendment to the amendment proposes to incorporate in the bill a provision which has been in various Navy and Army appropriation bills for many years. It is a provision upon which the workingmen lay great stress. It has been found to be appropriate heretofore, and I see no reason for changing the law. Therefore, Mr. President, if the Senate is ready to vote on the amendment, I ask for the yeas and nays.

Mr. WADSWORTH. Will the Senator be satisfied with a division?

Mr. McKELLAR. Very well; I will be satisfied with a division.

Mr. JONES of Washington. Mr. President, I wish to say merely a word in explanation of my vote. I have voted heretofore to prohibit the stop-watch method and in favor of the bonus provision because I thought that there was simply involved in the latter case the payment of the ordinary bonus. I have made some further investigation, however, during the last week with reference to the matter. I have looked into it more carefully than I ever did before, and I am satisfied that it is not the ordinary bonus at all which is involved, but that it goes much further than that. I think we ought to prohibit the payment of bonuses as well as the stop-watch method, and so I shall vote for the amendment offered by the Senator from Iowa to the amendment of the Senator from New York.

Mr. BROOKHART. Mr. President, the amendment to the amendment does not have in view the ordinary bonus payment at all, but that character of bonus which has behind it the idea of forcing or driving men to higher speed and a more rapid method of working, just as is involved in the case of the stop-watch method. There is no objection to a bonus in a general way being paid to everybody, so far as that is concerned; but it is a feature of the older efficiency scheme that we are trying to prohibit, as I understand. I think we had better have a roll call on the amendment.

The PRESIDING OFFICER. A division has been called for.

Mr. BROOKHART. Very well; let us have a division.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Iowa to the amendment offered by the Senator from New York on behalf of the committee.

On a division the amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. WADSWORTH. Mr. President, on behalf of the committee I offer another amendment.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. On page 108, after line 15, it is proposed to insert:

Notwithstanding the restrictive provisions of the act of February 26, 1896 (29 Stats. p. 21), the Secretary of War is authorized in his discretion to permit, without cost to the United States, the erection of monuments or memorials to commemorate encampments of Spanish War organizations which were encamped in said park during the period of the Spanish-American War.

The amendment was agreed to.

Mr. WADSWORTH. Mr. President, I ask the indulgence of the Senate while I offer two amendments, not on behalf of the committee, because it so happens that the committee has had no opportunity to examine them. I am offering them as an individual Senator.

I send the first amendment to the desk.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. On page 19, after line 3, it is proposed to insert:

Section 2 of the legislative, executive, and judicial appropriation act approved July 31, 1894, is amended by adding at the end thereof a new sentence to read as follows:

"Retired enlisted men of the Army, Navy, Marine Corps, or Coast Guard shall not be construed to hold an office within the meaning of this section."

Payments heretofore made to retired enlisted men of the Army, Navy, Marine Corps, or Coast Guard under appointments to civil offices with a compensation of $2,500 or more per annum are hereby validated.

Mr. McKELLAR. Mr. President, will the Senator explain that amendment?

Mr. WADSWORTH. Mr. President, the statute to which that amendment refers forbids the employment of certain personnel deemed to hold offices in the civil service of the United States at a wage higher than $2,500 a year. There are about 12 retired Regular Army enlisted men now employed in places drawing more than $2,500 a year. To the great astonishment of everybody the comptroller or somebody has ruled that a retired enlisted man of the Regular Army holds an office as such. The result of the ruling is that these 12 old soldiers are now called upon to pay back into the Federal Treasury the amount of money in excess of $2,500 that they have been drawing.

Mr. McKELLAR. The Senator's amendment is entirely right. It ought to be adopted.

Mr. WADSWORTH. The Military Affairs Committee has examined into this matter and has reported favorably a bill for this purpose. The construction given to the word "officer" was so astounding in this case that the Military Affairs Committee is unanimous in its support.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from New York.

The amendment was agreed to.

Mr. WADSWORTH. Mr. President, I send to the desk one more amendment of a legislative character which will take just a moment to explain, and then I think I shall have finished.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. On page 20, after line 16, it is proproposed to insert:

Nothing contained in any existing laws or regulations or orders promulgated in pursuance of law shall be construed to authorize on or after July 1, 1922, the issue of heat or light in kind to any person in the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, while such person is receiving an allowance for rental of quarters under the provisions of the act entitled "An act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922.

Mr. WADSWORTH. Mr. President, under the new pay law passed last year the allowances known as heat and light were abolished, and in their place was substituted one allowance, known as the rental allowance. The rental allowance is paid to officers of the six services when they are not occupying public quarters. It is to cover their house rent if they have to rent houses, and their heat, and their light. We understand on very reliable authority that there are certain accounting or auditing officers who are expressing the opinion, or are about to express the opinion, that in certain cases officers may draw not only the rental allowance but also the old allowance of heat and light in kind. We do not want that duplication.

Mr. McKELLAR. Nor do I; so I have no objection to the amendment.

