Congressional Record

SEVENTY-FOURTH CONGRESS, FIRST SESSION

SENATE

TUESDAY, AUGUST 6, 1935

(Legislative day of Monday, July 29, 1935)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. ROBINSON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Monday, August 5, 1935, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

Mr. LEWIS. I note the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Costigan	Lewis	Reynolds
Ashurst	Davis	Logan	Robinson
Austin	Dickinson	Lonergan	Russell
Bachman	Dieterich	McAdoo	Schall
Bankhead	Donahey	McCarran	Schwellenbach
Barbour	Duffy	McGill	Sheppard
Barkley	Fletcher	McKellar	Shipstead
Black	Frazier	McNary	Smith
Borah	George	Minton	Steiwer
Brown	Gerry	Moore	Thomas, Okla.
Bulkley	Gibson	Murphy	Thomas, Utah
Bulow	Glass	Murray	Townsend
Burke	Gore	Neely	Trammell
Byrd	Guffey	Norbeck	Tydings
Byrnes	Hale	Norris	Vandenberg
Capper	Hastings	Nye	Van Nuys
Caraway	Hatch	O'Mahoney	Wagner
Chavez	Hayden	Overton	Walsh
Clark	Johnson	Pittman	Wheeler
Connally	King	Pope	White
Copeland	La Follette	Radcliffe	

Mr. LEWIS. I announce that the Senator from West Virginia [Mr. HOLT] is absent because of illness, and that the Senator from North Carolina [Mr. BAILEY], the junior Senator from Mississippi [Mr. BILBO], the Senator from Massachusetts [Mr. COOLIDGE], the senior Senator from Mississippi [Mr. HARRISON], the Senator from Louisiana [Mr. LONG], the Senator from Connecticut [Mr. MALONEY], and the Senator from Missouri [Mr. TRUMAN] are necessarily detained from the Senate. I make this announcement for the day.

Mr. SCHWELLENBACH. I announce that my colleague the senior Senator from Washington [Mr. BONE] is absent because of illness.

Mr. AUSTIN. I announce that the Senator from Wyoming [Mr. CAREY], the Senator from New Hampshire [Mr. KEYES], and the Senator from Rhode Island [Mr. METCALF] are necessarily detained from the Senate.

Mr. VANDENBERG. I repeat the announcement heretofore made by me as to the absence because of illness of my colleague the senior Senator from Michigan [Mr. COUZENS].

The VICE PRESIDENT. Eighty-three Senators have answered to their names. A quorum is present.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a resolution adopted at a meeting of the Northwest Shippers' Advisory Board at Duluth, Minn., favoring the enactment of legislation providing for the elimination of the long- and short-haul clause from the fourth section of the Interstate Commerce Act, which was referred to the Committee on Interstate Commerce.

He also laid before the Senate petitions of several citizens of New York City, N. Y., praying for an investigation of charges filed by the Women's Committee of Louisiana relative to the qualifications of the Senators from Louisiana (Mr. LONG and Mr. OVERTON), which were referred to the Committee on Privileges and Elections.

He also laid before the Senate a letter from Hilda Phelps Hammond, chairman of the Women's Committee of Louisiana, enclosing a preamble and resolution adopted by that committee as a tribute to the late Senator Robert B. Howell, of Nebraska, especially in connection with his services as chairman of a special committee investigating the election of Mr. OVERTON as a Senator from the State of Louisiana, which, with the accompanying paper, was referred to the Committee on Privileges and Elections.

He also laid before the Senate a petition of sundry citizens of Swanton, Ohio, praying for the prompt enactment of the so-called "McGroarty old-age-pension bill", which was ordered to lie on the table.

Mr. LA FOLLETTE presented the following resolution of the Assembly of the State of Wisconsin, which was referred to the Committee on Finance:

A resolution commending President Roosevelt on his distribution-of-wealth tax program

Whereas President Roosevelt has announced a program which uses taxation as a means to provide a more equitable means of taxation, and which recognized the sound principle that taxes should be levied on the basis of ability to pay; and

Whereas such taxes are necessary to provide adequate public service, welfare, and security; and

Whereas it is only by levying taxes on the basis of ability to pay that recovery will be promoted; and

Whereas a great majority of the candidates for public office in the last election campaigned on the proposition that they were squarely behind the President: Now, therefore, be it

Resolved by the assembly, That the Assembly of the Wisconsin Legislature commends Franklin Delano Roosevelt, President of the United States, on his recently announced more equitable tax program; be it further

Resolved, That the assembly urges the Congress of the United States to enact legislation making retroactive to January 1, 1935, the provisions of the proposed income, inheritance, and gift taxes, and that the Wisconsin Representatives in the Congress be requested to support such legislation; be it further

Resolved, That properly attested copies of this resolution be sent to the President of the United States and to the two United States Senators from Wisconsin.

RESOLUTION OF CENTRAL LABOR COUNCIL OF BUFFALO, N. Y.

Mr. WAGNER presented a resolution adopted by the Central Labor Council of Buffalo and Vicinity, N. Y., which was ordered to lie on the table and to be printed in the RECORD, as follows:

Resolution adopted by the Central Labor Council at the meeting of July 25, 1935

Whereas the National Chamber of Commerce, State chambers of commerce, city chambers of commerce, manufacturers' association, Steel Institute, national and international bankers, automobile manufacturers, and the daily press, with few exceptions, and some of the wits and the witless on the radio have helped to swell the chorus attacking the policies of President Roosevelt in an effort to get the people to condemn these policies; and

Whereas the aforementioned groups were responsible to a large degree for creating the condition which they themselves were unable to better in any way, leaving it to President Roosevelt to clean up the mess, while they crawled into their kennels to wait until something was done which would enable them to resume business at the old stand. Now that they have emerged, and are standing in the sunlight of the hope created by the endeavors of President Roosevelt, they have gotten back some of their courage and a great deal of the venom they used to have and are hoping that they will be successful in their machinations; and

Whereas they are relying upon the reputed short memories of the workers to create that psychology necessary to defeat the President's policies: Therefore be it

Resolved, That the Central Labor Council of Buffalo and Vicinity, in regular meeting assembled on July 25, 1935, condemn the

efforts of these groups of employers, bankers, and newspapers to destroy the things that saved them when they were utterly helpless and unable to do anything for themselves or anyone else, and we serve notice on them to disabuse their minds of the idea that the workers will forget; and be it further

Resolved, That we endorse the efforts of President Roosevelt to bring order out of the chaos brought about by the gentlemen who are now condemning him, and we hope and trust that the President will be successful in getting Congress to adopt all of the measures the people so heartily endorsed, and do now endorse, and that he will be successful in his attempt to "drive the money changers out of the temple", and that we, the representatives of the workers, shall do everything we possibly can to help in bringing this about. The issuance of propaganda attacking and seeking to destroy every effort to help those who are unable to help themselves we are determined shall not succeed.

REPORTS OF COMMITTEES

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, to which was referred the bill (H. R. 6602) for the relief of Dr. Ernest B. Dunlap, reported it without amendment and submitted a report (No. 1202) thereon.

He also, from the same committee, to which was referred the bill (S. 3169) for the relief of Charles E. La Vatta, reported it with amendments and submitted a report (No. 1204) thereon.

He also, from the same committee, to which were referred the following bills, reported them each with an amendment and submitted reports thereon:

S. 3182. A bill authorizing an appropriation to carry out the provisions of section 26 of the agreement with the Muskogee or Creek Tribe of Indians, approved March 1, 1901 (Rept. No. 1203); and

S. 3268. A bill to authorize and direct the Secretary of the Interior to make a lease for the Agua Caliente or Palm Springs Band of Mission Indians of California (Rept. No. 1201).

Mr. BARKLEY, from the Committee on the Library, to which was referred the joint resolution (H. J. Res. 265) pertaining to an appropriate celebration of the four hundredth anniversary of the expedition of Hernando De Soto, reported it without amendment.

Mr. KING, from the Committee on Territories and Insular Affairs, to which was referred the joint resolution (H. J. Res. 290) to amend an act entitled "An act providing for the ratification of Joint Resolution No. 59 of the Legislature of Puerto Rico, approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico", approved June 18, 1934, reported it without amendment and submitted a report (No. 1205) thereon.

BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. MINTON:

A bill (S. 3374) for the relief of the State of Indiana; to the Committee on the Judiciary.

By Mr. BYRNES and Mr. STEIWER:

A bill (S. 3375) providing for the cash payment of adjusted-service certificates, and for other purposes; to the Committee on Finance.

By Mr. MURPHY:

A joint resolution (S. J. Res. 170) authorizing the President to reduce customs duties on manufactured articles if processing taxes on agricultural commodities shall be held invalid; to the Committee on Finance.

By Mr. POPE:

A joint resolution (S. J. Res. 171) providing for the establishment of a game management supply depot and laboratory, and for other purposes; to the Committee on Agriculture and Forestry.

THE MERCHANT MARINE

Mr. COPELAND. Mr. President, I ask consent to introduce a ship subsidy bill. I ask that the bill may be printed and referred to the Committee on Commerce. I hope that tomorrow the committee may take action upon it.

This is a bill which has been worked out by a committee of the administration, and is supposed to remedy all the defects of the bill which the Commerce Committee presented sometime ago. We hope that before the conclusion of the present session the bill may be enacted into law.

The VICE PRESIDENT. Without objection, the bill will be received, printed, and appropriately referred.

The bill (S. 3376) to develop a strong American merchant marine, to promote the commerce of the United States, to aid national defense, and for other purposes, was read twice by its title and referred to the Committee on Commerce.

AMENDMENT OF EMERGENCY FARM MORTGAGE ACT

Mr. SHEPPARD submitted an amendment intended to be proposed by him to the bill (H. R. 6776) to amend section 36 of the Emergency Farm Mortgage Act of 1933, as amended, which was referred to the Committee on Banking and Currency and ordered to be printed.

AMENDMENT TO TAX BILL

Mr. POPE submitted an amendment intended to be proposed by him to the bill (H. R. 8974) to provide revenue, equalize taxation, and for other purposes, which was referred to the Committee on Finance and ordered to be printed.

REGULATION OF COMMERCE IN PETROLEUM—AMENDMENT

Mr. THOMAS of Oklahoma submitted an amendment intended to be proposed by him to the bill (S. 2027) to regulate commerce in petroleum, and for other purposes, which was ordered to lie on the table and to be printed.

STATE RIGHTS—ADDRESS BY SENATOR SMITH

Mr. GEORGE. Mr. President, I ask unanimous consent to have printed in the RECORD an able address on the subject of State rights, delivered by the distinguished senior Senator from South Carolina [Mr. SMITH] on July 31, 1935, before the annual reunion of Confederate veterans of South Carolina, at the University of South Carolina, Columbia, S. C.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

Mr. Chairman, veterans of the Confederate Army, ladies, and gentlemen, I deem it a great honor, and an opportunity of grave responsibility to address you, the few remaining veterans of that desperate struggle between the States. My subject is "State Rights." The principles which it, State rights, embraces, have, through all the ages and under all forms of government, been the ultimate hope and desire of mankind. Individual liberty, local self-government, the right of the governed to determine the laws by which they shall be controlled are embodied in our dual system of government. Our dual form of government was not born of a theory but was born of bitter experience under conditions never paralleled in all the history of human experience. To these shores came those who belonged to that breed who for centuries had struggled to achieve for themselves the right to determine the form of laws under which they should live. The strong hands of emperors, monarchs, dictators, and kings had suppressed the spirit of individualism, the right to participate directly or indirectly in the affairs of government; had by organized force and wealth suppressed the expression of these principles, but these principles being inherent and inalienable flared anew throughout the pages of history. This invincible spirit gained its first great victory after the Battle of Runnymede, when it wrung Magna Carta from King John. The descendants of that rugged breed were set down on the shore of America in a wilderness, as primeval as the morning of creation. Never in the history of all the world has there been set a stage for the development of individualism and physical and moral stamina such as this provided. Never was there a stage set where grim necessity forced upon each the demonstration of individual capacity to achieve for himself out of the most adverse circumstances those things necessary for life, liberty, and reasonable subsistence.

Whatever was achieved, the individual achieved—no government handed him a largess—no wealth save the wealth of his own brain and muscle were available. He counted his wealth in the terms of his own individual achievements. He felled the forests, he fought the savage, he achieved and enjoyed to the fullest extent the result of his own efforts. He had in the most abundant form the opportunity to exercise those principles for which his forebears had fought through all the ages of civilization. And there was developed on the shore of America that spirit and character which created that form of government which has made America the greatest Nation on earth. These people worked out for themselves in each of the Thirteen Colonies such laws and customs as were adapted to their own needs, ideas, and resources. The history of the meetings of the burgesses and the town meetings and the different colonial forms of government are rich with the evidence of that spirit of democracy, the spirit of individualism, local self-government, and home rule. When the oppressive hand of despotic power was laid upon the Colonies and taxes were imposed, not for their benefit but for the benefit of the King and the furtherance of his own selfish purposes, the Colonies

revolted. Not one of the Colonies surrendered, or even intimated a surrender, of any of those things that they had achieved, but they confederated for the preservation of the right to govern themselves and to enjoy unmolested and without dictatorship what they had achieved. When they had achieved their independence, it is significant to note that the first article of the treaty of peace between Great Britain and the Colonies reads as follows:

"ARTICLE I. His Britannic Majesty acknowledges the said United States, viz, New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut and New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such", etc.

After their independence had been achieved and His Britannic Majesty in the treaty of peace had acknowledged that each of the Thirteen Colonies was free and independent, they realized that the independence of each might subsequently be jeopardized, and, therefore, to form a more perfect union, for the preservation of the independent sovereignty of each, they entered into a mutual agreement that created a Federal Government that would defend them from foreign encroachment, define their mutual relationship to each other in those domestic affairs which they could better do collectively rather than individually. The Constitution, therefore, is not to exert sovereignty over the States, but it is an instrument for the preservation inviolate of the sovereignty of each State.

The history of the ratification of the Constitution reveals the determination of each State to preserve to the fullest possible measure its sovereignty. The contention throughout the discussion for the ratification by the 13 States was what power they should delegate to the Federal Government.

There was finally agreed, passed, and ratified, the seven original articles, but the several States, or some of them, in ratifying these seven articles, realized that they were not sufficiently clear—that the probability of enlarged interpretation might infringe upon the rights of the several States. There was an agreement to the effect that the first Congress should define clearly the scope of the original seven articles. Hence, there was adopted by that Congress, and submitted to the several States the 10 amendments, which are known as the "Bill of Rights", and which was subsequently ratified by the States. It has been said that the Constitution comprising the first seven articles, "was at once seen to be sadly defective. Other men than those who framed it, took it in hand. The two vital defects were the absence of a guarantee to the citizens of protection against the exercise of despotic power by the new Government. There was an immediate demand for a bill of rights." Mark you, as I have heretofore said, every State realized and rejoiced in the fact that they had achieved their own independence and sovereignty, that whatever kind of government they had set up, whatever laws governing their own internal and domestic affairs, was theirs, and that through 7 long, bloody years, they had struggled to achieve independence, they did not propose, in setting up a government, to defend these sovereign and inalienable rights, to actually create a Frankenstein, that might ultimately destroy or nullify all those precious principles and privileges for which they had suffered and many had died. Now, they submitted to the several States the first 10 amendments, and what are these first 10 amendments?

"Paraphrasing them", in the well-chosen words of a distinguished American, "they are the voice of the people saying to their Federal Government, 'Thou shalt not deprive us of freedom of speech or of a free press. Thou shalt not seek to control the manner in which we worship God. Thou shalt accord to every one of us the right of trial by jury. Thou shalt not unreasonably search our houses or seize our private papers. Thou shalt not take our property except by due process of law and with just compensation.' Thus the people voiced commands to be obeyed by their Government. Then, as if to make assurance doubly sure, they said to their Government, 'We have delegated certain powers to you. Go ahead and exercise them. And remember that we reserve for the States and for ourselves, the people, all powers not delegated. Keep your hands off until you get our permission in the manner prescribed.' There is your tenth amendment. In a very real sense it is the keystone in the arch of the Federal Union of States. Blast it away and you transform our whole Government from that of a Federal Union to one imperial in character."

Jefferson, in a letter to Madison, September 20, 1787—Jefferson, the patron saint of the Democratic Party, the founder of that party whose cardinal principle is individual liberty, said:

"I will now tell you what I do not like: First, the omission of a bill of rights providing clearly and without the aid of sophism for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal and unremitting force of the habeas corpus laws, and trial by jury in all matter of fact triable by the laws of the land and not by the laws of nations. Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference."

In a letter to Francis Hopkins, December 21, 1788, Jefferson said:

"I am happy to find our new Constitution is accepted and our Government likely to answer its purpose better. I hope that the addition of a bill of rights will bring over to it a greater part of those now opposed to it, and that this may be added without submitting the whole to the risk of a new convention."