Mr. WADSWORTH. The intent of the Congress was to have the rental allowance cover all the old allowances.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from New York.

The amendment was agreed to.

Mr. WADSWORTH. Mr. President, that completes the bill, as far as the committee is concerned, with one exception.

Mr. ROBINSON. Mr. President, will the Senator yield to me to submit a request for unanimous consent touching a vote to be had on a provision in this bill?

Mr. WADSWORTH. Yes.

Mr. ROBINSON. Mr. President, after consultation with a number of Senators whom I know to be interested in the matter, including the Senator from Florida [Mr. FLETCHER] and the Senator from Idaho [Mr. BORAH], I ask unanimous consent that at 2 o'clock and 45 minutes on to-morrow the Senate proceed to vote upon any amendment that may be pending or that may be offered to the rivers and harbors item; and I will state my reason for making that request.

A number of Senators—five Senators—desire to leave on the 3.15 train to go to the city of Savannah, including the Senator from Georgia [Mr. HARRIS], who is the author of the concurrent resolution that passed the Senate to-day; that is, assuming that his resolution passes the body at the other end of the Capitol. I have consulted with the Senator from Idaho [Mr. BORAH] and the Senator from Florida [Mr. FLETCHER], and they have indicated their acquiescence in this unanimous-consent suggestion. The Senator from Georgia [Mr. HARRIS] is now conferring by telephone with the Senator from Utah [Mr. KING].

Mr. SMOOT. Mr. President, I will say to the Senator that I shall object to it.

Mr. ROBINSON. The Senator from Utah makes it unnecessary to pursue the matter further.

Mr. WADSWORTH. I had hoped that we might get an agreement to vote on the river and harbor item. I was about to welcome with a good deal of cheerfulness the suggestion of the Senator from Arkansas.

Mr. ROBINSON. The Senator from Utah [Mr. SMOOT] was not in the Chamber when I first made the suggestion, or I should have consulted him about the matter. I hope he may see fit now to withdraw his objection, in view of the conditions.

Mr. SMOOT. No; I can not withdraw it at this time.

Mr. WADSWORTH. Mr. President, may I say—perhaps the Senator was not in the Chamber—that the committee amendments now are finished, with one exception. We are to recess until 11 o'clock to-morrow. We shall have between 11 and 2.45 o'clock, if the Senator's suggestion is adopted, to do nothing but debate the river and harbor item.

Mr. ROBINSON. That will afford practically three hours' debate on the item.

Mr. WADSWORTH. Does not the Senator think that is sufficient?

Mr. SMOOT. No; I do not, Mr. President.

Mr. ROBINSON. Mr. President, I suppose nothing remains but to say that perhaps in the morning the request may be renewed if the Senator from Utah thinks over the matter and concludes to consent to the arrangement I have stated. The train leaves at 3.15 o'clock, and in the event the concurrent resolution passes the House that will be the latest hour at which the committee can leave here to arrive in Savannah in time to attend the exercises which it is expected will be held there.

Mr. WADSWORTH. Mr. President, this completes the consideration of the committee amendments with the exception of one which has been put over until to-morrow, that one being found at the foot of page 21. I am not entirely certain what the pleasure of the Senate is at this time. Before the order for the recess is invoked I expect to move an executive session. I do not now move it.

Mr. HARRISON. Mr. President, I desired to address myself to the failure of the Senate to do anything touching the codification of the laws—a matter which has been before Congress for some time, and which passed the House some time ago, but apparently nothing has been done in the Senate. There are only a few days remaining, and if failure comes about all of the work that has been done in the House will go for naught.

I do not see the chairman of the committee having the matter in charge, the Senator from Kentucky [Mr. ERNST]. If he is in the Chamber in the morning I shall bring up this matter, so that we may know whether something is to be done, or whether the bill will die in the Senate, as it has heretofore.

I shall not say anything further at this time, because the chairman of the committee is not in the Senate Chamber.

Mr. SMOOT. Does the Senator have reference to the revision of the laws?

Mr. HARRISON. Yes.

Mr. SMOOT. I certainly hope that some action will be taken on it before the close of this Congress.

Mr. HARRISON. Yes; I knew the Senator felt that way about it. A great many Senators feel that way about it, but I do not care to discuss it in the absence of the chairman of the committee having the matter in charge.

Mr. SPENCER. Mr. President, are individual amendments to the bill now in order?

The VICE PRESIDENT. They are.

Mr. SPENCER. I ask for the consideration of the amendment which I send to the desk and which has been printed.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. In the proper place it is proposed to insert the following proviso:

Provided, That hereafter the engineer officer in charge of public buildings and grounds shall, during the term of his office, have the rank, pay, and allowance of a brigadier general.

Mr. SPENCER. Mr. President, perhaps I ought to say, in regard to that amendment, that the present occupant of that office is Col. Clarence O. Sherrill. The amendment meets with the approval of the War Department and the Chief of Staff. In addition to his duties as the officer in charge of public buildings, which are quite important enough to warrant the title of brigadier general, there is this further situation: He is also, by virtue of his office, aid to the President. The corresponding aid from the Navy is an admiral, and at public functions and in meeting with representatives of other governments there is a certain embarrassment in having the Army represented by a colonel and the Navy represented by an admiral. The cost is practically nothing. If the man in charge is 30 years in service, there is no difference in cost between the rank of colonel and the rank of brigadier general in this office. The average service of 27 years would make a difference in cost of $200 a year.

Mr. FLETCHER. Mr. President, I shall not oppose the amendment by any extra effort. I shall not favor it. I expect to vote against it. There is nothing personal at all in my attitude, because I have no doubt Colonel Sherrill is a most efficient officer and deserving of every consideration. I think, however, that it is a mistake to proceed here to increase his rank to that of brigadier general simply because at social functions he is the aid to the President. I think he can perform the duties of aid to the President just as well as a colonel as he could as a brigadier general, and I can not see any real justification for this advance in rank to brigadier general simply for social reasons.

I can not support the amendment, although, as I say, I am not going to make any particular effort against it.

Mr. SMOOT. Mr. President, all I want to say is this: There is no question but that Colonel Sherrill does as much work, and perhaps more work, than an admiral of the Navy. I know of no officer of the Government who does more work than Colonel Sherrill. He is a splendid officer. He has good judgment. I would like to have him taken care of in some other way; but if this is the only way he can be taken care of, I have no objection.

Mr. WADSWORTH. It is fair to say this is not really a raise in pay.

Mr. SMOOT. It is, of $200.

Mr. WADSWORTH. Just $200. It is not for that purpose that the Senator from Missouri offers the amendment.

Mr. SMOOT. I take it for granted it is not for that purpose. I shall not object, if it is thought the proper thing to do.

The amendment was agreed to.

Mr. SPENCER. I ask that there be placed in the RECORD a list of the duties of the Engineer commissioner of the United States Army, assigned as officer in charge of public buildings and grounds, for information.

There being no objection, the matter was ordered to be printed in the RECORD, as follows:

DUTIES OF THE ENGINEER OFFICER, UNITED STATES ARMY, ASSIGNED AS OFFICER IN CHARGE OF PUBLIC BUILDINGS AND GROUNDS.

1. Military aid to the President and his personal escort on formal official functions; in charge of arrangements for all diplomatic, social, and military functions at the White House; represents the President in formal courtesies to diplomatic and other foreign officials.

2. In charge of the improvement, maintenance, and operation of the parks of Washington, including the administration of all activities therein, such as recreational features—bathing beach, golf courses, tennis courts, baseball fields, and so on. This work involves an expenditure of approximately $1,000,000 a year.

3. In charge of the maintenance and operation of the public memorials, such as the Lincoln Memorial and the Washington Monument.

4. In charge of the maintenance and upkeep of the White House, the executive offices, and the White House grounds, including the disbursement of funds for the White House police force.

5. Executive officer and in charge of the construction and administration of the details of business for the following commissions:
Arlington Memorial Bridge Commission.
Lincoln Memorial Commission.
Grant Memorial Commission.
The Meade Memorial Commission.
The Rock Creek and Potomac Parkway Commission.
The Ericsson Memorial Commission.

6. A member of the Public Buildings Commission, which is charged with the duty of assignment of all office space to the departments and establishments in Washington. This commission has during the past year by detailed study committed to the officer in charge of public buildings and grounds saved over $100,000 in rentals.

7. A member of the Zoning Commission, which is charged with the administration of the laws prescribing the character of use, height, and area of occupancy of all buildings in Washington.

8. Superintendent of the State, War, and Navy Department Buildings, which involves the operation, maintenance, repairs, and cleaning and general upkeep of 26 public office buildings with a floor space of approximately 6,000,000 square feet and involving the expenditure of approximately $2,000,000 a year. Congress recently added to this office's responsibilities the Interior Department Building, the Patent Office Building, the Land Office Building, and the Pension Office Building.

Mr. REED of Pennsylvania. Mr. President, I offer an amendment which I send to the desk.

The VICE PRESIDENT. The Secretary will state the amendment.

The READING CLERK. On page 18, after line 24, to insert the following:

Any officer whose name is now borne on the Army Register, and who served with credit as a general officer of the line during the World War, or who was recommended for appointment as a general officer of the line by the commander in chief, American Expeditionary Forces, prior to November 11, 1918, shall be eligible for selection to the general officers' eligible list provided for in the national defense act, approved June 4, 1920, notwithstanding the fact that he shall now hold a grade below that of colonel in the line.

Mr. REED of Pennsylvania. Mr. President, the only purpose of this amendment is to make eligible for appointment as general officers those officers who, during the World War, actually served as general officers of the line, and also those who, because of conspicuous service, were then recommended for appointment as general officers. This does not increase the number in any way, and it does not accomplish the promotion of anybody, but merely makes them eligible if the President shall select them. I believe the committee has no objection.