In a letter to Judge William Johnson, June 12, 1823, Jefferson said:

"I have been blamed for saying that a prevalence of the doctrines of consolidation would one day call for reformation or revolution. I answer by asking if a single State of the Union would have agreed to the Constitution had it given all powers to the General Government? If the whole opposition to it did not proceed from the jealousy and fear of every State being subjected to the other States in matters merely its own? And if there is any reason to believe the States more disposed now than then, to acquiesce in this general surrender of all their rights and powers to a consolidated government, one and undivided."

Now, I hope we have a clear understanding of the conditions under which the Constitution was drafted, discussed, ratified, and the Bill of Rights added. Bear in mind that the Revolutionary War was fought and won to obtain the independent sovereignty of each State, and that the Constitution was written and ratified with the Bill of Rights added to preserve the sovereignty of the States. The history of our country from the establishment of the first colony up to the present time has been the preservation of the sovereign rights of the States and the preservation of local self-government home rule.

Subsequent events have caused us from time to time to lose sight of these necessary principles upon which rests the preservation of our democratic institution, the ultimate loyalty of the citizens to their Government. I say from time to time we have lost sight of these vital principles, and have, as now, come dangerously near to the verge of centralization, to the extension of Federal power to the destruction of these principles upon which our Government is founded and for which principles our soil has been watered by the blood of devoted patriots.

I realize that when through some combination of circumstances a disastrous depression may bring poverty and distress to American citizens, that they are likely to turn to any source which may promise relief from their immediate suffering, and endanger the precious principle of local self-government and individual rights. In other words, they may be tempted to sell their birthright for a mess of pottage; to sell for dollars and cents those principles that their forbears deemed more precious than life itself.

The long-drawn-out struggle of the Revolutionary War, the bloody tracks around Valley Forge, the heroic deaths at Cowpens and Kings Mountain, and the final surrender of the invading forces at Yorktown are the glorious examples of what our forbears thought of these principles. Poorer than any depression has ever made us, suffering more materially, more bitterly, and surrounded with infinite dangers, they recked not of money or life to achieve and hold fast these principles. Yet, here in South Carolina, above all States, are some advocating a departure from the fundamental principles of democracy, in spite of the glorious history and the traditions of the Palmetto State, all dear to my heart and to the hearts of true Carolinians. It is my proud privilege as Carolina's senior Senator, for over a quarter of century, to deny the implication that my State can be seduced by the hope of financial reward to give up the reserved powers of her sovereign rights.

Here I am, the descendant of those who made this country glorious, coming to South Carolina, the home of the immortal John C. Calhoun, to explain as best I may and to plead with all the power I have for the maintenance of the principles of our dual form of government. The War between the States and the ultimate achievement by the Union forces did not abate one jot or tittle or modify in any respect the Bill of Rights or the dual form of government. All it did was to settle, so far as force could settle it, the question of whether the Union of States as expressed in the Constitution was one and indivisible.

The real cause of the Civil War was whether a State had the right to secede from the Union.

Mr. Calhoun had, some years before the war, contended that South Carolina was willing to bear her proper share of taxes, however burdensome, that were laid by the Federal Government within the powers granted by the Constitution; but he contended, and rightly, that Congress had no constitutional power to impose tariff duties for "protection" which favored a group of States at the expense of other States, and that a protective-tariff act laid an illegal and unjust burden upon South Carolina for the express purpose of benefiting certain other States. I invite any student to find, if he can, any provision of the Federal Constitution that grants power to Congress to enact a protective-tariff law. In this connection, I remind you that in national Democratic platforms there will be found planks asserting the Democratic doctrine that protective-tariff laws are unconstitutional.

The platform of 1860, upon which Lincoln was nominated, has this resolution:

"*Resolved*, That the maintenance inviolate of the rights of the States, and especially the right of each State, to order and control its own domestic institutions according to its own judgment exclusively is essential to that balance of power on which the perfection and endurance of our political fabric depends * * *."

It has been proclaimed in the public press by a South Carolinian that all State rights disappeared when Lee surrendered under the apple tree at Appomattox, and that 48 sovereign States, with all their reserve power, surrendered their rights, too.

I am delighted beyond expression that since there has been a suggestion made that we ought to have amendments to the Constitution striking at the very heart of State rights, namely, granting to the Federal Government the right to regulate the social and economic affairs of the States, there has been indignant and

determined opposition expressed in practicaly every State, regardless of party affiliations.

I now quote not from the South alone but from the different parts of the United States what leaders of thought and the defenders of the Constitution have to say.

I now give you an extremely interesting and enlightening statement, in view of the author of it and the time at which it was made and the present agitation.

I quote from President Roosevelt, who was then Governor of New York. He delivered it in New York March 2, 1930. I am incorporating here parts of the speech that the present President made, quoted in the New York Times of Monday, March 3, 1930, in a specially prepared address. The following is an extract from the text of Governor Roosevelt's speech:

"The proper relations between the Government of the United States and the governments of the separate States thereof depend entirely, in their legal aspects, on what powers have been voluntarily ceded to the central government by the States themselves. What these powers of government are is contained in our National Constitution, either by direct language, by judicial interpretation thereof during many years, or by implication so plain as to have been recognized by the people generally.

"The United States Constitution has proved itself the most marvelous compilation of rules of government ever written. Drawn up at a time when the population of this country was practically confined to a fringe along our Atlantic coast, combining into one Nation for the first time scattered and feeble States, newly released from the autocratic control of the English Government, its preparation involved innumerable compromises between the different Commonwealths. Fortunately for the stability of our Nation, it was already apparent that the vastness of our territory presented geographical and climatic differences which gave to the States wide differences in the nature of their industry, their agriculture, and their commerce. Already the New England States had turned toward shipping and manufacturing, while the South was devoting itself almost exclusively to the easier agriculture which a milder climate permitted. Thus already it was clear to the framers of our Constitution that the greatest possible liberty of self-government must be given to each State, and that any national administration attempting to make all laws for the whole Nation, such as was wholly practical in Great Britain, would inevitably result at some future time in a dissolution of the Union itself.

"UPHOLDS RIGHTS OF MINORITY

"The preservation of this home rule by the States is not a cry of jealous Commonwealths seeking their own aggrandizement at the expense of sister States. It is a fundamental necessity if we are to remain a truly united country. The whole success of our democracy has not been that it is a democracy wherein the will of a bare majority of the total inhabitants is imposed upon the minority, but because it has been a democracy where, through a dividing of government into units called 'States', the rights and interests of the minority have been respected and have always been given a voice in the control of our affairs. This is the principle on which the little State of Rhode Island is given just as large a voice in our National Senate as the great State of New York.

"The moment a mere numerical superiority by either States or voters in this country proceeds to ignore the needs and desires of the minority, and, for their own selfish purposes or advancement, hamper or oppress that minority, or debar them in any way from equal privileges and equal rights, that moment will mark the failure of our constitutional system.

"For this reason a proper understanding of the fundamental powers of the States is very necessary and important. There are already, I am sorry to say, danger signals flying. A lack of study and knowledge of the matter of the sovereign power of the people through State government has led us to drift insensibly toward that dangerous disregard for minority needs which marks the beginning of autocracy. Let us not forget that there can be an autocracy of special classes or commercial interests which is utterly incompatible with a real democracy whose boasted motto is 'of the people, by the people, and for the people.' Already the more thinly populated agricultural districts of the West are bitterly complaining that rich and powerful industrial interests of the East have shaped the course of government to selfish advantage.

"The doctrine of regulation and legislation by 'master minds', in whose judgment and will all the people may gladly and quietly acquiesce, has been too glaringly apparent at Washington during these last 10 years. Were it possible to find 'master minds' so unselfish, so willing to decide unhesitatingly against their own personal interests or private prejudices; men almost godlike in their ability to hold the scales of justice with an even hand—such a Government might be to the interests of the country, but there are none such on our political horizon, and we cannot expect a complete reversal of all the teachings of history.

"STRESSES HOME RULE

"Now, to bring about government by oligarchy masquerading as democracy it is fundamentally essential that practically all authority and control be centralized in our National Government. The individual sovereignty of our States must first be destroyed, except in mere minor matters of legislation. We are safe from the danger of any such departure from the principles on which this country was founded just so long as the individual home rule of the States is scrupulously preserved and fought for whenever they seem in danger.

"Thus it will be seen that this home rule is a most important thing—the most vital thing—if we are to continue along the course on which we have so far progressed with such unprecedented success.

"Let us see, then, what the rights of the different States, as distinguished from the rights of the National Government, are. The Constitution says that 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people', and article IX, which precedes this, reads: 'The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.'

"DEFINES FEDERAL POWER

"Now, what are the powers delegated to the United States by the Constitution? First of all, the National Government is entrusted with the duty of protecting any or all States from the danger of invasion or conquest by foreign powers by sea or land, and in return the States surrender the right to engage in any private wars of their own. This involves, of course, the creation of the Army and Navy and the right to enroll citizens of any State in time of need. Next is given the treaty-making power and the sole right of all intercourse with foreign states; the issuing of money, and its protection from counterfeiting; the regulation of weights and measures so as to be uniform; the entire control and regulation of commerce with foreign nations and among the several States; the protection of patents and copyrights; the erection of minor Federal tribunals throughout the country, and the establishment of post offices are specifically enumerated. The power to collect taxes, duties, and imposts, to pay the debts for the common defense and general welfare of the country is also given to the United States Congress, as the law-making body of the Nation. * * *

"On such a small foundation have we erected the whole enormous fabric of Federal Government which costs us now $3,500,000,000 every year; and if we do not halt this steady process of building commissions and regulatory bodies and special legislation like huge inverted pyramids over every one of the simple constitutional provisions, we will soon be spending many billions of dollars more. * * *

"So much for what may be called the 'legal' side of national versus State sovereignty. But what are the underlying principles on which this Government is founded? First and foremost, the new thought that every citizen was entitled to live his own life in his own way so long as his conduct did not injure any of his fellowmen. This was to be a new land of promise, where a man could worship God in the way he saw fit; where he could rise by industry, by thrift, by intelligence, to the highest places in the Commonwealth, secure from tyranny, secure from injustice—a free agent—the maker or the destroyer of his own destiny. * * *

"On this foundation of the protection of the weak against the strong, stone by stone, our entire edifice of government has been erected. As the individual is protected from possible oppression by his neighbors, so the smallest political unit, the town, is, in theory at least, allowed to manage its own affairs, secure from undue interference by the larger unit of the county, which, in turn, is protected from mischievous meddling by the State.

"This is what we call the doctrine of 'home rule', and the whole spirit and intent of the Constitution is to carry this great principle into the relations between the National Government and the government of the States.

"Let us remember that from the very beginning differences in climate, soil conditions, habits, and modes of living in States separated by thousands of miles rendered it necessary to give the fullest individual latitude to the individual States. Remembering that the mining States of the Rockies, the fertile savannahs of the South, the prairies of the West, and the rocky soil of the New England States created many problems, introduced many factors in each locality, which have no existence in others, it is obvious that almost every new or old problem of government must be solved, if it is to be solved to the satisfaction of the people of the whole country, by each State in its own way.

"There are many glaring examples of where exclusive Federal control is manifestly against the scheme and intent of our Constitution.

"It is, to me, unfortunate that under a clause in our Constitution, itself primarily intended for an entirely different purpose, our Federal courts have been made a refuge by those who seek to evade the mandates of the State judiciary.

"I think if we understand what I have tried to make clear tonight as to the fundamental principles on which our Government is built, and what the underlying idea of the relations between individuals and States, and States and the National Government should be, we can all of us reason for ourselves what should be the proper course in regard to Federal legislation on any of the questions of the day."

These words of Governor Roosevelt are the very essentials of Jeffersonian democracy.

It has been correctly said that "the powers delegated to the Federal Government are few and defined; those to remain in the hands of the State government are numerous and indefinite. What we need is not more Federal Government but better local government. Once the evasion of local responsibilities becomes a habit, there is no knowing how far the consequences may reach. Every step in such a progression will be unfortunate alike for States and Nation."

The late President Coolidge, in defense of State rights, said: "One insidious practice which sugar-coats the dose of Federal intrusion is the division of expense for public improvements or services between State and National Treasuries. The ardent State

rights advocate sees in this practice a vicious weakening of the State system. The extreme federalist is apt to look upon it in cynical fashion, as bribing the States into subordination. The average American, believing in our dual sovereignty system, must feel that the policy of national doles to the States is bad and may become disastrous. We may go on yet for a time with the easy assumption that 'if the States will not, the Nation must.' But that way lies trouble. When the National Treasury contributes half, there is temptation to extravagance by the State. We have seen some examples in connection with the Federal contributions to road building. Yet there are constant demands for more Federal contributions. Whenever by that plan we take something from one group of States we do an economic injustice on one side and a political injury on the other. We impose unfairly on the strength of the strong and we encourage the weak to indulge their weakness."

The invitation to repeal or to modify the tenth amendment to the Federal Constitution in order to transfer to, or invest in, the Congress of the United States power to pass laws regulating all of the internal concerns of the several States, or to regulate "the social and economic problems of the States" as it is flippantly phrased by some whose mental ligaments must have become temporarily twisted, is a proposal so astounding as to justify the righteous indignation and stern opposition of thoughtful Americans.

The Constitution of the United States, including, of course, the first 10 amendments, creates the three departments—the executive, the legislative, and the judicial, with checks and balances contained therein, constitute fundamental principles of the dual form of the American Government. No part of the triangle shall be removed.

The powers of the Federal Government under the Constitution are limited and were so intended. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Therefore, the reserved powers of the States are innumerable and undefined.

Who in this audience would be willing to surrender to the Federal Government the right to pass laws regulating marriage and divorce, including the right to permit miscegenation, or the right to determine under what conditions our colleges, public and private schools shall be operated, or to regulate the entire public school system in every part of South Carolina, or the right to control, supervise, or direct the elective franchise of this State, or the right to prescribe qualifications for local, county, and State officers, or the right to regulate and determine the system of taxation, or the right to make laws and regulations as to the distribution of real and personal property, or regulate the devolution of title of property by deed and will? Lastly, are you willing to invest the Federal Government with power to send Federal troops to South Carolina at any time it sees fit to supervise, regulate, and control the local concerns and affairs of South Carolina? Knowing the people of this State and the traditions of South Carolina as I do, I am confident your answer is an emphatic "No."

I desire to refer briefly to the so-called "Wagner-Costigan antilynching bill", introduced in the present Congress, and which the authors, both Democrats, I regret to say, one of whom represents New York State and the other the State of Colorado, strenuously advocated.

I am proud to say to you that I led the fight in the Senate to prevent that obnoxious and unconstitutional bill from being considered in the Senate, not because I, or any citizen of my State, condone or uphold mob rule or the unlawful violence of a mob, but I opposed that measure on the fundamental ground that it sought to invest the Federal Government with power to wrongfully invade the sovereign rights of the States in the administration of justice. That vicious bill provides, among other obnoxious features, that the Federal Government be invested with jurisdiction to indict and try in the Federal court any local magistrate or police officer of the State within whose territory or jurisdiction the violence occurred, if shown by affidavit that he did not exercise due diligence in apprehending the persons constituting the mob, and upon conviction, the defendant would be subject to a heavy fine or imprisonment, or both; and that upon nonpayment of the fine, the Federal Government would have the right to levy upon and sell a county courthouse, or the county jail, or both, or any property owned by the State or any county, to satisfy the judgment of the Federal court. The bill also provides that if the Governor of a State should be remiss for a similar lack of due diligence in the apprehension of the persons constituting a mob, he, too, could be indicted and if convicted, the State capitol building could be levied upon and sold to satisfy the judgment of the court.

The Wagner-Costigan bill is a reminder of the iniquitous force bill, the object of which was to set up Federal machinery within the State, to supervise and control the elections in the States. You will no doubt recall the gallant and wonderful fight made by Senators representing Southern States in defeating that contemptible bill. Those patriotic Senators of the South knew the history of the South and of their people; they fully appreciated the fundamental principles of Jeffersonian democracy as well as the meaning of the tenth amendment reserving State rights.

As long as I am a Senator I shall continue to oppose all bills that attempt to encroach upon the sovereign rights of South Carolina, and I shall insist that her sovereign rights under the tenth amendment shall be respected and not taken from her.

Let me remind you that John Fiske, the great philosopher and historian, author of Critical Period of American History, page 282, said:

"If the day should ever arrive (which God forbid) when the people of the different parts of our country shall allow their local affairs to be administered by prefects sent from Washington and when the self-government of the States shall have been so far lost as that of the departments of France, or even so closely limited as that of the countries of England—on that day the political career of the American people will have been robbed of its most interesting and valuable features, and the usefulness of this Nation will be lamentably impaired."