The amendment was agreed to.

ASSOCIATION OF PRODUCERS OF TURPENTINE AND ROSIN.

Mr. HARRISON. Mr. President, this morning when the calendar was being considered, the call was stopped just before we reached a bill in which I am very much interested, and which I hoped to have passed. The matter is one I offered in the form of an amendment to the Capper bill, I believe, to permit producers of rosin and turpentine to come under the provisions of the cooperative marketing bill, the same as the producers of nuts, the producers of cotton, and so forth. I presented the matter to the Senate at that time, and was told that I should try to have it passed in the form of a separate bill, so I withdrew the amendment for that reason.

The Committee on Agriculture and Forestry unanimously reported out the bill, and it is on the calendar. The only change it makes in the law is in allowing producers of rosin and turpentine to come under the provisions of that law. I ask unanimous consent for the present consideration of Senate bill 4324, to amend an act entitled "An act to authorize associations of producers of agricultural products."

The VICE PRESIDENT. The Secretary will report the bill.

The bill was read, as follows:

Be it enacted, etc., That the first paragraph of the first section of an act entitled "An act to authorize association of producers of agricultural products," approved February 18, 1922, is hereby amended so as to read as follows: "That persons engaged in the production of agricultural products, as farmers, planters, ranchmen, dairymen, nut or fruit growers, or producers of turpentine and rosin may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing, for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purpose: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements."

SEC. 2. That this act shall take effect immediately.

The VICE PRESIDENT. Is there objection to the consideration of the bill?

Mr. SMOOT. I do not know really why we should pass a bill affecting producers of turpentine and rosin.

Mr. HARRISON. When I offered this, it was to cover naval stores, rosin and turpentine being classed as naval stores, but the Senator from Massachusetts raised some objection to that term being employed, so I restricted it to rosin and turpentine. Rosin and turpentine, of course, as the Senator knows, are extracted from the yellow pine of the Gulf coast section, and the

small farmers down there and the small producers for 17 years, with one exception, have had difficulty in getting any fair prices for their turpentine and rosin. I can not really see any harm in their being permitted to collectively market their products any more than there would be wrong in allowing the producers of nuts to collectively market. It will aid them very, very much in disposing of their crops. They call these articles "crops," and the trees "orchards," just the same as you get crops of peaches from peach trees. That is about all I can say. It changes the law in no other particular except the one I have mentioned.

Mr. SMOOT. It seems to me that if the producers of rosin have the right provided for in this bill it ought to be extended to all industries. I do not see why the producers of rosin should have this privilege any more than the manufacturers of glue.

Mr. FLETCHER. That is really an agricultural product.

Mr. SMOOT. So is glue, made from the hoofs and hides of cattle. I do not see any difference at all between the two.

Mr. HARRISON. That might be a very good reason for including glue. I only know about this particular proposition. I know those products have always been carried in the Agricultural appropriation bill. They are considered agricultural matters. These crops are owned by small farmers. In thousands and thousands of instances, where they have, say, 40 trees, they will box them, and this is to allow them to organize and sell their product. There have been times in the past 10 years when they could not dispose of their rosin and terpentine at any price at all. They are just turned loose, and everyone takes care of himself. If the purposes of the other bill for the protection of those engaged in agricultural production were good, I can not see any harm, under the peculiar circumstances confronting these people, in passing this.

Mr. SMOOT. I shall not object, although I think it is going a long way outside of agriculture. I do not know where it will end.

Mr. HARRISON. The Senator is aware that rosin and naval stores have been taken care of under the Agricultural appropriation bills and have been considered as agricultural products.

Mr. SMOOT. I am perfectly aware of that. We have had legislation in regard to them on every Agricultural appropriation bill, and special legislation at times, since I have been in the Senate, but just because they are handled in an agricultural bill does not appeal to me in any way as an argument why they should be treated any different from glue or other articles which may be made from farm products. That is the way it looks to me; but I am not going to object to the consideration of the bill at this time.

The VICE PRESIDENT. Is there objection to the consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

DRAINAGE SYSTEM, PIUTE INDIAN LANDS.

Mr. SPENCER. Mr. President, the Piute Indians in Nevada have 4,047 acres of land, for which they have already secured water rights. Of this land 1,200 acres is water-logged and of no use unless it is drained. The State of Nevada under the Newlands Act has a drainage district which takes care of these 4,047 acres. All the land in the drainage district is now included in the project except these Indian lands.

House bill 10211, authorizing an appropriation to meet proportionate expenses of providing a drainage system for Piute Indian lands in the State of Nevada within the Newlands reclamation project of the Reclamation Service is on the calendar. It authorizes the Secretary of the Interior to place these Indian lands within that drainage district. The cost of it, of course, is reimbursable. The Senate passed precisely the same bill a few weeks ago and it met with the approval of the Committee on Indian Affairs. I ask unanimous consent that the bill may be now considered.

Mr. UNDERWOOD. Mr. President, I do not intend to object to the consideration of this bill, and I really have no objection to it, but I do not think we should take up the calendar at this time in the evening. The main reason is that a good many Members of the Senate have gone. We usually transact business of this kind in the morning hour, and Senators are not apprised as to what is coming up when the calendar is brought up in the evening. I think it is very much better, if Senators are going to ask unanimous consent for the consideration of bills of this kind, that they should do it in the morning hour when those who may want to object or have an interest in them are here and have an opportunity to object, but that it should not be done late in the evening when many Senators think we are proceeding with the regular order and that such things as these are not to be brought up.

I do not like to object to bills which are not of personal interest, and I am not going to raise any objection to this, but I will ask for the regular order after this bill is considered. I hope that when this bill is disposed of we will go on with the regular order, and not take up any other bill at this hour.

The VICE PRESIDENT. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate, as in the Committee of the Whole, proceeded to consider the bill, which was read, as follows:

Be it enacted, etc., That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $41,077.05, payable in 20 annual installments of $2,100 each, except the last, which shall be the amount remaining unpaid, for the purpose of meeting the proportionate expense of providing a drainage system for 4,047 acres of Piute Indian lands in the State of Nevada, within the Newlands project of the Reclamation Service.

The money herein authorized to be appropriated shall be reimbursed in accordance with the provisions of law applicable to said Indian lands.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

EXECUTIVE SESSION.

Mr. WADSWORTH. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened, and (at 5 o'clock and 5 minutes p. m.) the Senate, under the order previously entered, took a recess until to-morrow, Tuesday, February 6, 1923, at 11 o'clock a. m.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 5, 1923.

ASSISTANT DIRECTOR OF BUREAU OF FOREIGN AND DOMESTIC COMMERCE.

Robert A. Jackson, to be Assistant Director.

COAST AND GEODETIC SURVEY.

Donal Bruksicker Pheley to be aid with the relative rank of ensign in the Navy.

Donald Wood Taylor to be aid with the relative rank of ensign in the Navy.

Carl Frederic Meyer to be aid with the relative rank of ensign in the Navy.

Henry William Hemple to be hydrographic and geodetic engineer with relative rank of lieutenant in the Navy.

PROMOTIONS IN THE ARMY.

Clarence Harvey Bragg, to be captain, Infantry.

Paul Rutherford Knight to be captain, Infantry.

DeWitt Clinton Smith, jr., to be captain, Infantry.

Edward Arthur Dolph to be first lieutenant, Coast Artillery Corps.

Joseph Kittredge Baker to be first lieutenant, Cavalry.

William Mason Wright, jr., to be first lieutenant, Field Artillery.

Herbert William Kruger to be second lieutenant, Field Artillery.

James Lewis Montague to be second lieutenant, Infantry.

Henry Dwight Fansler to be second lieutenant, Infantry.

William Earl Watters to be second lieutenant, Field Artillery.

Leo Henry Dawson to be second lieutenant, Air Service.

Michael Vincent Healey to be second lieutenant, Air Service.

Hilton Welborn Long to be second lieutenant, Air Service.

Milton John Smith to be second lieutenant, Air Service.

Carl Budd Wahle to be second lieutenant, Coast Artillery Corps.

James Eldridge Gardner to be second lieutenant, Air Service.

Leonard Loyd Hilliard to be second lieutenant, Infantry.

Lester Vocke to be second lieutenant, Field Artillery.

Frederick Viehe Armistead to be second lieutenant, Field Artillery.

John Leon Dicks to be second lieutenant, Infantry.

Thomas Jefferson Randolph to be second lieutenant, Cavalry.

Harry Edwin Magnuson to be second lieutenant, Coast Artillery Corps.

Gerald Crofoot Williams to be second lieutenant, Air Service.

Robert Boyd Williams to be second lieutenant, Air Service.

James Fish to be second lieutenant, Infantry.

LaRoy Sanders Graham to be second lieutenant, Infantry.