The great liberal, Woodrow Wilson, in his wonderful book on Constitutional Government in the United States, on pages 191 and 192, said:

"It would be fatal to our political vitality really to strip the States of their powers and transfer them to the Federal Government. It cannot be too often repeated that it has been the privilege of separate development secured to the several regions of the country by the Constitution and not the privilege of separate development only, but also that other more fundamental privilege that lies back of it, the privilege of independent local opinion and individual conviction, which has given speed, facility, vigor, and certainty to the processes of our economic and political growth. To buy temporary ease and convenience for the performance of a few great tasks of the hour at the expense of that would be to pay too great a price and to cheat all generations for the sake of one."

Let me add, I regret that men in high places, both social and political, are bending the pregnant hinges of the knee that thrift might follow fawning.

In conclusion, is it necessary for me to recall to you South Carolinians the experience of your State during that tragic era, that darkest page of American history—reconstruction?

Supported by Federal bayonets, every department of the organized life of South Carolina was jeopardized. Our courts are filled with the venal and corrupt. Under the direction of this Federal power our legislature was filled with ignorance, lust, and corruption. Our executive offices were likewise prostituted. Every element of society was threatened with debasement and extinction. The scalawags and carpetbaggers, supported and upheld by Federal bayonets, threatened the very extinction of all that was decent. The citizens of the State were subjected to the insolence and insults of ignorant villains under the rule and direction of usurped power. Every constitutional right of the State, all of its reserve powers and rights were disregarded and force took the place of law, until at last, when these conditions become so intolerable and threatened to be made permanent, a call was made to all patriotic, liberty-loving South Carolinians to rally for the redemption of their State. The old war-weary and battle-scarred veterans and the beardless youths rallied to the cry from the mountains to the seaboard. They donned the red shirts, and under that matchless warrior and patriot, Wade Hampton, they drove from our midst, that unspeakable orgy of lawlessness, corruption, and vice. Who is here today, a citizen of this State, who will now be willing to vote to make possible by law what was then perpetrated by force?

"God of our fathers, be with us yet,
Lest we forget, lest we forget!"

POLICIES OF THE ADMINISTRATION—ADDRESS BY POSTMASTER GENERAL FARLEY

Mr. PITTMAN. Mr. President, I ask unanimous consent to have printed in the RECORD an address delivered by the Postmaster General, Hon. James A. Farley, chairman of the Democratic National Committee, at a luncheon given by the Democratic County Committee of San Francisco and the "On With Roosevelt" Club, at San Francisco, Calif., on August 1, 1935, relative to policies of the administration.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

It seems superfluous for me to express the pleasure I feel in being in San Francisco and having a chance to talk over the political situation with my fellow Democrats. I don't know anybody who doesn't like to come to this beautiful city. Not only is there much to see that every American wants to see, but San Francisco has the charm of romance to a greater degree, I think, than any other community within the borders of the Republic. Most American cities have come along in humdrum fashion and are consequently pretty much alike, but you folks on the edge of the continent grew up by yourselves; developed a culture unique in its character, independent of the rest of the country, with the result that you have done your own thinking. Undoubtedly this is due to the circumstance that you were an isolated community, separated by long distances from other popular centers. Where most of our cities are tributary to some larger center and patterned after that large center, you for many decades have been a metropolis in your own right. For nearly half a century people thought of the Pacific coast only as meaning San Francisco. You developed your own great men and great women, your own great authors and artists and not a few of the leaders of industry, whose names have become household words in New York and elsewhere, brought their wealth and talents to the East and identified themselves with the largest of national and international enterprises.

Your splendid universities and other public works that bear their names indicate how loyal and lasting was the affection for California of these men whose fortunes were founded here. I know that some of these may have been ruthless in their pursuit of fortune, but they dated from a ruthless period. The pioneers who defied the dangers of the great gold trek of '49 had to be strong men to overcome the stupendous difficulties in their way and to hew out careers on a difficult frontier. Their faults were the faults of a period and environment; their virtues were the qualities that mean success everywhere.

No observer of government could fail to note the high quality of the men you have sent to Washington from the beginning of your statehood.

No California audience needs to be told of the eminence of your senior Senator, HIRAM JOHNSON, in the councils of the Nation. Your junior Senator, WILLIAM GIBBS MCADOO, through his vast influence, his wide experience, and his ripe judgment, is of inestimable value to the country and to the administration. Your delegation in the House of Representatives ranks as high as any State's Congressmen and has contributed much to the wise legislation that has made possible the measure of recovery from the depression we have attained.

The Democratic Party cannot forget its debt to California. It was this State that kept Woodrow Wilson in the White House in 1916. It was California that insured the nomination of Franklin D. Roosevelt in 1932, and the vote of this State confirmed magnificently the action of your delegates to the Chicago convention.

Yours has always been a progressive community. You have not feared to try stupendous experiments. This trait is part of the fine heritage that came to you from your adventurous ancestors.

Because we must recognize that the course being pursued by President Roosevelt is in itself pioneering, I feel that we can count on the continued support of the sons and daughters of your pioneers. It has required the same sort of courage that brought your fathers and mothers across the deserts and over the mountains, fighting their way with hostile Indians and the bandits that beset the trails, to inaugurate and prosecute the emergency policies that have marked the present administration in Washington.

Franklin D. Roosevelt, when he came to the White House, felt that he was charged with leading this country out of the great depression. There were no precedents that he could follow in carrying out this great mission. For 3 years the country had been in the gravest trouble. Every month of that period showed an increase in unemployment, the closing down of factories, the destruction of confidence in the banks, and a growth of despair among the people. I will not say that no effort was made during this period to fight the depression, but nothing was tried except the puny expedients that had served to check minor economic diseases. It was as though some of the old-time remedies for a sore throat were applied to meeting the emergency of a ghastly mortal epidemic. It required strong measures to meet the situation.

I have heard the banking holiday declared by the President on the day of his inauguration compared with the shotgun quarantines of your pioneer days. It would have been perhaps difficult to reconcile the stringent activities of California's early days to strict legal requirements, but they were effective. So were effective the emergency measures enacted on the advent of the Roosevelt administration, which, starting in by rehabilitating the banking system, continued with such expedients as the National Recovery Act, the Agricultural Adjustment Administration, Civilian Conservation Corps, etc.

I do not urge that in the administration of these measures there may not have been mistakes and errors, but they served a great purpose and the result of these measures is the difference between the country's condition today and what it was on March 4, 1933.

Yours is a political organization and I want to talk over politics with you. It is perfectly natural that at this time, with a national election coming next year, the Democratic administration should be subjected to as keen a fire as our opponents can bring to bear upon it. That is the explanation of a flood of propaganda that has been inundating the country. It is true that all of this propaganda does not bear the Republican label. But there is no difference in the purpose of the onslaught, regardless of its source. The objective is to destroy confidence in the Roosevelt administration, and particularly in the President himself. By this process our assailants hope—no; I will not say hope, because I doubt if even the most sanguine among them thinks that Republican success is possible in 1936—I will put it that the dream is that by destroying the confidence of the people in the President, they can effect a return of the Government control to those who would restore the privileges which piled up enormous fortunes for the few and reduced the rest of us to poverty.

Not only is there a general assault on the legislation the President has sought to promote in Congress and a consistent effort to make our industrial and commercial gains attained under the recovery program seem small, or to deny them altogether, but there is also being conducted a whispering campaign. The word is being circulated that the President has broken down under the strain and that his decisions, instead of being the ripened judgment of a man stalwart in strength and mind, are the productions of a fretful invalid. I can tell you that hardly a day passes while I am in Washington in which I do not see and talk to the President. I can tell you also that he is in perfect health, that he is serene, and that he is living the busiest life of anybody in these United States smilingly, cheerfully, and most effectively. Twice a week he meets the Washington newspaper correspondents. He faces several hundred of them at these sessions; they bombard him with questions, and he replies. Isn't it absurd to suppose that this host of keen, experienced men, many if not most of them representing newspapers hostile to the administration, would not have been quick to note any lessening of the President's powers? The story, of course, is without a vestige of a foundation. That, however, has not prevented its industrious circulation by word of mouth, by chain letters, and by every other means which could pass it around surreptitiously and in such form that its ultimate source cannot be traced. Well, there is nothing new in this, either to the President or to the Democratic organization. The same stories were told during the 1932 campaign in exactly the same way and in almost exactly the same language. The President plans to come out to this State after Congress adjourns to participate in one of the great California expositions. You will be able to judge for yourselves of his physical state and the vitality of his mental processes. I only mention the matter now because doubtless a great many of you may have seen some of this scurrilous stuff and may have been alarmed by it.

The President has the most strenuous job in the world, but he is equal to it.

The Nation is fortunate that this statement is true. Let me ask you if there is one among you who has not thought of the bristling possibilities that threatened this Nation if it had not had for its head during the past few years an individual of consummate courage, skill, and endurance? Where would we be today if Franklin D. Roosevelt had not gripped the situation on this advent to the White House and carried out his program of restoration and rehabilitation? The Supreme Court recently decided that in establishing the N. R. A. the President had gone beyond the letter of the Constitution. So did Jefferson when he effected the Louisiana Purchase. So did Lincoln when he issued the emancipation proclamation. I am no constitutional lawyer, but I dare say that there were those who regarded the acquisition of the Pacific coast as part of the United States as open to constitutional question. None of this, of course, contravenes the fact that the Supreme Court is the tribunal of last resort, and you have doubtless observed that the President, while he did not mask his disappointment at the N. R. A. decision, hastened to comply with it and to arrange the various emergency establishments in accord with the ruling.

Now, the other day I noticed that one of the newspaper columnists instanced an episode of the Taft administration, reciting that the then President and thereafter Chief Justice had vetoed a bill—the Webb-Kenyon Act—because he doubted its constitutionality. This, of course, was in line with criticism of President Roosevelt, who advised Congress that, in his opinion, it should not hastily discard legislation for the public welfare merely because a constitutional question was raised. That matter must be left for the Supreme Court to decide. What I was about to tell you was that in the recital of the Taft incident, the columnist did not tell the whole story, for the bill that President Taft vetoed was repassed by Congress over that veto, and the Supreme Court decided that it was constitutional, and it remained in force until the repeal of the eighteenth amendment.

Yes; the 1936 campaign has already begun. Every act of the administration is assailed by the Republican spellbinders and the Republican newspapers and the crew of special-interest representatives who pose as nonpartisan defenders of the Constitution and work in the word "liberty" in the titles of their organizations. When Congress passes a law in accordance with the President's recommendation there is an immediate barrage to the effect that the President is assuming to be a dictator and that Congress is a mere rubber stamp ready to register his individual will. When, on the other hand, Congress objects or modifies some proposal the President has made, the G. O. P. batteries—open and concealed—send forth a broadside telling the people that the President has lost control of Congress and that Congress is a high-minded body of statesmen. Of course, this does not make sense. A President could hardly be a dictator today and be at the mercy of Congress tomorrow and resume his despotism the day after.

The situation is simply this: The old guard wants to get hold of the Government again, and President Roosevelt being an insuperable obstacle in their path, they feel that their only chance lies in breaking down the affection and regard with which the plain people of this country regard him. Naturally, such a campaign is not going to be carried on in any fine ethical spirit or with adherence to the truth if a falsehood will serve better. I presume you have noticed the events in Congress relative to the bill aimed to put an end to such frauds on the people and such larcenies of the people's money as was typified in the Insull case.

For a time, you will remember, you read about every day of the flood of telegrams from their constituents being received by Senators and Representatives protesting against the enactment of this bill. These messages were cited as showing the deep public interest and concern in the matter. At the recent senatorial investigation it was shown that these telegrams by thousands were filed by the interests that sought to defeat the Wheeler-Rayburn Act; that the signatures thereto were taken from city directories and telephone books; and that the senders knew nothing about them until some of the Congressmen replied to them. Instances appeared where the originals of these telegrams were burned in an effort to destroy the evidence of forgery. Moreover, there was revealed a million-dollar slush fund. The Associated Gas and Electric System admitted spending $700,000 to fight this legislation. Chairman Philip H. Gadsden, of the committee of public

utilities executives, testified to the expenditure of $301,865, which he said had been used for attorney fees and lobbying activities.

Now, the next time you read of the surging tide of public sentiment against some administration project or policy, just remember the faked snowstorms of telegrams to Congressmen and the million-dollar slush fund, and you can perhaps arrive at a real estimate of the alleged surge of public opinion.

Detraction of the President is the sole resource of our political enemies. In all the matter that they send out, in all the speeches that have been made by or for the reactionaries and exploiters, there has not been one word of a constructive character. They inveigh against the recovery program, but not by any chance do they suggest an alternative program. They denounce the expenditures to keep people from starving and to put the unemployed to work, but never do they make a suggestion of how starvation can be warded off or men be put to work except in the manner in which this is being done.

The administration has been accused of extravagance. Let me call your attention to the fact that the routine expenditures of government, the normal natural work of the various departments, are hundreds of millions of dollars per year below what they were when Roosevelt came to the White House. The only extravagance that can be justly laid to the door of the administration is the money it has expended in feeding the hungry, giving work to the jobless, and changing the business balances on their ledgers from red to black.

Let us just take a look at some of the results of the Roosevelt policies. For example, the amount paid in income taxes last year was $200,000,000 greater than the year before. I wish each of you would make a mental calculation. Take the amount of income tax you have paid and figure what relation it bears to your income. Apply the same process to the $200,000,000 increase that the Treasury reports and it will be plain to you that the general public income in this country is three or four billion dollars more than it was a year ago. That is one yardstick by which you can figure what the Roosevelt policy has done for business. What it has done for the farmer you people in California can gage from your own experience. The Department of Agriculture tells me that the cash sales making up California's farm income are $65,000,000 more this year than they were last. I, of course, have seen and marveled at the two great bridges that are being thrown across San Francisco Bay.

The employment they are furnishing and the impetus to business given by the purchase of the materials that go into them are tangible results of the President's program. Your stores, they tell me, are having an excellent season. These evidences of prosperity are not confined to California by any means. The automobile industry reports that it produced 2,300,000 cars and trucks during the first 6 months of 1935, a third more than in the corresponding period of last year and a good deal more than double those produced in 1933.

A familiar charge against the administration is that the profit is all going to the big fellows in business, to the detriment of the little fellow. Now, what are the facts? Dun & Bradstreet, that cold-nosed chronicler of business trends, announced that sales of general merchandise in small towns and rural areas in June of this year were 38 percent higher than for June of last year and 51 percent higher than the year before that. This business firm likewise reported recently that there were more retail businesses in existence now than there were during the boom that collapsed in the fall of 1929 and that the percentage of business failures was less than it had been for 15 years.

Yet, those who attack the administration are trying to convince the people that they are in a terrible plight, that the new deal has failed, and that the country's only salvation lies in giving back control of the Government to the outfit that led us into economic calamity.

I have gone into the subject of attacks on the administration at some length. Please do not get the impression that this means that there is any anxiety in Democratic headquarters as to the effect of the campaign of detraction. Our political fences are in good shape. I have no more doubt of the result of the 1936 election than I had before the 1932 election. But there is always this to be considered, no election was ever won by inaction, by permitting feuds within the party to take up all our attention, or by neglecting the great work of organization and education. Overconfidence has more than once in this country turned what appeared to be certain victory into surprising defeat, so I want to tell you that this is no time for Democrats to sit back and grin at what appears to be a futile foe. Moreover, an election is but one stage in the advancement of the great principles of democracy, so well expressed in a recent utterance of the President, when he was asked by a newspaperman to define the object of his administration. He said then:

"The social objective, I should say, remains just what it was, which is to do what any honest government of any country would do, to try to increase the security and the happiness of a larger number of people in all occupations of life and in all parts of the country; to give them more of the good things of life; to give them a greater distribution, not only of wealth in the narrow terms, but of wealth in the wider terms; to give them places to go in the summertime—recreation; to give them assurance that they are not going to starve in their old age; to give honest business a chance to go ahead and make a reasonable profit, and to give everyone a chance to earn a living."

This country has made great progress under the Roosevelt administration. It will progress still further toward the goal of public betterment during Roosevelt's next term. The voters of the United States enthusiastically gave him his opportunity in 1932. They gave him a magnificent tribute of approbation in 1934. It should be the aim of every one of us to see that in 1936 his election figures shall be so impressive that nobody can make any mistake as to where the American people stand.