Francis Lavelle Ready to be second lieutenant, Cavalry.
Joseph Rexford Vernon to be second lieutenant, Corps of Engineers.
David Hottenstein to be second lieutenant, Coast Artillery Corps.
George John Kelley to be second lieutenant, Coast Artillery Corps.
Ray Brooks Floyd to be second lieutenant, Infantry.
Ray Eugene Marshall to be second lieutenant, Infantry.
Morris Miller Bauer to be second lieutenant, Corps of Engineers.
George Cabell Carrington to be second lieutenant, Infantry.
Charles Henry Berle to be second lieutenant, Coast Artillery Corps.
Harland Fremont Burgess to be second lieutenant, Infantry.
Karl Clifford Frank to be second lieutenant, Coast Artillery Corps.
Harry Munroe Leighley to be second lieutenant, Coast Artillery Corps.
Clyde Anderson Burcham to be second lieutenant, Cavalry.
Walter Raymond Miller to be second lieutenant, Infantry.
Randall James Hogan to be second lieutenant, Ordnance Department.
Herman William Fairbrother to be second lieutenant, Infantry.
Robert Nicholas Young to be second lieutenant, Infantry.
James Frederick Phillips to be second lieutenant, Corps of Engineers.
Clement Thomas Gleason to be second lieutenant, Finance Department.
John Bixby Shepard to be second lieutenant, Infantry.
Theodore Allen Martin to be second lieutenant, Infantry.
Allen Crabill to be second lieutenant, Chemical Warfare Service.
Douglas Valentine Johnson to be second lieutenant, Field Artillery.
George Joseph Hill, jr., to be second lieutenant, Infantry.
Frederick Williams Watrous to be second lieutenant, Field Artillery.
Charles Elford Smith to be second lieutenant, Infantry.
Franz von Schilling, jr., to be second lieutenant, Field Artillery.
Raymond Edward Culbertson to be second lieutenant, Field Artillery.
Maynard Harper Carter to be second lieutenant, Infantry.
LaGrande Albert Diller to be second lieutenant, Infantry.
Robert Parker Hollis to be second lieutenant, Field Artillery.
Isaac Davis White to be second lieutenant, Cavalry.
Louis Edward Roemer to be second lieutenant, Infantry.
Max Hesmer Gooler to be second lieutenant, Infantry.
Joseph Howard Harper to be second lieutenant, Infantry.
Emerald Foster Sloan to be second lieutenant, Infantry.
Newton Farragut McCurdey to be second lieutenant, Cavalry.
John Julius Dubbelde, jr., to be second lieutenant, Infantry.
Joe Ford Simmons to be second lieutenant, Coast Artillery Corps.
Clarence Turner Hulett to be second lieutenant, Infantry.
Daniel Powell Poteet to be second lieutenant, Field Artillery.
Edmund Kennedy Ellis to be second lieutenant, Infantry.
Frank Henry Marks to be second lieutenant, Coast Artillery Corps.
Ord Gariche Chrisman to be second lieutenant, Infantry.
Gerson Kirkland Heiss to be second lieutenant, Ordnance Department.
Grover Cleveland Kinney to be second lieutenant, Infantry.
Ransom George Amlong to be second lieutenant, Quartermaster Corps.
Paul Lawrence Martin to be second lieutenant, Field Artillery.
Walter Howard DeLange to be second lieutenant, Air Service.
Robert Kelsey Haskell, to be second lieutenant, Field Artillery.
Walter Sidney Smith to be second lieutenant, Air Service.
John Owen Colonna to be second lieutenant, Corps of Engineers.
Walter Francis McGinty to be second lieutenant, Infantry.
Ralph Adel Snavely to be second lieutenant, Air Service.
Claude Armenius Thorp to be second lieutenant, Cavalry.
Everett Wilcox to be second lieutenant, Infantry.
Richard Maxwell Spengler to be second lieutenant, Infantry.
Rowland Reid Street to be second lieutenant, Infantry.
John Marquiss Whistler to be second lieutenant, Field Artillery.
Thomas Edward Meyer to be second lieutenant, Field Artillery.
Howard Miller Fey to be second lieutenant, Infantry.
George Mandeville Brien to be second lieutenant, Field Artillery.
James Howard Leusley to be second lieutenant, Field Artillery.
John Francis McGowan to be second lieutenant, Air Service.
William Henry Drummond to be second lieutenant, Field Artillery.
Lester Mavity Rouch to be second lieutenant, Field Artillery.
Charles Llewellyn Gorman to be second lieutenant, Quartermaster Corps.
Edgar Nash, jr., to be second lieutenant, Coast Artillery Corps.
Joseph Perry Catte to be second lieutenant, Infantry.
Albert Carroll Morgan to be second lieutenant, Infantry.
Randolph Burt Wilkinson to be second lieutenant, Infantry.
Perley Bernard Sancomb to be second lieutenant, Cavalry.
John LaValle Graves to be second lieutenant, Field Artillery.
Archie Arrington Farmer to be captain, Signal Corps.
Emery Williamson to be captain, Signal Corps.
Lloyd Chandler Parsons to be captain, Signal Corps.
William Nimmons Davis to be first lieutenant, Signal Corps.
John Henry Pirie to be major, Air Service.
William Francis Donnelly to be captain, Air Service.
Richard Derby to be captain, Air Service.
Joseph Howard Barnard to be lieutenant colonel, Field Artillery.
George Edgar Nelson to be major, Field Artillery.
George Wessley Sliney to be major, Field Artillery.
Joseph Scranton Tate to be captain, Field Artillery.
Richard Ernest Dupuy to be captain, Field Artillery.
Lawrence Archie Kurtz to be captain, Field Artillery.
George Francis Wooley, jr., to be first lieutenant, Field Artillery.
Edward Herendeen to be first lieutenant, Field Artillery.
William Sawtelle Kilmer to be first lieutenant, Corps of Engineers.
Hubert Stauffer Miller to be second lieutenant, Corps of Engineers.
Garland Cuzorte Black to be first lieutenant, Signal Corps.
Ellis DeVern Willis to be first lieutenant, Air Service.
Robert Gale Breene to be first lieutenant, Air Service.
Clarence Miles Mendenhall, jr., to be second lieutenant, Coast Artillery Corps.
Grayson Villard Heidt to be colonel, Quartermaster Corps.
Walter Herbert Neill to be lieutenant colonel, Quartermaster Corps.
Fred Hayes Gallup to be major, Field Artillery.
Rufus Wood Leigh to be captain, Dental Corps.
William Adalbert Sproule to be lieutenant colonel, Veterinary Corps.
Walter Fraser to be lieutenant colonel, Veterinary Corps.
Benjamin Ralph Luscomb to be first lieutenant, Medical Administrative Corps.

POSTMASTERS.

ILLINOIS.

Mode Morrison, Manteno.
William R. Watts, Paxton.
Milton T. Hunt, Warsaw.

KANSAS.

Arthur F. Rader, Smith Center.

KENTUCKY.

George T. Joyner, Bardwell.
James A. Leach, Beaver Dam.
Emma M. Oldham, Bloomfield.
James W. Burns, Catlettsburg.
Anna Glascock, Flemingsburg.
Martin Himler, Himlerville.
Jasper N. Oates, Nortonville.
Ulyses G. Willis, Versailles.

LOUISIANA.

Pierre O. Broussard, Abbeville.

MARYLAND.

Philip E. Huntt, Waldorf.

MICHIGAN.

Ernest Paul, Pigeon.

MISSISSIPPI.

Louis B. Phillipps, Eupora.

NEW JERSEY.

Milton K. Thorp, Hackettstown.

OKLAHOMA.

Forrest L. Strong, Clinton.
Elmer D. Rook, Sayre.

PENNSYLVANIA.

Frank J. Woodward, Media.
Mary E. Leavitt, Sharon Hill.

VERMONT.

Vernie S. Thayer, Readsboro.

VIRGINIA.

Louis H. Stoneman, Columbia.
Ernest P. Burgess, Fork Union.
Francis L. Armentrout, Goshen.
Leonard A. Hodges, Rockymount.

WEST VIRGINIA.

Harry R. Adams, Spencer.

WISCONSIN.

Floyd D. Bartels, Blue River.
John B. Schneller, Neenah.

HOUSE OF REPRESENTATIVES.

MONDAY, *February 5, 1923.*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Blessed Father in heaven, a power full of mercy and compassion belongeth unto Thee, and we are not afraid. In coming unto Thee there is an inspiring comfort. Speak graciously to all hearts and reveal unto us that which we are unable to understand. Keep us close to the people, lest we lose the touch of sympathy and thus fail to know their real needs. The Lord quicken the public conscience. Make all men to know that the chief glory of a nation lies in its high moral tone. Preserve us as a people from all sins that bring destructive self-reproach. Lift us up to that high moral plane that would cause heaven to smile to see a country so blest. Through Jesus Christ, our Lord. Amen.

The Journal of the proceedings of Saturday, February 3, 1923, was read and approved.

MILITARY INTELLIGENCE DIVISION.

Mr. McKENZIE. Mr. Speaker, a few days ago there was some discussion in the House relative to the Military Intelligence Division of the War Department. The gentleman from Alabama [Mr. HUDDLESTON] made some remarks, and the gentleman from Texas [Mr. BLANTON] took occasion to make some remarks on that subject. I ask leave to extend my remarks by inserting in the RECORD a statement from the War Department defining the peace-time activities of the Military Intelligence Division of the War Department, and a letter from Secretary Weeks to Mr. W. G. Lee, president of the Brotherhood of Railway Trainmen; and also a letter to Mr. Samuel Gompers, of the American Federation of Labor.

Mr. STAFFORD. Will it be agreeable to have this go in the back part of the RECORD?

Mr. McKENZIE. Yes.

The SPEAKER. It ought to go there.

Mr. STAFFORD. The other day we had a dissertation on the dog and some other animals right in the body of the House proceedings. Let it go in the back part of the RECORD.

The SPEAKER. That is where it properly should go.

Mr. LONDON. Mr. Speaker, what has that dissertation on the dog to do with the Secretary of War? [Laughter.]

Mr. BLANTON. This is a dissertation on men. It has no reflection on that brave young lieutenant out in the Northwest who is trying to do his duty, has it?

Mr. McKENZIE. As I understand it this is simply a statement of facts. I am not acquainted with the young officer. I do not know him at all. I do not know whether he is a brave man or acts wisely.

Mr. BLANTON. There are letters there from the Secretary of War to the brotherhood chiefs and to Mr. Gompers concerning this matter.

Mr. McKENZIE. The purpose is simply to put before the country the correct status.