THE PROCESSING TAX AND THE TARIFF

Mr. BANKHEAD. Mr. President, the Montgomery Advertiser, of Montgomery, Ala., is one of the best edited newspapers in the country. A few years ago its present editor, Judge Grover Hall, was awarded the Pulitzer prize for the best editorial published in any newspaper in the United States during that year. The Advertiser has recently carried a series of editorials comparing the philosophy and the legality of the processing tax with protective-tariff taxes which are not intended primarily as revenue laws but are intended to protect and thereby control industrial production in this country. I ask unanimous consent to have printed in the RECORD the three editorials which I am sending to the clerk's desk.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Montgomery (Ala.) Advertiser]

SHOES FOR BOTH FEET

Throughout the South there is a rising demand for tariff reform which has been given new impetus by the recent decisions holding the A. A. A. unconstitutional.

It is becoming increasingly evident that when the Government first entered the field of attempting to control production with the "tariff of abominations" in 1828, it made a mistake. Having once entered on that policy, the Government has been unable to withdraw, but instead has been drawn more and more finally arriving at the present condition which exists under the new deal.

There is not a farmer in the entire United States who would be unwilling to throw the entire A. A. A. program overboard if there was any possibility of making a decent living without it. The farmer has the same pride and initiative as do those men in other fields of endeavor and does not want to hold one plowline and let the Government hold the other—if it is possible to do otherwise.

Unfortunately under existing conditions, there seems to be no other way, if he is to be able to feed and clothe his family.

This Nation has taken pride in its industrial development, and justly so. But that development has been bought at a heavy price to the farmers of the Nation. While the country has looked with pride on the industrialization, which has made $6-a-day labor possible, it has forgotten the millions of farmers whose average income is $120 a year. While the country has watched tariff walls mount to dizzy heights in order that industrial laborers will not have to compete with cheap foreign labor, it has left the farmers to their fate in a world market in which they must compete with cheap labor as best they can. While a paternal Government has fostered industry whose laborers were paid salaries that would allow them to keep up the American standard, the farmer has had to fight desperately to maintain whatever standard he could.

While our Government has fostered labor so that it might balance itself with its market, capital, the farmer has been unable to organize and balance himself with his market.

Thus this country has marched from infancy, one foot provided with a fine shoe by the Government, the other unshod, an easy mark for the rough road of progress.

For a long time it appeared that the unshod foot had become tough enough to "take it." This country marched along from 1920 to 1930, and the farmer was able to sell his goods at what appeared to him to be a fair price. But in looking back we can easily see that even then his lot was sorry in comparison. Farm ownership, which is an absolute necessity under an agricultural system, decreased approximately 55 percent to 45 percent.

The farm standard, which had never been on a par with urban life, dragged to a new low ebb by 1932. Then attempts were begun to put a shoe on the bare foot. Naturally, after so many years, the first fitting hasn't been completely successful. The A. A. A. has not been completely successful, but at least it is an attempt to effect a balance, and with the experience already gained it is possible that alterations might be made.

The tariff, likewise, was not a complete success when first tried. It has been changed continuously, but always it has been made more comfortable. With the exceptions made by the reciprocal trade agreements, the Smoot-Hawley tariff law, passed in the Hoover administration, is in effect today.

If the decisions of the lower courts are upheld and the Supreme Court declares that this Government can make no move to control agricultural production and put the farmer on a basis with industry, then it will mean that the South must trod on unshod.

But that is impossible. Either this overgrown boy that is the United States must wear shoes on both feet or it must go barefooted. If the shoe that has been worn with so much comfort by industry is taken off, it will necessarily involve some stone bruises and blisters. Too long has the shoe been worn, and too tender is the foot that wears it, to expect that to remove the shoe will not involve some hardships.

The original mistake was made when this country weakened in the first place. Had the high tariff not been depended upon in the first place, this country might today be a virile giant that could stand on both feet equally and face the whole world.

[From the Montgomery (Ala.) Advertiser]

WHY NOT BEND IT SOUTH

Whatever hopes the farmers of the United States had of getting anything more than a dime package of seed and a few bulletins from their Government are fast disappearing with various Federal courts handing down decisions declaring the Agricultural Adjustment Act unconstitutional.

The consensus of the rulings declaring the processing tax unconstitutional is embodied in the following paragraph:

"The act is clearly unconstitutional, as it is not a revenue-producing measure and because it is purely an attempt to regulate crops and production."

How can this view of the Constitution be reconciled with the tariff rates now in existence?

Has there ever been any doubt that the tariff "is purely an attempt to regulate production"?

Has there ever been any doubt that the tariff "is not a revenue-producing measure"?

If tariffs can be levied by the Federal Government for controlling industrial production, cannot processing taxes be levied for controlling agricultural production? The only difference between the two is that the one makes it possible to increase production, while the other makes it possible to decrease production or control it.

There is no denying that tariffs ceased to be levied for raising revenue long ago. Tariff rates have become so distorted that in effect they constitute an absolute prohibition against the importation of goods in many instances.

In a decision declaring the Bankhead Cotton Control Act unconstitutional, Federal Judge Randolph Bryant, of Texas, said:

"It is only a thinly disguised attempt to regulate the production of cotton under the pretext of the exercise of the taxing power of the National Government. This power, if it exists at all, is not committed to the National Government, but is expressly reserved to the States."

If ever there was "a thinly disguised attempt to regulate the production" of certain manufactured articles, the levy of a tariff is.

Attorneys for the plaintiffs in a suit brought in Federal court at Birmingham argued that the levy was not in fact a tax since the money does not go into the general treasury, but is in fact taken from one group, processors, for another group, producers.

Is a tariff of 200, 300, or even 400 percent a tax? The South has argued for over 100 years that the tariff in fact takes property from one group for the benefit of another.

The taxing powers of Congress are set forth in article I, section 8, of the Constitution as follows:

"Congress shall have power:

"1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

That is all that is said with the exception of the provision that all revenue bills shall originate in the House, and an amendment which provides for income taxes.

No other provisions are made concerning the nature of taxes. Can it be denied that the general welfare of the United States is served to the same degree by processing taxes as by tariffs?

The use of the taxing power to regulate is not an innovation with the processing levies. In addition to tariffs, Congress regulates in a number of other instances by the taxing authority. The whole basis of narcotic control, as an example, is the taxing power. It has been ruled that "the power to tax is the power to destroy."

There seems to be an impression that since the processing tax is a product of the new deal and a progressive move, it is unconstitutional. But the tariff, which has steadily increased since 1828, is taken for granted and accepted.

The reason that the processing tax became necessary in the instance of cotton was the loss of foreign markets, due to the failure of other nations to buy when they became unable to hurdle our tariff walls. Had it been possible to dispose of our surplus cotton, the South would have needed no means to control production.

It is clear that if the farmers of the Nation are convinced that the A. A. A. is beneficial, they must rise up and demand that if the Constitution is to be bent, it must be bent as far South as it is East.

[From the Montgomery (Ala.) Advertiser of Aug. 5, 1935]

BANKHEAD FOR TESTING THE TARIFF, TOO

A significant phase of the current political drama in this aching Republic is the proposal of a group of Texas farmers that the American protective-tariff principle be subjected to the same judicial test that the processing-tax principle of A. A. A. must meet.

It is of special interest that this bold and lusty challenge should have come from Texas, in which John Henry Kirby, of Houston, is a stalwart and famous leader.

Mr. Kirby, a lumber magnate, is one of the most aggressive high-tariff Democrats in the South. For a quarter of a century he has been at war with his own party over the tariff question, if we except the present Democratic regime, with respect to which it should be said that the Secretary of State, Mr. Hull, is the only Democrat in Federal office who has manifested and is manifesting any genuine interest in tariff reform.

Mr. Roosevelt has been too much preoccupied with other questions to get around personally to the tariff in a big way, Democrat though he is, and notwithstanding that the country is afflicted by the highest tariff rates—made under Hoover—ever before known to the American people.

If Mr. Roosevelt should turn tariff reformer we doubt if Mr. Kirby could contain himself. He was at war with the Wilson administration because that administration insisted upon the Underwood tariff law. We suspect he must have been at war with the two Cleveland administrations, also, because "Old Grover" was himself an ardent tariff reformer.

We draw Mr. Kirby into the picture because recently he formed "The Southern Committee to Uphold the Constitution." It is a formidable committee. Many of the brightest men in southern life, several of them from Alabama—including Oliver D. Street, Alabama's Republican—have lent their names to the Kirby cause.

In its declaration of principles Mr. Kirby's committee affirms its devotion to the principle of State rights and reaffirms its devotion to the Constitution, and by implication denounces the new deal from top to bottom.

Not quite from top to bottom—Mr. Kirby does not denounce Mr. Roosevelt for any Democratic tariff heresies, since Mr. Roosevelt has soft-pedaled the tariff as much as he conveniently could.

So far as the world knows Mr. Roosevelt and Mr. Kirby are as one on the tariff.

So much for the point of view of the valiant, courageous, and admirable Mr. Kirby, of Houston.

Let us see now, what may be said of those Texas farmers who like at least one feature of the new deal—they are partial to A. A. A., since A. A. A. has put nearly as much money into their pockets as the Pennsylvania tariff racket has taken out.

JOHN BANKHEAD, the Alabama country boy who moved to the city of Washington and made good, has just made some impish comments on the move of a group of Texas farmers to put the American protective tariff principle to trial before the bar of public justice, along with the processing tax.

These farmers purpose to test in court the legality of import tariffs to "protect American industry." Senator BANKHEAD, one of the creators of A. A. A. and the father of the present cotton-control act, remarks in an Associated Press interview that this challenge is "one of the smartest and best movements that has yet been proposed."

"It will be interesting to observe", the Alabaman says, "whether the court takes the view that a tax which is used for production control in agriculture is an unauthorized tax and that a tariff tax levied for production control of industry is a valid tax."

Senator BANKHEAD expressed hope that farmers throughout the country will join to bring a tariff test suit and that the Government will help get the case before the Supreme Court at the same time the processing tax is presented.

In a formal discussion of the proposed test, he said:

"While some revenue is collected under the tariff taxes, it is well known that most of the tariff taxes are not intended for revenue purposes, but to control industrial production in America. The congressional debates on items in tariff bills clearly show that the purpose of Congress is primarily to put a burdensome penalty on the import of industrial commodities or to prevent imports.

"These debates show that the subject of the amount of revenue to be derived from tariff taxes was given practically no consideration, but, on the contrary, the entire objective has been whether the rates proposed will be effective in protecting and controlling production in this country.

"The farmers have carried the burden of controlled industrial production for more than a hundred years.

"Many arguments have been made that tariff rates which are not intended as revenue taxes are unconstitutional. A real test of the subject, however, has never been made. The Supreme Court has never been called on in any case to decide whether a specific tariff rate is intended as a tax measure or whether it is a penalty to protect and control production in this country.

"The decision of the Boston court by two Republican judges represents the philosophy that the processing taxes are intended to control agricultural production and that such taxes cannot be levied under the Constitution.

"It is to be hoped that the farmers will go forward and present a typical case of the tariff tax levied not for revenue purposes but for the protection of industrial production. It is further to be hoped that the Supreme Court will be called upon when ruling upon the validity of the processing tax to rule at the same time upon the validity of the tariff tax.

"It will be interesting to know whether one rule applies to agriculture and another to industry."

Thus a beautiful issue is joined. If the farmers should be fortunate in selecting a foolproof tariff schedule to present to the courts and if they should be so fortunate as to have their innocent question answered at the same time that the courts pass upon the processing tax—which, like protective-tariff rates, is supposed to be paid by the ultimate consumer—we should presently have an entirely new light thrown upon the processes of American government.

REFUSAL OF RELIEF BENEFICIARIES TO WORK

Mr. FLETCHER. Mr. President, I ask unanimous consent to have printed in the RECORD a timely editorial, entitled

"Refuse Work and Get Off Relief", published in the Sunday Times-Union of Jacksonville, Fla., on the 4th instant.

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

[From the Jacksonville (Fla.) Times-Union of Aug. 4, 1935]

REFUSE WORK AND GET OFF RELIEF

There is going to be a very long and loud request made by the general public which is paying the costs of relief—no matter how it is given or where it comes from directly at this time—for the shifting from relief rolls of all who are able to work and refuse to accept employment when offered. Few indeed are the people who think that the money being handed to those on relief comes from the sky or out of the pockets of Uncle Sam where it grows and never is depleted. The money that has been handed out to succor the unemployed and needy is drawn from the Public Treasury, and the public placed it there and is expected to keep the Treasury full, with money taken from the people who work and earn and pay taxes.

"From Washington comes a statement by Lawrence Westbrook, Assistant Relief Administrator, that relief beneficiaries who refuse jobs will be cut off immediately", says the New Orleans Times-Picayune. "This is not only common fairness and decency, but is an obvious necessity if the enormous burden upon the taxpayers is ever to be reduced and the labor market restored to normal. South Dakota seems to present the most amazing situation just now, with a big wheat crop ready for harvest and farmers calling in vain for laborers. Mr. Westbrook also cites the complaint of Winchester, Va., that farmers offer jobs 'and are laughed at by loafers at stores and filling stations who say they are on relief.'"

South Dakota has very properly shut down on all relief until harvest needs can be supplied, but the story from Virginia could likely be repeated of many places and sections. There is remarked the fear of some of those on relief that they may be permanently deprived of the Government dole if accepting a temporary job; and the idea is no doubt well established. Yet the individuals deserve no credit for thus thinking of the future. Unless they have decided to spend the rest of their lives as idlers and live on charity, they should take every chance offering to work for pay. If it is only a day's work they could well undertake to make something, with the hope that employment for much longer time could be obtained.

Another statement being made by those who do not want to work and are enjoying the life of a "man on the town", is that the employment being offered in the Dakotas and Virginia is not exactly the kind of work they would most appreciate. It is actually set up by some defending the refusal of able-bodied men to go into the wheat fields that they are not experienced in this labor; and that it would require their being out in the sun considerably during the day. Probably they—many of these men on relief who are now laughing off the request that they go to work—are quite softened and in good condition for loafing around the stores and poolrooms and holding down the chairs on the porch. But that is not admired by the common people; those who are working hard and often in places where it is not quite comfortable; and perspiring rather considerably in the effort to make a living and something over for taxes.

The Times-Picayune suggests that the Government agents should indicate the possibility of those on relief again securing something from the public funds when or if their work accepted does not hold out or lead to other employment. It does not believe that so many who are now refusing short jobs would bother to change, even if assured of a return to the relief rolls later. "Too many have become confirmed and habitual loafers because they seemingly feel sure of easy money", says the newspaper.

"Most of the fault is probably not with the relief administration", the Times-Picayune declares. "Even the most highly trained investigators know the difficulty of obtaining the actual financial status of an individual or a family, and it was impossible for the country to produce, in a little more than 2 years, an adequate organization to handle the vast sociological experiment upon which we embarked. With the increasing efficiency of the administration, however, has grown up a cunning resistance on the part of the shirkers, thousands of whom have become adept in evasion or, in some cases, deliberate misstatement. Between those who refuse work when it is offered and those who draw private pay and Government doles also there probably is not much choice. Every well-informed person in every community probably knows of such cases, and the longer the situation exists the worse it becomes. The many who are really deserving should be the first to resent the attitude of the chiselers." The situation is bad. And it is not moving toward the better very rapidly.

DEPORTATION OF CRIMINAL ALIENS

Mr. WALSH. Mr. President, I ask unanimous consent to have printed in the RECORD an address entitled "The Deportation of the Criminal Alien" delivered July 16, 1935, at the meeting of the American Bar Association in Los Angeles by Hon. J. Weston Allen.

Mr. Allen, who was formerly attorney general of Massachusetts, is now a member of Attorney General Cummings' Advisory Committee on Crime. He is also chairman of the National Crime Commission, a vice president of the American Bar Association, and a member of the council of its criminal law section.

The address which he delivered on the Deportation of Criminal Aliens is an able discussion of the deportation bill which is now pending in the Senate.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

The repeated failure of Congress to enact more effective legislation to rid the United States of the menace and burden of the criminal alien is one of the seemingly inexplicable phenomena in the battle we are waging to overcome the surging tide of crime that for a generation has challenged the law-enforcement agencies of the Nation.

This is the more surprising because changing industrial and social conditions have operated during the period to reverse the immigration policy of two centuries and impose the most stringent barriers on the entry of aliens, who previously were offered every inducement to come here to meet the increasing demands for labor in the development of our natural resources.

One would think that when tens of thousands of law-abiding, self-supporting citizens of other countries, many of them parents, children, or brothers and sisters of our foreign-born population, are clamoring for admission, an insistent demand would compel the deportation of criminal aliens, if only to make place for those who are deprived of the privilege of joining their kindred here.

Of course, a far more potent and an all-sufficient reason for the deportation of the alien malefactor is the benefit to be derived in the enforcement of the criminal law in this country. While our prisons are overcrowded with criminals, many of them aliens, and our law-enforcement officers, Federal and State, are endeavoring with indifferent success to stem the tide of crime, why should we permit the alien criminal to remain to augment the forces of the underworld?