Mr. BLANTON. I have no objection to general rules going to the country, but the gentleman will remember that, because a man tries to do his duty as the Attorney General did, some of these people try to get him into hot water.

Mr. LONDON. Mr. Speaker, I demand the regular order.

The SPEAKER. Is there objection to the request of the gentleman from Illinois that he may extend his remarks in the manner indicated, to be inserted in the back of the RECORD.

There was no objection.

Mr. McKENZIE. Mr. Speaker, under the leave granted to me to extend my remarks in the RECORD I include the following statement of the Secretary of War given to press on incident at Vancouver Barracks, Wash.:

STATEMENT OF SECRETARY OF WAR GIVEN TO PRESS ON INCIDENT AT VANCOUVER BARRACKS, WASH.

It having recently come to the attention of the Secretary of War that the unauthorized activities of subordinate officers have in a few isolated instances occasioned the possibility of a public misunderstanding of the proper function of military intelligence in time of peace, he has directed the publication of the following statement.

The surveillance of domestic organizations or groups is not at all the purpose of the Military Intelligence Division, the authorized activities of which are clearly set forth in Army Regulations, 10–15, as follows:

"The Military Intelligence Division is charged, in general, with those duties of the War Department General Staff which relate to the collection, evaluation, and dissemination of military information.

"The Military Intelligence Division is specifically charged with the preparation of plans and policies and the supervision of all activities concerning:

"(1) Military topographical surveys and maps.

"(2) The custody of the General Staff map and photograph collection.

"(3) Military attachés, observers, and foreign-language students.

"(4) Intelligence personnel of all units.

"(5) Liaison with other intelligence agencies of the Government and with duly accredited foreign military attachés and missions.

"(6) Codes and ciphers.

"(7) Translations.

"(8) Relations with the press.

"(9) Censorship in time of war."

During the World War our widespread military interests necessitated special measures which resulted in authority being given for the Military Intelligence Division to conduct investigations of far-reaching character. During the period of demobilization and contraction of the Military Establishment to a normal peace-time basis, activities of this nature were transferred as rapidly as seemed practicable to the proper civil agencies.

Not only have the instructions which were in effect for the operation of the Military Intelligence Service during the war and shortly thereafter been rescinded but repeatedly since that time instructions have been issued emphasizing the fact that the military authorities are expressly prohibited from making investigations in time of peace other than within the Military Establishment.

The following paragraphs quoted from the above-mentioned instructions indicate the intention of the War Department:

"At certain posts and stations along the coasts and frontiers where information in connection with actual or theoretical plans of defense is required the necessity for intelligence officers is clear. It is also necessary to appoint the intelligence officers prescribed by the Tables of Organization and to employ them in training their personnel in combat intelligence. But it is no longer necessary to have intelligence officers at all posts and stations in the United States, as the conditions requiring their employment have long ceased to exist.

"With the foregoing in mind, a corps area commander will appreciate the necessity for giving his personal attention to seeing that his staff are correctly oriented as to intelligence work in general and as to its extremely limited application to domestic affairs. It is a case of not only revoking obsolete orders and instructions but of guiding such intelligence officers as are retained to a correct mental conception of the duties of military intelligence within the United States."

WAR DEPARTMENT, *Washington.*

Mr. W. G. LEE,
President Brotherhood of Railroad Trainmen,
Cleveland, Ohio.

DEAR MR. LEE: It has recently come to my attention that the intelligence officer at Vancouver Barracks, Wash., has sent out a circular letter to law-enforcement officials of local communities intimating that the Military Intelligence Division of the Army is interested in the railroad brotherhoods as elements potentially hostile to the purposes of this Government. This letter was printed on page 122 of The Nation, January 31, 1923.

The Military Intelligence Division conducts no investigations in time of peace of the nature indicated in this young officer's letter. I feel assured that you will agree with me that his assertions are so absurd that the War Department should not accord the dignity of a denial to the suggestion that organized labor is looked upon as a hostile organization. I have directed a thorough investigation of the matter and shall apply such corrective and disciplinary measures as may prove warranted.

I sincerely regret this incident and trust that you will look upon it only as the immature action of a young man whose enthusiasm has completely dwarfed his judgment.

Yours very truly,

JOHN W. WEEKS,
Secretary of War.

WAR DEPARTMENT,
Washington, January 30, 1923.

Mr. SAMUEL GOMPERS,
President the American Federation of Labor,
901 Massachusetts Avenue NW., Washington, D. C.

DEAR MR. GOMPERS: It was recently brought to my attention that a young intelligence officer at Vancouver Barracks, Wash., had sent out a circular letter to law-enforcement officials in the vicinity of that post. In this letter it is intimated that the Intelligence Service of the Army is interested in the American Federation of Labor as an element potentially hostile to the Government of this country. I have since learned that this letter has been printed on page 122 of the Nation of January 31, 1923.

The Military Intelligence Division does not conduct in time of peace any investigations of the nature indicated by the above-mentioned officer. I am sure you will agree with me that the utterly ridiculous