The need for a revision of our laws governing immigration and deportation has been recognized for a long time, and the failure of the existing law to meet the changed conditions of our social order and our industrial life was never more clearly exposed than in the virile report on the enforcement of the deportation laws by the National Commission on Law Observance and Enforcement, commonly known as the "Wickersham Commission."

For 2 years the Immigration Service of the Department of Labor, at the instance of Col. Daniel W. MacCormack, Commissioner of Immigration and Naturalization, has been making a study and field survey of the defects in operation of the immigration laws and regulations, and as a result of the survey which has been made, a bill has been introduced and is now pending in Congress, which has been endorsed by this association in the following resolution:

"*Resolved*, That the executive committee of the American Bar Association favors the enactment into law of H. R. 6795, introduced by Congressman KERR, of North Carolina, which is intended to increase the classes of undesirable aliens, particularly criminals, subject to deportation; strengthen the Government's authority to effect deportation; and permit alleviation of certain extraordinary hardships, such as separation of families, or enforced termination of long-established residence in cases of aliens of good character."

It has also been endorsed by the National Crime Commission, the International Association of Chiefs of Police, and by other organizations vitally concerned in the crime problem.

This bill has been favorably reported with amendments and is now pending in the House of Representatives (H. R. 8163), and is also before the Senate upon a favorable committee report (S. 2969). At the hearing before the House Committee on Immigration and Naturalization Commissioner MacCormack said:

"I venture to state that there is no statute of the United States which offers so many loopholes for the escape of the criminal, while at the same time imposing such barbarous treatment upon the persons of good character, as does the body of law dealing with the deportation of aliens."

As an instance of the habitual criminal who cannot be deported under existing laws, he cited the case of an alien 50 years of age who has been in this country for 16 years. He was convicted in 1911 and sentenced to from 3½ to 6½ years for the possession of firearms. In 1917 he was given 5½ years for robbery. In 1925 he was arrested on a charge of grand larceny, but was released on bond, and upon his default, his bond was forfeited. He was arrested again for grand larceny in 1933 and discharged. In the same year he was again arrested for robbery with a gun, and the case was dismissed. He has been arrested 5 times, and of the 16 years he has been in this country he has spent more than half (9 years 7 months 2 days) in prison, yet he cannot be deported.

The only aliens who can be deported for criminal offenses under the Federal statutes now in effect are:

1. Any alien who was convicted or admits the commission prior to entry of a felony or other crime or misdemeanor involving moral turpitude.

2. Any alien who is sentenced to imprisonment for a term of 1 year or more because of conviction in this country of a crime involving moral turpitude committed within 5 years after entry.

3. Any alien who is sentenced more than once to imprisonment for 1 year or more because of conviction in this country of any crime involving moral turpitude committed after entry and subsequent to February 5, 1917.

In the case cited by Commissioner MacCormack the conviction for which the criminal served his first term could not be consid-

ered on the issue of deportation, because possession of firearms is not held a crime involving moral turpitude, and also because the crime was prior to 1917. The second conviction for robbery was not ground for deportation because it was not committed within 5 years after entry.

The requirement that an alien must be convicted and sentenced for a crime before it can become a basis for deportation removes from consideration all crimes where the criminal pleads guilty or is found guilty, if his case is put on file, or if he receives a suspended sentence, as well as cases where he jumps his bail before conviction or sentence. The original bill as prepared by the Commissioner of Immigration and introduced by Congressman KERR provided that any alien should be deported if convicted of two or more crimes involving moral turpitude committed on separate occasions at any time after entry, even if the alien was not sentenced, provided the Secretary of Labor found such deportation was in the public interest. Unfortunately, the bill as reported by the committee omitted this section, so that the existing law is not changed with respect to deportation for two convictions and prison sentences.

The committee has, however, included an entirely new section which authorizes deportation for conviction of one crime involving moral turpitude without sentence to imprisonment if the conviction is within 5 years of the institution of deportation proceedings and the deportation is in the public interest. This new section will permit deportation of a convicted alien even if his case is filed or sentence suspended or if he is sentenced to a fine or imprisonment for less than a year.

In certain other respects the bill now before Congress will greatly aid in ridding the country of criminal aliens as well as those guilty of illegal entry.

First. It extends the compulsory deportation of persons convicted of violating narcotic laws to include violators of narcotic laws of any State, Territory, insular possession, or the District of Columbia, whereas the present law calls for deportation only of violators of Federal narcotic laws. It is obvious that the narcotic drug violator should be equally subject to deportation whether he is guilty under Federal or State laws.

Second. It requires the deportation not only of an alien who is smuggled into this country, who is deportable under existing law, but also of any alien who knowingly and for gain participates in smuggling the alien in, or any alien who on more than one occasion participates in such smuggling, irrespective of the element of gain. The alien who makes a business of smuggling is a greater menace than the alien who makes the illegal entry.

Third. It authorizes deportation, if found to be in the public interest, of any alien convicted within 5 years of commencement of deportation proceedings, of possessing or carrying any concealed or dangerous weapon, even if no sentence is imposed by the courts.

This provision will result in the deportation of gunmen, racketeers, gangsters, and the numerous class who commit crimes of violence, or who are apprehended armed in the act of committing of attempting to commit other crimes for which they are not deportable.

By the act of March 2, 1929, it is provided that an alien shall not be deportable by reason of conviction of a crime if the court shall, within 30 days from the time of imposing sentence or passing judgment, recommend to the Secretary of Labor that such alien shall not be deported.

This well-intentioned but unfortunate legislation was based upon the theory that the judge who heard the criminal case was in a position to form an opinion as to whether the alien should be deported. While originally intended as a recommendation, it constitutes an absolute bar to deportation. Not even the President of the United States has power to overrule the recommendation of the trial judge, which is in fact a final order prohibiting deportation and not a recommendation at all. In practice this provision has operated to prevent the deportation of many criminals who are a menace to society.

It is altogether too much power to give a trial judge who has no knowledge of the alien offender except what he may obtain from the trial or from the probation officer. Oftentimes the alien is a habitual criminal, but not having committed a previous offense in that locality, the probation officer has no previous record.

Other considerations frequently influence the judge in recommending against deportation, who, in many cases, is an inferior police judge of little or no experience. He may have a personal feeling against deportation. He may be too indolent to make any inquiry at all as to the defendant's previous record. He may make the recommendation as a favor to the defendant's counsel, or as a friendly gesture because he is imposing a longer sentence than the lawyer thinks his client deserves. He even may not know that his decision is final, but may make the recommendation, believing that the immigration officials will review the question and intending that they shall disregard his recommendation if the facts warrant it.

The pending bill in Congress recognizes the fallacy of permitting a trial judge, without adequate knowledge of the defendant, to control the action of the Federal authorities on the question of deportation, and the recommendation of the judge is made subject to approval by the interdepartmental committee established by an amendment by the bill.

If the bill as now drafted is enacted it will put teeth into the present law, regulating the deportation of criminals, and will make it possible for the immigration authorities to rid this country of many dangerous and habitual criminals not now deportable.

The pending bill in Congress, commonly termed the "Kerr bill", in addition to strengthening the Federal arm in the deportation of criminals, will greatly facilitate the apprehension and deportation of aliens illegally entering the United States.

Under the present law (act of Feb. 27, 1925) an immigrant inspector or patrol inspector has the power, without warrant, to arrest an alien who in his presence or view is entering or attempting to enter the United States, but if entry has been made unseen, the alien cannot thereafter legally be arrested without a warrant, even if the inspector has proof positive that the alien has crossed the border only a few moments before. The alien can even admit he has entered illegally because, before a warrant can issue from Washington, he can be many miles from the border and out of reach of the patrol. The Immigration Service reports that 2,600 illegal entrants escaped deportation during the past year solely because the immigration officials would not authorize arrest without warrant.

The Kerr bill authorizes the apprehension without warrant and detention for 24 hours in case of aliens believed to have entered or remained in the United States illegally. The alien must be brought at once before an immigration inspector, who, prior to the expiration of the 24-hour period, must obtain a warrant to continue the suspect in custody, or release him.

The provision for detention without warrant for a limited period gives to employees of the Department of Labor authority similar to that granted to the Department of Justice by the last Congress and will be an invaluable aid to the Service because:

1. It will make possible the deportation of thousands who would otherwise successfully evade the officials and escape detention;

2. It will eliminate the time which would otherwise be spent in the attempted search and apprehension of these illegal entrants, giving the inspector more time for apprehending other deportable aliens; and

3. It will make much more difficult and hazardous the operations of the organized rings engaged in smuggling aliens and have a deterrent effect on the aliens who now attempt to enter illegally.

The Kerr bill contains other provisions aimed to ameliorate the hardships of mandatory deportation of certain aliens who have been long resident in the country and are of good moral character but have unwittingly violated some provision of the laws relating to entry or residence.

In recognizing these cases the Wickersham report says: "Many persons are permanently separated from their American families with results that violate the plainest dictates of humanity"; and it further states, "In the opinion of the Commission the limited discretion * * * to permit in cases of exceptional hardship a relaxation of the rigid requirements of the present statutes would be consistent with the dignity of a great and humane nation."

To meet this situation the Kerr bill conferred a limited discretion on the Secretary of Labor in these cases of hardship, and the House committee further limited the discretion and vested it in an interdepartmental committee of three members to be comprised of representatives of the Departments of State, Justice, and Labor.

We are not here concerned with the creation of this discretion, or with other sections of the bill which do not relate to the deportation of criminal aliens, except insofar as they may affect the passage of the bill.

Unfortunately, opposition has arisen to the granting of any discretion, even in these cases where deportation of aliens of good character will separate husbands from wives and parents from children, and also there is opposition to any discretion in the deportation of criminal aliens.

When legislation affecting immigration is before the Congress, party lines are largely eliminated, and the Senators and Representatives avowedly take sides as liberals or restrictionists. The restrictionists represent districts where there are comparatively few of foreign birth, and the liberals come from industrial centers and communities where many of their constituents are of foreign birth or descent.

Opposition to the bill has been aroused in part, due to the mistaken belief that it weakened the present law by giving discretion to the Secretary of Labor not to deport criminal aliens now mandatorily deportable. Such is not the case. The mandatory provisions of our present law with respect to criminal aliens are retained, and only in extending the law to include deportation of criminals not now deportable, is the discretion granted. Obviously, as the law is made more severe, the need for the exercise of discretion in the application of the law becomes imperative. Some classes of criminal aliens should be deported, others should be deportable. The proposed new law making aliens convicted of possessing or carrying concealed or dangerous weapons will result in the deportation of many habitual and dangerous criminals, but every alien convicted of possessing or carrying a concealed or dangerous weapon should not be sent out of the country never to return. The discretion must be vested somewhere if the law is to be broadened to reach the gunman and the racketeer.

One argument of the opponents of the bill remains to be considered. It is contended in the report of the minority of the House committee that the granting of any discretion is an abandonment by Congress of its control over deportation, and the delegation of a legislative power to an executive branch of the Government.

But in granting exercise of discretion to an administrative board within clearly defined limits, the Congress is only doing what it has done before in many instances. Similar discretion has been granted to the Secretary of Labor by the Immigration Act of February 5, 1917, with respect to the return of stowaways and the admission of aliens under 16 years unaccompanied.

The Supreme Court has recognized the validity of the delegation of such a discretion by Congress and has intimated that such

discretion in the deportation of aliens may reside in the executive and administrative branch of the Government. In the case of *Mahler* v. *Ebey* (264 U. S. 32), in construing the act of May 10, 1930, which concerned the deportation of aliens, the Court said: "Nor is the act invalid in delegating legislative power to the Secretary of Labor. The sovereign power to expel aliens is political and is vested in the political departments of the Government. Even if the Executive may not exercise it without congressional authority, Congress cannot exercise it effectively save through the Executive. It cannot, in the nature of things, designate all the persons to be excluded. It must accomplish its purpose by classification and by conferring power of selection within classes upon an executive agency."

For more than 18 years, the Secretary of Labor has been exercising discretion in the deportation of aliens, and the Supreme Court says that the Congress, in expelling aliens, not only can, but must confer power of selection upon an executive agency, because it cannot designate all the persons to be excluded.

If the bill becomes law, it will serve the threefold purpose of (1) ridding the country of large numbers of alien criminals not now deportable, (2) decreasing illegal entries by arrest and return of aliens unlawfully crossing the border, and (3) granting discretion in the deportation of aliens of good character in cases of extreme hardship and severity.

The bill should receive the support of all patriotic and humane societies and citizens because, for every alien of good character permitted by the bill to remain in this country, it will cause the deportation of three or more aliens of bad character, including gunmen, racketeers, smugglers, and habitual criminals.

PRESIDENT ROOSEVELT—EDITORIAL FROM KANSAS CITY AMERICAN

Mr. CLARK. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Kansas City American of July 26, entitled "We Maintain."

There being no objections the editorial was ordered to be printed in the RECORD, as follows:

[From the Kansas City American of July 26, 1935]

WE MAINTAIN

We maintain that President Franklin Delano Roosevelt is the greatest humanitarian who ever sat in the Executive seat in the White House.

We maintain that he is one of the greatest executive officers in the history of our country.

We maintain that the far-reaching efforts of his administration to relieve distress, to feed the hungry, to save homes from foreclosure, and to increase the national wealth by great projects, giving employment to many armies of men is rapidly developing into the most colossal success in world history.

We maintain that no such efforts as he has put forth can be brought to fruition within 3 years, and hence it is entirely too early for the wolf pack now barking at his heels to frighten either him or any of his friends.

We maintain that he saved the banks—that he saved the railways—that he saved thousands of homes to the owners—that he saved millions of men, women, and children from stark destitution and starvation.

We maintain that he has prevented inflation—kept the dollar sound, and when Europe was planning a gold raid on the country withdrew that precious metal from circulation and put eight billions of it in vaults, where it is safe, until the world has recovered its sanity.

We maintain that the powerful financial interests which are fighting, and which refuse to cooperate with him in his titanic efforts to abolish the depression, will never be able to head off either his renomination or his reelection.

We maintain further that before his second term expires we will have a perfectly balanced Budget, and economists will be able to show that under his administration many billions of wealth were added to the country, and that his great social-justice program will be so far advanced that no responsible statesman will ever attempt to impede its onward march.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed without amendment the following bills of the Senate:

S. 2193. An act to provide for the construction, extension, and improvement of public-school buildings in Duchesne County, Utah; and

S. 2545. An act to provide funds for acquisition of the property of the Haskell Students Activities Association on behalf of the Indian school known as "Haskell Institute", Lawrence, Kans.

The message also announced that the House had passed the following bills of the Senate, each with an amendment, in which it requested the concurrence of the Senate:

S. 2426. An act to provide for the creation of a memorial park at Tampa, in the State of Florida, to be known as "The Spanish War Memorial Park", and for other purposes; and

S. 2865. An act to amend the joint resolution establishing the George Rogers Clark Sesquicentennial Commission, approved May 23, 1928.

The message further announced that the House had passed the following bills of the Senate, each with amendments, in which it requested the concurrence of the Senate:

S. 1633. An act to amend the Interstate Commerce Act, as amended, and for other purposes; and

S. 2073. An act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes.

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H. R. 6645. An act to amend the act entitled "An act to provide for the construction of certain public buildings, and for other purposes", approved May 25, 1926;

H. R. 6869. An act authorizing the Chippewa Indians of Wisconsin to submit claims to the Court of Claims;

H. R. 7438. An act to amend the act entitled "An act to authorize the construction and operation of certain bridges across the Monongahela, Allegheny, and Youghiogheny Rivers in the county of Allegheny, Pa.," approved June 4, 1934;

H. J. Res. 129. Joint resolution to amend the joint resolution entitled "Joint resolution for the relief of Porto Rico", approved December 21, 1928, to permit an adjudication with respect to liens of the United States arising by virtue of loans under such joint resolution; and

H. J. Res. 276. Joint resolution authorizing the State of Arizona to transfer to the town of Benson without cost title to section 6, township 17 south, range 20 east, Gila and Salt River meridian, for school and park purposes.

ENROLLED JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled joint resolution (S. J. Res. 167) to amend the public resolution approved June 28, 1935, entitled "Joint resolution providing for the participation of the United States in the Texas Centennial Exposition and celebrations to be held in the State of Texas during the years 1935 and 1936, and authorizing the President to invite foreign countries and nations to participate therein, and for other purposes", and it was signed by the Vice President.

HOUSE BILLS AND JOINT RESOLUTIONS REFERRED

The following House bills and joint resolutions were severally read twice by their titles and referred as indicated below:

H. R. 6645. An act to amend the act entitled "An act to provide for the construction of certain public buildings, and for other purposes", approved May 25, 1926; to the Committee on Public Buildings and Grounds.

H. R. 6869. An act authorizing the Chippewa Indians of Wisconsin to submit claims to the Court of Claims; to the Committee on Indian Affairs.

H. R. 7438. An act to amend the act entitled "An act to authorize the construction and operation of certain bridges across the Monongahela, Allegheny, and Youghiogheny Rivers in the county of Allegheny, Pa.", approved June 4, 1934; to the Committee on Commerce.

H. J. Res. 129. Joint resolution to amend the joint resolution entitled "Joint resolution for the relief of Porto Rico", approved December 21, 1928, to permit an adjudication with respect to liens of the United States arising by virtue of loans under such joint resolution; to the Committee on Territories and Insular Affairs.

H. J. Res. 276. Joint resolution authorizing the State of Arizona to transfer to the town of Benson without cost title to section 16, township 17 south, range 20 east, Gila and Salt River meridian, for school and park purposes; to the Committee on Public Lands and Surveys.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Latta, one of his secretaries.

ENROLLED JOINT RESOLUTION PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on today, August 6, 1935, that committee presented to the President of the United States the enrolled joint resolution (S. J. Res. 167) to amend the public resolution approved June 28, 1935, entitled "Joint resolution providing for the participation of the United States in the Texas Centennial Exposition and celebrations to be held in the State of Texas during the years 1935 and 1936, and authorizing the President to invite foreign countries and nations to participate therein, and for other purposes."

RIVER AND HARBOR APPROPRIATIONS

Mr. AUSTIN obtained the floor.

Mr. COPELAND. Mr. President——

The VICE PRESIDENT. Does the Senator from Vermont yield to the Senator from New York?

Mr. AUSTIN. I yield.

Mr. COPELAND. Mr. President, I have asked the Senator from Vermont to yield for just a moment in order that I may make a statement as to the river and harbor bill.

We are having difficulty about getting a conference on this bill. When the bill went to the House a conference was asked for. Objection was raised. Since that time the Committee on Rules of the other body has declined to permit an arrangement to be made for the holding of a conference.

The reason for that is that the Senate inserted in the bill what is known as "amendment numbered 73."

(At this point a message from the House of Representatives was received, which appears elsewhere under the appropriate heading.)

Mr. COPELAND. I have had several conferences, not alone with the Chairman of the Rivers and Harbors Committee of the other body but also with Chairman O'CONNOR, of the Rules Committee of the House. I feel that I ought to make this statement to the Senate. Naturally, as chairman of the committee, I realize my responsibility to obtain action on this bill at this session and as soon as possible.

I have stated the situation and in order to test the sentiment of the Senate I am about to ask unanimous consent to request the House to return the bill. In doing this I do not wish at all to criticize the House. I wish we had quite the same respect and regard for our own rights and privileges that is exercised over there. However, in this particular matter, so far as I can see, the only thing I can do at the moment as chairman of the committee is to do what I do now, and that is to ask unanimous consent that the House may be requested to return the bill to the Senate.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. COPELAND. Certainly.

Mr. VANDENBERG. The Senator from New York started to state the reasons for the difficulty at the other end of the Capitol and was interrupted by the message from the House. Will he not now make the statement?

Mr. COPELAND. In answer to the Senator from Michigan, the difficulty is this: It will be recalled that we brought out the bill the second time in order that Senators from the Colorado River States might get into closer agreement regarding certain amendments relating to improvements on that river. That particular matter related largely to amendment numbered 72.

Amendment numbered 73 was put in the bill to validate all the acts of the Interior Department and the Secretary of the Interior and the P. W. A. in matters relating to flood control, irrigation, and other matters which the House in its wisdom believed should not be included in the river and harbor bill. That is the reason why I feel there is no other course for me personally to take at the moment than to ask unanimous consent as I have, and to be governed by the action of the Senate.

The VICE PRESIDENT. Is there objection to the request of the Senator from New York?

Mr. McNARY. Mr. President, I find it difficult to object to any request made by the able and respected Senator from New York. I shall have to do so in this case because the proposition is novel. It does not seem to me it is the proper procedure to be pursued between two parliamentary bodies. We have a way of meeting our differences in conference. There is nothing unusual about the amendments in the bill. It may be the desire of Members of the House that their difficulty should be made known in conference. I am not willing at this time, by unanimous consent or motion, to consent that the river and harbor bill be brought back to this body. There is one way to proceed. There is one beaten path we have always followed. The results have always been good. I insist that we pursue the orderly method of having the conference, and therefore I object to the request of the Senator from New York.

The VICE PRESIDENT. Objection is heard.

THE AIR MAIL SERVICE—CONFERENCE REPORT

The Senate resumed consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 6511) to amend the air mail laws and to authorize the extension of the air mail service.

Mr. AUSTIN. Mr. President, when the Senate recessed last evening we were discussing the amendments to the air mail laws and I desire briefly to continue the discussion. I referred last evening to the history preceding what had occurred in this session of Congress as bearing upon the vindictive character of certain features of the amendments and upon what seem to me to be face-saving clauses which should not be in the bill and which will hardly appear in any well-considered bill in the future.

I realize that no change is possible at the present session of Congress with respect to this matter. What I have to say is intended as a record for use by Senators when we come to the consideration of the bill which has been promised on the floor of the Senate during the instant debate.

I am very happy to recognize the candid statements of the Chairman of the Committee on Post Offices and Post Roads as holding out not merely a hope, but a promise, than when the subject shall come up for consideration again the points to which I have directed attention will be thoroughly considered and regard will be given to the points of view which have been here expressed.

Before the enactment of the McNary-Watres Act there were developed two substantial lines of air transportation in the country, one of them being the northern transcontinental route. I do not know its exact and technical name today, but I have always identified it as the United Airways. I believe it has had different names at various times and that today it has a different name than it had even a year ago; but everyone will recognize it as the route from New York through Chicago to San Francisco, and as being one of the great transcontinental lines, which is in competition with the other two transcontinental lines which were created under the McNary-Watres Act and by virtue of the powers granted to the Postmaster General and the stimulus created by the subsidy authorized by that act.

The other route which was created before the McNary-Watres Act was passed was the National Park Airway.

Both these routes were created by means of the competitive-bid plan. Both were in full operation before the meeting was held for consideration of the air mail map under the McNary-Watres Act. Therefore all directors, all officers, all employees performing managerial services for those two lines obviously could not by any stretch of the imagination be regarded as tainted with fraud or collusion or any of the offenses which were claimed to be the ground for cancelation of the air mail contracts.

Obviously none of those directors, officers, or servants engaged in managerial services ought to come within the proscription of the amendments contained in the conference report to which I shall later allude. They do, however, fall within the condemnation of the original act of June 12, 1934, and they do fall under the condemnation of these amendments, an injustice which I feel certain the Chairman of the great Post Office and Post Roads Committee does not intend to have perpetuated.

The McNary-Watres Act was approved April 29, 1930. In that act there was granted the power to put together the sporadic, scattered, illogical, disjointed, and separated routes which were spread out all over the United States. Outside of the two lines to which I have heretofore referred as being created before the McNary-Watres Act, these scattered routes and lines failed to perform the service which an air mail line is designed to perform, for the reason that they were disconnected, and a letter or a package could not be transmitted by mail or express from one to the other without transporting it by some other means of carriage in between. So, under the authority to combine, put together, and make extensions, connections were made, and efforts were exerted to create the other two transcontinental routes, the midcontinental and the southern routes.

Those efforts involved the meeting, the getting together of the managers and directors of the various pioneers who, by their daring and their audacity and their self-sacrifice, had laid out these airways. Airways are not things merely of the air; they are things also of the earth, and they are just as fixed in their characteristics as are railways.

The official at the desk in Washington had the assistance of these men for the purpose of remaking the air-mail map of the United States. He discovered that these pioneers could not agree, that there would be claims by more than one pioneer for the same route, and that was a cause for an entire lack of agreement; but there was another cause for it.

The question was raised whether the Postmaster General had authority under the law to create transcontinental routes by this method. After considerable delay, an opinion was rendered which caused the Postmaster General to stop the undertaking to remake the air mail map by the advice and consent and agreement of these pioneers; the plan was given up, and the other plan of letting the contracts out by bids was then adopted.

Without doubt any fair-minded, just person examining the history of the events which led up to the letting of contracts for the transcontinental lines would conclude that the facts developed in those meetings, under the provision of the McNary-Watres Act relating to extensions, naturally affected the judgment and the conduct of men in submitting bids under the bidding plan of letting the contracts. So it turned out that men who were qualified to bid on the southern route found it in their interest to concentrate their efforts upon the southern route, and men who were qualified to bid on the midcontinental route concentrated upon that. All the facts which had developed in those meetings, all the interests which these men had as being qualified bidders, prevented them from bidding on any other route than that for which they were qualified.

That formed the basis of what was called "collusion." The present administration was fully informed of this history. Within 6 days before the cancelation of these contracts were decided upon the present Postmaster General testified before the special investigating committee as follows—this was on January 30, 1934, and I quote from the record:

Senator AUSTIN. The fact I am interested in is whether you, as Postmaster General, have discovered something that you regarded as fundamentally wrong about these contracts which you tried to correct?

Mr. FARLEY. I have not made any move in that direction.

Again, later:

Senator AUSTIN. With reference to these certificates for air mail service?

Mr. FARLEY. Let me explain it this way: They are still in operation. No change has been made. At the moment I am not in position to say whether or not we approve the system in vogue or whether I would recommend a change.

Senator AUSTIN. Yet, of course, in an investigation of this character it would be important to consider whether you, as Postmaster General, in the time that you have been in office—that is, since March 4, 1933—had disapproved or approved.

Mr. FARLEY. I have not disapproved any, and I would assume the fact that I have not made any change might be considered an approval up to the present day, if that is what you have in mind.

Senator AUSTIN. That is, exactly.

Again, later:

Senator AUSTIN. Then up to that time—January 30—your men, who had been right here along throughout this hearing, had not reported anything to you to cause you to disapprove of the air mail contracts?

Postmaster General FARLEY. Well, they had reported things to me, but the material, in their judgment and in mine, had not been sufficiently assembled, or sufficient facts brought out, to warrant doing what we did.

Seven days later, on February 6, 1934, the project to cancel all the contracts was submitted to the President and the Attorney General by the Postmaster General. In the short time between January 30 and February 6 the decision had been made to cancel the contracts. What had happened in the meantime? Had any further evidence been adduced before the committee on the subject of collusion and fraud? Not a single word. Between January 30, 1934, the date when the Postmaster General testified that he had found nothing about the contracts which had caused him to act toward cancelation and that his own conduct under them might be regarded as a ratification of them, and February 9, the date when the cancelation actually occurred, the Society of Independent Operators, which had been formed immediately after the national election of 1932 for the purpose of securing cancelation of the contracts, had turned on pressure for speedy action, which was followed by cancelation of all the contracts. That is what happened.

On February 2, four days before the conference with the President, they filed with Postmaster General Farley a memorandum from which I quote. This evidence, it seems to me, is not merely persuasive, it is conclusive. In the memorandum they asserted—

That unless early constructive action is taken to bring about changes in existing administration of the air mail service the independent operators will be forced to cease their air passenger transport operations.

That was the motivating cause which arose between January 30 and February 6 for the decision to cancel the air mail contracts. As a matter of history, did they proceed according to law to cancel the contracts? The McNary-Watres Act permitted cancelation for cause upon notice and hearing. Oh, no; they did not act under that provision. Did the President act under the general authority given him to cancel any contract with the Federal Government for cause upon notice of 60 days and a hearing? Oh, no. Congress had declared its policy that that should be done, and that no property right such as a contract should be taken from a citizen by his country save through due process of law, but that was not done. Without notice, without hearing, though it was requested in writing, these contracts were struck down and denounced, and the persons who conducted the executive business of the several corporations and the individual principals were denounced as frauds, malefactors, and attainted with a disability ever again to contract with their Government.

That is a bit of history which I shall not permit to be forgotten so long as we have to stand here and fight these unreasonable proposals of legislation which have for their obvious purpose the crystallizing and freezing of a monopoly, and the prevention of open and even competition in the air mail service.

The particular value of the historical facts at this instant is their bearing upon the acts of the conferees of both House and Senate in striking out the words "for cause" from the amendment agreed to unanimously by the Senate.

Why strike out the words "for cause" when granting to the Federal Government the power to terminate a contract on 60 days' notice? Obviously to save the face of an administration which cancels contracts without cause.

This bit of history is important also because it bears upon the perpetuation of that vindictive feature of the Air Mail Act of 1934 setting up as frauds a group of men who had become the most learned, the most expert, of all administrators of air transport management and operation and service, condemning them for life to that condition of inferiority and servitude that they are disabled from enjoying the privilege

which other citizens have of contracting freely with their Government.

Mr. President, how long is the Senate of the United States going to continue the character of legislation which perpetuates an attainder that is forbidden by the fundamental law? We know it is forbidden because of the express terms of the Constitution forbidding it, and we know it is forbidden because of the decisions of the United States Supreme Court upon similar acts of punishment of citizens by legislation and without trial by a court of justice.

Here we sit, 96 men, picked from the country, and solemnly proceed with this declaration in these amendments of the air mail laws. I read from page 4 of the conference report:

SEC. 9. Subsection (d) of section 7 of such act is amended to read as follows.

Now listen with the question in mind whether we are not about to pass judgment without trial upon the citizens of this country implied in the amendments and impose punishment, the punishment of a disqualification to enjoy the rights of citizens:

(d) No person shall be qualified to enter upon the performance of, or thereafter to hold an air mail contract (1) if, at or after the time specified for the commencement of mail transportation under such contract, such person is (or, if a partnership, association, or corporation, has a member, officer, or director, or an employee performing general managerial duties, that is) an individual who has theretofore entered into any unlawful combination to prevent the making of any bids for carrying the mails: *Provided*—

Mr. President, this proviso is the only thing in this amendment which shows to whom the authority is given to pronounce this judgment or to execute this judgment or to find any facts about it:

Provided, That whenever required by the Postmaster General or Interstate Commerce Commission the bidder shall submit an affidavit executed by the bidder, or by such of its officers, directors, or general managerial employees as the Postmaster General or Interstate Commerce Commission may designate, sworn to before an officer authorized and empowered to administer oaths, stating in such affidavit that the affiant has not entered nor proposed to enter into any combination to prevent the making of any bid for carrying the mails, nor made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person to bid or not to bid for any mail contract, or (2) if it pays any officer, director, or regular employee compensation in any form, whether as salary, bonus, commission, or otherwise, at a rate exceeding $17,500 per year for full time: *Provided further*, That it shall be unlawful for any such officer or regular employee to draw a salary of more than $17,500 per year from any air mail contractor—

Listen to this—

or a salary from any other company if such salary from any company makes his total compensation more than $17,500 a year.

What folly! As legislators of the United States looking to the general welfare we sit here and solemnly denounce every person who obtains compensation of more than $17,500 a year, though he be the executive or managerial servant of an institution which connects the Atlantic and the Pacific Oceans, is the custodian and operator and manager and trustee of millions of dollars of citizens' property, and the faithful trustee of the mail of the United States of America, a man who must have experience, who must have character, who must have power, who must be so preeminent in his service to his fellow man that he may be chosen out of many to undertake that great responsibility. If he receives more than $17,500 a year he is proscribed.

I do not want to be judged so small. I do not want to have anyone consider that my opinion of the problems of business and professional life is so narrow as not to recognize that service is worth what a man renders to his fellow man, and that the value of that service cannot be limited by $17,500, considering the magnitude of the trust and responsibility which is involved in the carriage of the mail by air from ocean to ocean.

Worse than that, however, is that other provision of the amendment which perpetuates for all time, unless some future Congress shall have the sense and the justice to correct it, the attainder of those people who are assumed by this administration to be frauds—not proved, but assumed—some of whom were not even present at the meetings, some of whom had contracts which did not arise out of any of the transactions involved, innocent or guilty as those transactions may have been.

We have not the time to pass upon the merits of that controversy, and that is not the object of my rehearsal of it. The object of the reconsideration, briefly, of the history of the cancelation of the air mail contracts is to give force to the objection which we make at this time to the conference report, and to show why we do what seems like a futile thing—debate a conference report at all when we know that it will be agreed to.

My reference to that history is made for the purpose and in the hope that some future session of the Congress of the United States will put a stop to this condemnation of citizens without trial, in absentia, and in defiance of their constitutional and fundamental right.

Mr. President, there were other amendments made. I refer to page 9969 of the CONGRESSIONAL RECORD and read:

The next amendment to the committee amendment was, on page 17, line 10, after the word "maintained", to strike out "for at least 4 months next preceding" and insert "prior to."
The amendment to the amendment was agreed to.

There was a companion strike-out in the same paragraph as follows:

The next amendment to the amendment was, on page 17, line 12, after the word "maintained", to strike out "during the year."
The amendment to the amendment was agreed to.

What was the reason for that amendment? The reason for it was to take out of this bill one of the elements which consolidated the monopoly and which opened this legislation up to permit competition.

Let us see how that section read, and Senators will observe at once the value of removing that time requirement. I am reading from the bill as we considered it and adopted it on the Senate floor, page 17, line 4, of the bill:

After June 30, 1935, no air mail contractor shall be allowed to maintain passenger or express service off the line of his air mail route which in any way competes with passenger or express service available upon another air mail route, except—

Mr. President, these are the gentlemen who may carry on a service off the line of their air mail route, and these are the only gentlemen who can:

except that off-line competitive service which has been regularly maintained for at least 4 months next preceding July 1, 1935, and such seasonal schedules as may have been regularly maintained during the year prior to July 1, 1935, may be continued if restricted to the number of schedules and to the stops scheduled and in effect during such period or season.

We took out all that provision as to time. We did it not to make this bill perfect—it could not be made perfect; we should have been compelled to strike out the entire paragraph in order to make it perfect—but by compromise we arrived at those two amendments, which removed the time limits and left this amendment open so that if any air mail carrier had been engaged at all in off-line service before July 1, 1935, he would come within the exception from the prohibition.

The Senate agreed to it. The conferees on the part of the Senate took it to the meeting of the conferees, but what happened there? They struck it right out; that is, they struck out "during the year." They left "prior to" in the first instance, but they struck out the cancelation of "during the year", and so now in order that there may be anyone excepted from this proscription he must have maintained regularly the off-line service for an entire year prior to July 1, 1935. Monopoly! Another case of freezing a condition as it is today, and shutting the door in the face of anyone in the future. That is only one aspect of this amendment. That is only one of those proscriptions—and this is a bill of proscriptions—which prevents anyone in the future coming in.

Mr. President, I am about to conclude what I have to say. Let us assume that a change of administration should occur; let us assume that a Republican administration should come into power in the near future; what would become of the air mail as an institution if that new administration should

adopt the tactics of the present administration? I am saying that one of the worst features of this conference report is that feature which struck out the words "for cause", and put it into the power of a Republican administration or a Democratic administration or any other administration to cancel on 60 days' notice all these contracts, and put the fellows who were out in, and the fellows who were in out.

It seems to me it is time that political color should be erased, that this important legislation should be considered without reference to politics, and that we should build up legislation here which will not be condemnatory, which will not smear some of the best of our citizens, but which will encourage the development of the mechanics of the air, safety devices, sound suppressors, devices for communication, increase the efficiency and the strength and the speed of airships, and assure not only the investor whose money operates these services—notwithstanding this pretense of lavish support by the Government—but also assure the traveling public and the shipping public that here is an institution which has sufficient permanence, sufficient opportunity for competition, sufficient stability, sufficient safety from a tyrannical Government so that it may be improved and developed and expanded; so that all men and women may have the use of it; so that more mail and express may be carried than are carried today, and the cost to the consumer, the cost to the person who rides in the plane, and the cost to the person who sends the mail may be reduced.

This we sincerely hope for. This we have worked for heretofore. To this end these amendments were offered, and we supposed to these ends they were agreed upon. Why they should be wiped out and reversed is one of the most mysterious transactions in legislation that has ever come to my attention.

Mr. DUFFY obtained the floor.

Mr. McKELLAR. Mr. President, will the Senator from Wisconsin permit the conference report on the air mail bill to be voted on at this time?

Mr. DUFFY. Mr. President, I understand there are points of order to be raised which will lead to further discussion, and I prefer to make my statement at this time.

Mr. McKELLAR. Mr. President, a conference report has priority over a bill.

Mr. DUFFY. Very well; I will retain the floor and I shall discuss, as the other Senators have, matters which I think should be presented at this time.

Mr. President, tomorrow 1 week will have elapsed since the Senate began the consideration of the copyright bill. At that time I pointed out to the Senate that there is also on our Executive Calendar a treaty which has been unanimously reported by the Foreign Relations Committee, and which is awaiting the disposition of this bill because of its character as an enabling act. I recognize that those who are opposed to this bill would like to see it delayed as long as possible, as we are approaching the end of the session. I recognize that much of the discussion, which has had nothing to do with the bill, has not been inspired by the idea of delaying its passage, but, nevertheless, I wish to make an appeal to my colleagues that we may be permitted to have an expression of the Senate upon this bill, and I hope that I shall not be asked to consent to lay it aside for other business.

I recognize that conference reports have priority, and we are in no position to object to their consideration, but I should like to serve notice that I, at least, cannot consent to lay aside the bill for other kinds of business, and that such action will have to be taken by vote of the Senate.

I should like to suggest that, so far as I know, there is only one additional speech to be made upon the bill, and possibly one or two questions to be raised with reference to certain portions of it. So it should not take very long to have a proper consideration and disposition of the bill.

The Senator from New York [Mr. WAGNER], who, I understand, wishes to speak upon the bill, said the other day that he thought I reflected upon some very fine people in this country, authors and others, by saying that the American Society of Composers, Authors, and Publishers was engaged in a racket. I wish distinctly to draw the line in the accusation I made between the activities of the society and the very fine men who may belong to it. A composer or author assigns his copyright and his rights to the society and has nothing further to do about their enforcement. I claim that the activities of the society in many respects and in many States have been nothing less than a racket. I read a letter here from the Federal judge in my State designating it as such. I have a letter here from the attorney general of my State who refers to it in such terms. I have letters here from district attorneys, who have been called upon to prosecute actions under the minimum damage section, who refer to it in that manner. We have the testimony of several Senators who have had experience in their States showing what the procedure was there, snooping and, in many cases, condemning innocent infringers and bringing them into the Federal court and making them pay the minimum of $250.

But to show that those who framed this bill and those of us who have taken an interest in it have no animus against the society itself, except insofar as this racket has beeen carried on, I want at this time to put into the RECORD a very short statement as to the provisions that were put in this bill at the request of the American Society of Composers, Authors, and Publishers. In other words, there was not any disposition to try to disregard the interests or rights of A. S. C. A. P., as the society is called, an organization which, as I pointed out the other day, is being prosecuted by the Federal Government under the Sherman Antitrust Act at the present time.

HOW THE DUFFY BILL HELPS THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS, AND PUBLISHERS

When the American Society of Composers, Authors, and Publishers sent its representatives to take part in the preparation of the Duffy bill, a number of suggestions were made which were included in the finished draft.

The principal affirmative desire expressed on behalf of the American Society of Composers, Authors, and Publishers was the adherence by the United States to the Convention for the Production of Literary and Artistic Works. The bill prepares the way for adherence to the treaty. Accordingly, this principal desideratum is granted to the American Society of Composers, Authors, and Publishers.

A special request was made that authors be specifically granted the exclusive right to convert their works into motion pictures. This request is granted in the bill, page 2, lines 5 and 6.

Another request was to accord to the author exclusive right to communicate his work to the public by means of television, which is one of the new developments from which considerable is expected in the near future. This was accorded by the bill, page 4, line 9.

Request was made to accord specifically to authors the control of works prepared for recording by means of electrical or mechanical transcription, which has become of great importance since the last revision of the copyright act. This is accorded in the bill, at the request of their representatives, on page 5, lines 12 and 13.

Request was made for the expansion of the right to control oral delivery of a copyrighted work. Under the present law such control is accorded to lectures, sermons, and addresses. Under the bill, page 2, lines 15 and 16, extension is made to cover any copyrighted work delivered in public for profit.

In other words, those are the provisions which were requested specifically by the organization, and they were given a full hearing. Mr. Mills, their general manager, was heard; testimony was taken; Mr. Burkan, their attorney, was heard, as were Mr. Buck and various others who were interested. I wish to assure the Senate that there was no disposition to try to take advantage of or to put the society in a hole in any way. It was, however, the feeling of the committee that the provision for the $250 minimum, which had been used as a means of a racket and as a club, should be done away with and that we ought to leave full discre-

tion to the courts to award such damages as would prevent infringement and as would be just and equitable.

I point out to the Senate that when rights of monopoly are given and controlled by a private group there is always inherent danger. Under the law rights of monopoly were given to the authors; that is all right; but when authors and composers and others get together and form an organization so powerful in its exclusive control that the Department of Justice or the United States Government is prosecuting them under the Antitrust Act, then the rights of the consumers must be given some attention.

We desire that authors be protected. They will get great benefits under this proposed act. If there are to be further speeches upon other matters I should like to have Senators at least glance over, hurriedly, if necessary, the letter that was written by the junior Senator from California [Mr. McADOO] to Irving Berlin, which letter is published in yesterday's RECORD, which is on the desks of Senators this morning. I think the facts are presented in that letter very clearly and very succinctly, and the letter shows the very great effort which has been made to be as fair as possible.

The Senator from Idaho [Mr. BORAH] had printed in the RECORD some days ago a petition from Thorvald Solberg, from which I desire to quote a couple of sentences. Mr. Solberg, as I previously told the Senate, for 33 years was Register of Copyrights. He says in part:

S. 3047 is a compromise bill. Any proposal for the general revision of our copyright legislation must of necessity be a compromise measure. But, in my opinion, it is the best balanced and most practical compromise proposal for the betterment of our copyright laws that has been presented to Congress for a long term of years.

He says further:

So far as this matter is concerned, our authors are neither asked to do anything more than heretofore nor anything different. They are left under the provisions of existing law to continue a practice of more than 50 years, including the deposit of copies of their works and registration of their claims to copyright. The records of the Copyright Office clearly indicate that authors generally would desire to continue deposit and registration, because they are convinced that it is definitely to their own advantage.

Mr. Solberg further says:

The bill extends to American authors many of the most important copyright reforms discussed during the last 10 years.

He ended his petition by saying:

Authors should, in my opinion, rally to the support of this bill, because it is obvious that they would secure through its enactment definite new benefits and would not lose any rights that are practically valuable.

So I submit to the Senate, inasmuch as the bill has received such wide-spread approval and the only opposition to it is concentrated on the one feature, which takes away from the society something, out of which, of course, they have made considerable money, but at the expense largely of the small, innocent infringers, and inasmuch as the bill has been before the Senate for almost a week, that we ought to have the opportunity of having a vote so that the Senate may give an expression of its opinion and those who may be opposed to it may register their opposition. We have to get the bill over to the House, and there is on the Executive Calendar the copyright treaty awaiting action on the bill. So I appeal to the Members of the Senate to permit a vote to be had. I think we have been patient; we have yielded to other measures and have been as accommodating as we possibly could be. The bill is of importance. If Senators have speeches to make on matters which are entirely extraneous, it seems to me that they could be made just as well after a vote on the pending bill shall have been had.

Mr. McKELLAR. Mr. President, may we have a vote on the conference report? I ask for a vote.

Mr. BORAH. Mr. President, I inquire has the conference report been disposed of?

Mr. McKELLAR. It has not been disposed of; but I hope we may now dispose of it.

The PRESIDENT pro tempore. The question is on agreeing to the conference report.

Mr. WHITE. Mr. President, I have been so much impressed by the criticisms directed to this conference report by the senior Senator from California [Mr. JOHNSON], and by my colleague from Vermont [Mr. AUSTIN], and I am so hopeful that if the report shall again be committed to the conferees that they will have both the disposition and the capacity to eliminate the infirmities and the defects which I think have been pointed out in it, that I am constrained to make a point of order against the report.

I make the point of order that there has been included in the conference report matter not committed to the conferees by either the House or the Senate. I invite the attention of the Chair to two paragraphs embodied in the report, first with relation to the language appearing near the middle of page 3 of the printed conference report, and which I read as follows:

And the Commission shall make a report to the Congress, not later than January 15, 1936, whether or not, in its judgment, a fair and reasonable rate of compensation on each of said eight contracts, under the other provisions and conditions of said act, as herein amended, is in excess of 33⅓ cents per mile; together with full facts and reasons in detail why it recommends for or against any claim for increase.

Mr. President, in the House bill, so far as I am able to discover, there is no reference whatsoever to any report to the Congress with respect to any matter covered by the language of the House bill.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. WHITE. If I may conclude my suggestion, then I will yield.

In the Senate bill there is a provision for a report to the Congress; but if the Presiding Officer will turn to page 12 of the bill as it passed the Senate he will note, and the Senate will note, that the report provided for by the Senate bill related only to the profits, whether reasonable or unreasonable, made by the air mail contractors, and that that report called for by the Senate language had no relation whatever to the rates of compensation charged by the air mail carriers or allowed by the Postmaster General or the Interstate Commerce Commission.

I maintain that by inserting the provision requiring a report to the Congress with respect to the rates of compensation the conferees have inserted matter not submitted to them by either House.

Mr. President, I invite attention further to language appearing on page 5 of the conference report, in section 10. I read that language of which I complain:

There is authorized to be used from the appropriations for contract air mail service for the fiscal year ending June 30, 1936, a sum not in excess of $25,000 for the purpose of auditing the books and records of air mail contractors by the Post Office Department.

I am not able to discover, either in the language of the bill as it passed the Senate or in the language of the bill as it passed the House, any authority for an authorization for an appropriation of any sum whatsoever for any such purpose as is here suggested.

It seems to me that in these two respects the conferees have clearly transcended their authority. I make the point of order, as indicated at the beginning of my brief remarks, only because of my hope that if the bill goes back to the conferees they may start de novo and may bring to the Senate a report free from the infirmities pointed out by previous statements.

I make the point of order.

Mr. McKELLAR. Mr. President, as to the first objection to the language found on page 3, let me read the language:

Under the other provisions and conditions of said act, as herein amended, is in excess of 33⅓ cents per mile, together with full facts and reasons in detail why it recommends for or against any claim for increase.

It is perfectly apparent that that point was in controversy. That was really the principal controversy between the two bills. Under the language of the bill as it passed the House, on page 3 the Interstate Commerce Commission was authorized to fix the rates at 20 percent higher than they now are.

What the conferees did, instead of accepting the Senate provision for the present limitation, was simply to agree that the matter, as to eight contracts which had been given the full limit of 33⅓ cents, should be submitted again to the Interstate Commerce Commission and the Commission should report whether there should be any increase in rates under those contracts, the report to be made at the January session of Congress.

The point was directly in controversy between the two Houses. There was a provision relating to it in the Senate bill fixing the rate at 33⅓ cents and there was a provision in the bill as it passed the House fixing the rate at 40 cents, and there was a reference to the Interstate Commerce Commission to investigate the matter and report at the next session of the Congress as to rates between these figures.

The PRESIDENT pro tempore. Will the Senator from Tennessee please read the two paragraphs involved, the one appearing in the Senate bill and the one appearing in the House bill?

Mr. McKELLAR. I shall take pleasure in doing so.

On page 3 of the bill as it passed the House it was provided as follows:

SEC. 6. (a) The Interstate Commerce Commission is hereby empowered and directed, after notice and hearing, to fix and determine by order, as soon as practicable and from time to time, the fair and reasonable rates of compensation for the transportation of air mail by airplane and the service connected therewith over each air mail route, and over each section thereof covered by a separate contract, prescribing the method or methods by weight or space, or both or otherwise, for ascertaining such rates of compensation, and to publish the same, which shall continue in force until changed by the said Commission after due notice and hearing. In fixing and determining such rates, if it shall be contended or alleged by the holder of an air mail contract that the rate of compensation in force for the service involved is insufficient, the burden of establishing such insufficiency and the extent thereof shall be assumed by him.

I invite the attention of the Chair to the next sentence:

In no case shall the rates fixed and determined by the said Commission hereunder exceed by more than 20 percent the limits prescribed in section 3 (a) of this act.

That is the provision in the bill as it passed the House. If the Chair will turn to the bill as it passed the Senate he will find on page 8 that the provision for a limitation of 33⅓ cents is reenacted. In other words, here was the distinct issue. I need not read it, but I ask that the paragraph contained in the bill as it passed the Senate may be printed in the RECORD.

The PRESIDENT pro tempore. The Chair would very much like to have it read.

Mr. McKELLAR. Very well. I shall read it, as follows:

The Postmaster General is authorized to award contracts for the transportation of air mail by airplane between such points as he may designate, and for initial periods of not exceeding 3 years, to the lowest responsible bidders tendering sufficient guaranty for faithful performance in accordance with the terms of the advertisement at fixed rates per airplane-mile: *Provided*, That where the Postmaster General holds that a low bidder is not responsible or qualified under this act, such bidder shall have the right to appeal to the Comptroller General, who shall speedily determine the issue, and his decision shall be final: *Provided further*, That the base rate of pay which may be bid and accepted in awarding such contracts shall in no case exceed 33⅓ cents per airplane-mile for transporting a mail load not exceeding 300 pounds. Payment for transportation shall be at the base rate fixed in the contract for the first 300 pounds of mail or fraction thereof plus one-tenth of such base rate for each additional 100 pounds of mail or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried per mile over the route during such month, except that in no case shall payment exceed 40 cents per airplane-mile.

Mr. President, there are two distinct provisions, one fixing a limitation of 33⅓ cents on the power of the Commission to fix rates. The other is a provision increasing that rate by 20 percent. What the conferees did was to permit eight of the contractors to go before the Interstate Commerce Commission and have that body determine whether those eight contractors were entitled to anything more than 33⅓ cents per mile. In other words, it is directly in controversy. It is a provision in both bills, and the conferees reached a compromise between the two.

Mr. WHITE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Tennessee yield to the Senator from Maine?

Mr. McKELLAR. I yield.

Mr. WHITE. I am making no point with respect to the level of the rates, whether they be at one figure or whether they be at another. I should not wish to have the Chair miss what I have in mind and what I am suggesting. The criticism is that the conferees have included the language requiring a report to the Congress and an opinion by the Commission as to whether, in its judgment, a fair and reasonable rate of compensation is in excess of 33⅓ cents per mile, together with full facts and reasons in detail why it recommends for or against the particular increase. My criticism is not as to dealing with the rates themselves; but in the requirement for a report to Congress on the matter, the provision that the Commission shall give its reasons why it did one thing or did not do another thing is entirely new matter, not contained in the House bill, and not contained in anything read by the Senator from Tennessee.

Mr. HAYDEN. Mr. President——

Mr. McKELLAR. Mr. President, in last year's act and in this year's act we required reports from the Interstate Commerce Commission both to the Congress and to the Postmaster General. That requirement is all through this bill. If the Senator will look at the measures he will see that it is in the House bill and it is in the Senate bill.

I now yield to the Senator from Arizona.

Mr. HAYDEN. Mr. President, one fact which has been overlooked in this discussion is that the Senate struck out all after the enacting clause of the House bill and the conferees have submitted a third text. In that situation it is my understanding that the only question which the Chair has to pass upon is whether the change made in conference is germane to the proposals as originally submitted by the House or by the Senate.

The House proposed to authorize a possible increase in existing air mail rates by 20 percent, whereas the Senate proposed to leave the maximum rate at 33⅓ cents per airplane mile. Since both the House and Senate proposals covered all contractors, clearly the conferees would have jurisdiction to say what should be done with respect to eight, or some of the contractors. Action in that respect certainly would be germane.

As to the sentence which requires that a report be submitted to Congress, the text as passed by the House required the Interstate Commerce Commission to make a finding as to the necessity for increased pay to air mail contractors, to which the Senate would not agree. Consequently, it would be germane for the conference report to require that the Interstate Commerce Commission shall make a report to Congress with respect to the matter.

Mr. WHITE. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield to the Senator from Maine for the purpose of asking a question of the Senator from Arizona.

Mr. WHITE. Does the Senator mean to contend that a finding by the Interstate Commerce Commission involves a report to the Congress with respect to a matter? They are entirely separate, distinct, and totally unrelated things.

Mr. HAYDEN. But the question is, Is the provision in the conference report germane to the text of the bill as passed by the House of Representatives? Certainly it is germane. It relates to the subject matter of air mail pay.

If the Senate was dealing with a bill where there were specific changes in various sections or paragraphs, there might be some force to the point of order made by the Senator from Maine; but that is not now the case. The Senate struck out the entire House text, and what the committee of conference has done is germane to the entire subject matter.

Mr. WHITE. If the Senator from Tennessee will yield further, there is not in this section of the House bill anything whatsoever with respect to a report to the Congress. When we turn to the Senate bill we find that there is a pro-

vision requiring a report with respect to the profits of the companies. Disregarding both those provisions, the conferees have written in a requirement for a report with respect to rates of compensation.

I shall be glad to hear the Senator's comment on that point.

Mr. McKELLAR. Mr. President, as to the first point of order, with reference to the matter on page 3, it is clearly in controversy between the two Houses. Indeed, it was the point of controversy which came very near wrecking the conference. The principal question during the whole conference was as to whether or not we should change the limitation which now exists on the rates of air mail, whether or not we were going above 33⅓ cents. That was the point of controversy in every conference, and we had many of them. This adjustment of the matter was finally had, by directing that the Interstate Commerce Commission report as to these eight contracts. I take it that there cannot be any doubt about it.

On page 5 it is objected that this language was added:

There is authorized to be used from the appropriations for contract air mail service for the fiscal year ending June 30, 1936, a sum not in excess of $25,000 for the purpose of auditing the books and records of air mail contractors by the Post Office Department.

If that is germane, it is entitled to be in the report. Unquestionably it is germane.

If the Chair will permit me, a similar matter came before the House of Representatives a number of years ago.

The report having been read, Mr. Tracey, of New York, made the point of order that the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate had exceeded their authority and jurisdiction in recommending the injection into the bill of new matter not in dispute between the two Houses and not germane to the bill or amendments thereto.

It is perfectly germane, if a report is ordered, to direct that the proper means of securing the report may be had, and in my judgment, the points of order should be overruled.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield.

Mr. BARKLEY. As I understand, either in the House bill or in the Senate bill there was authority for a report to be made.

Mr. McKELLAR. In both bills.

Mr. BARKLEY. In both bills, without specifying the amount?

Mr. McKELLAR. Without specifying where it should come from.

Mr. BARKLEY. So the territory to be covered was anywhere between nothing and an indefinite sum which might be afterward appropriated to provide for the report. Is that true?

Mr. McKELLAR. In my judgment it is.

Mr. BARKLEY. So a limitation on the amount would be within the territory of difference between the two Houses on that subject?

Mr. McKELLAR. In my judgment that is true; but over and above that, it is perfectly germane to the provision in the bill itself, and under the rules as here interpreted the point of order should be overruled. I hope the Chair will overrule it.

The PRESIDENT pro tempore. A point of order is made by the Senator from Maine [Mr. WHITE] against the language in the conference report on page 3, which reads as follows:

And the Commission shall make a report to the Congress, not later than January 15, 1936, whether or not, in its judgment, a fair and reasonable rate of compensation on each of said eight contracts, under the other provisions and conditions of said act, as herein amended, is in excess of 33⅓ cents per mile; together with full facts and reasons in detail why it recommends for or against any claim for increase.

Also, a point of order is made to the language on page 5 of the conference report, which reads:

There is authorized to be used from the appropriations for contract Air Mail Service for the fiscal year ending June 30, 1936, a sum not in excess of $25,000 for the purpose of auditing the books and records of air mail contractors by the Post Office Department.

The point of order is based on the allegation that new legislation is carried in the conference report not contained in either the Senate or House bills.

In the Senate bill this language appears with regard to the 33⅓ cents per mile:

Provided, That where the Postmaster General holds that a low bidder is not responsible or qualified under this act, such bidder shall have the right to appeal to the Comptroller General, who shall speedily determine the issue, and his decision shall be final: *Provided further*, That the base rate of pay which may be bid and accepted in awarding such contracts shall in no case exceed 33⅓ cents per airplane-mile for transporting a mail load not exceeding 300 pounds. Payment for transportation shall be at the base rate fixed in the contract for the first 300 pounds of mail or fraction thereof plus one-tenth of such base rate for each additional 100 pounds of mail or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried per mile over the route during such month, except that in no case shall payment exceed 40 cents per airplane-mile.

In the House bill, in section 6 (a), as amended, this matter is provided for. The last part of that section says:

In no case shall the rates fixed and determined by the said Commission hereunder exceed by more than 20 percent the limits prescribed in section 3 (a) of this act.

It will be observed that while this matter is treated in both the Senate and the House bills, they are at entire variance in their treatment of it. Therefore both of the sections were in conference.

Under the interpretation of the present occupant of the chair, where all after the enacting clause of a House bill is stricken out and an entirely new bill inserted by the Senate, the question arises as to whether or not the language used as a substitute for the two sections is germane and carries out the intent of both bodies with regard to such particular legislation.

As to the provision which is the subject of the last point of order—

There is authorized to be used from the appropriations for contract air mail service for the fiscal year ending June 30, 1936, a sum not in excess of $25,000 for the purpose of auditing the books and records of air mail contractors by the Post Office Department—

The Chair calls attention to the fact that the Senate bill carries no provision for auditing the books, while the House bill, in section 10, as amended, carries this provision:

All persons holding air mail contracts shall be required to keep their books, records, and accounts under such regulations as may be promulgated by the Postmaster General, and he is hereby authorized, if and when he deems it advisable to do so, to examine and audit the books, records, and accounts of such contractors, and to require such contractors to submit full financial reports in such form and under such regulations as he may prescribe.

That requirement is found alone in the House bill. The Senate did not have to accept that provision. If it did accept that provision, it could accept it with such conditions as it saw fit. It did accept the provision with this condition:

There is authorized to be used from the appropriations for contract air mail service for the fiscal year ending June 30, 1936, a sum not in excess of $25,000 for the purpose of auditing the books and records of air mail contractors by the Post Office Department.

That addition to the House provision certainly is germane, and it is a reasonable condition to impose upon the adoption of the House provision for auditing the books.

The former provision which the Chair has discussed, which requires a report to Congress, is absolutely germane to the issue raised by the different sections of the two bills. Being germane, and the language not being identical in both bills, it was a reasonable adjustment of the differences in that particular between the two Houses.

The Chair overrules the points of order.

The question is on agreeing to the conference report.

The report was agreed to.

REVISION OF COPYRIGHT ACT

The Senate resumed the consideration of the bill (S. 3047) to amend the act entitled "An act to amend and consolidate the acts respecting copyright", approved March 4, 1909, as amended, and for other purposes.

The PRESIDENT pro tempore. The bill is open to amendment.

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Costigan	Lewis	Reynolds
Ashurst	Davis	Logan	Robinson
Austin	Dickinson	Lonergan	Russell
Bachman	Dieterich	McAdoo	Schall
Bankhead	Donahey	McCarran	Schwellenbach
Barbour	Duffy	McGill	Sheppard
Barkley	Fletcher	McKellar	Shipstead
Black	Frazier	McNary	Smith
Borah	George	Minton	Steiwer
Brown	Gerry	Moore	Thomas, Okla.
Bulkley	Gibson	Murphy	Thomas, Utah
Bulow	Glass	Murray	Townsend
Burke	Gore	Neely	Trammell
Byrd	Guffey	Norbeck	Tydings
Byrnes	Hale	Norris	Vandenberg
Capper	Hastings	Nye	Van Nuys
Caraway	Hatch	O'Mahoney	Wagner
Chavez	Hayden	Overton	Walsh
Clark	Johnson	Pittman	Wheeler
Connally	King	Pope	White
Copeland	La Follette	Radcliffe	

The PRESIDING OFFICER (Mr. THOMAS of Utah in the chair). Eighty-three Senators having answered to their names, there is a quorum present.

AMENDMENT OF INTERSTATE COMMERCE ACT

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1633) to amend the Interstate Commerce Act, as amended, and for other purposes, which were, on page 1, line 6, to strike out the word "part" and insert "Act", and to amend the title so as to read: "An act to amend the Interstate Commerce Act, as amended."

Mr. WALSH. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

THE CONSTITUTION AND COMMERCE AMONG THE STATES

Mr. O'MAHONEY. Mr. President, yesterday I introduced Senate bill 3363, to regulate commerce among the States. This measure undertakes to establish a constructive program for the rehabilitation of commerce among the States in such a manner as to maintain high standards of living for labor, to make possible the adoption of fair methods of competition in the basic trades and industry, and to protect the investor from the obvious abuses of corporate power from which the country has suffered for a generation.

The bill, following a declaration of policy, is divided into three titles. The first title sets up the Federal Trade Commission as the agency by which the law is to be administered, and increases the membership of the Commission from 5 to 9 persons, so that there may be 3 representatives of labor, or the employees of industry; 3 representing employers, or capital itself; and 3 representing the general public.

This title confers certain powers upon the Federal Trade Commission, among them the power to prepare and provide a general program for the coordination, stabilization, and orderly development of the basic industries of the country, and to summon a national industrial conference in which employers and employees, the investing public, and the public generally, may be represented.

The Federal Trade Commission is directed to submit its reports to Congress. It is authorized and directed, after investigation of the basic trades and industries, to make its findings with respect to the general economic conditions which it observes, and, again, to make recommendations to Congress with respect to the methods of fair competition which may be expected to be helpful in eliminating unfair trade and labor practices.

The bill provides for only three principal requirements in a general licensing system to be applied to those who engage in commerce among the States. These three requirements are the protection of female employees from discrimination, a provision against child labor, and a provision guaranteeing the right of collective bargaining.

All the other provisions and conditions which the Federal Trade Commission may deem necessary must be submitted to Congress for its consideration before they can be imposed upon industry. There is thus no delegation whatever of legislative authority.

It is provided that before licenses may be issued the Federal Trade Commission shall hold hearings. It may, however, grant blanket licenses in order that there may be no interruption of commerce and industry. However, whenever the Commission has reason to believe that any commerce, by whatever name we may be inclined to call it, interferes with the national scope of commerce or with any licensee under the act in such manner as to defeat the purposes of the act, then the Commission, after hearing and a finding, may make its decision upon such matters, and such commerce shall then be made subject to the act.

Mr. WALSH. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. WALSH. What did the Senator from Wyoming say were the primary minimum labor conditions prerequisite to obtaining a license by an industry engaged in interstate commerce?

Mr. O'MAHONEY. The primary requirements are the prevention of discrimination against women employees, the ban against child labor, and the protection of the rights of collective bargaining.

Mr. WALSH. The conditions suggested would be incorporated in the proposed legislation and be prerequisite to granting the licenses?

Mr. O'MAHONEY. That is correct.

Mr. WALSH. I am wondering if there is not some constitutional question involved in the right to require such conditions before issuing a license to an industry engaged in interstate commerce.

Mr. O'MAHONEY. There is, of course; and I shall come to that.

Mr. WALSH. The reason I ask the question is because a bill which is shortly to come before the Senate contains certain minimum labor provisos whenever any person seeks to contract for the purchase of supplies by the Government. In such cases there are many decisions holding that the Government is free to provide such terms as it sees fit when it comes to directing its contractual relations.

Mr. O'MAHONEY. Exactly. The Senator is correct. There is, of course, a provision for the revocation of licenses, but the bill provides for a court review of the action of the Federal Trade Commission in that respect.

Excluded from the operation of the proposed law is the production of any agricultural article or commodity. It is also provided that it shall not apply to any common carrier or to any licensee under the Communications Act of 1934, so far as such licensee is engaged in radio broadcasting; or to any banking corporation or insurance corporation, or to any corporation engaged in publishing newspapers, or to any corporation having a charter under the China Trade Act of 1922.

PROTECTION FOR CORPORATE STOCKHOLDERS

The second title undertakes to impose the primary conditions which shall be required of a corporation which undertakes to engage in commerce among the States.

It provides, for example, that every director shall be a trustee for the stockholders of his corporation and shall be liable to the stockholders in actual and punitive damages for unconscionable profits which such director may secure by means of his power to control the capital of the stockholders. It prohibits the payment of bonuses or commissions except by vote of the stockholders. It provides that all stock shall have equal voting power, and it affords protection to the minority stockholder, to the holder of a few shares of stock, the widows and orphans, of whom we have heard so much recently, by providing for a system of accredited corporation representatives, free from Government direction, but certified by the Federal Trade Commission after examination in corporation law and accounting, conducted by the Civil Service Commission.

These corporation representatives are not in any sense the agents of the Federal Trade Commission or of any other

branch of the Government. They are intended to be a professional class, like certified public accountants, to whom the small stockholder may with confidence send his proxy so that he may have the assurance that he will be represented in corporation meetings by a competent person who has no interest to serve except the interest of the stockholder. They are to be responsible to no one except to the stockholders, but the compensation of the representatives is to be fixed by the Federal Trade Commission and paid one-half by the corporation and one-half by the Commission.

Protection against the manipulation of corporate funds for the benefit of the management and to the detriment of the stockholder and the employee is provided by a provision that the surplus of corporations having more than a given number of employees shall not be permitted to exceed a given proportion of the capital stock, and, when dividends have not exceeded 10 percent of the par value of the outstanding stock, that the excess surplus should be distributed in dividends to the stockholders. When, on the other hand, dividends have exceeded 10 percent of the par value of the outstanding stock, provision is made for the adoption by authority of the stockholders of a suitable profit-sharing plan for the employees.

I call attention to the fact that this profit-sharing plan is to be adopted by authority of the stockholders and not by imposition of the Federal Trade Commission. Care is taken, however, to permit any corporation affected to apply to a competent court to show that the surplus is needed for proper corporate purposes and may be so expended without endangering the minimum-wage standards and the standards of maximum hours of employment established by virtue of the act.

The Federal incorporation system provided in the bill is substantially the same as that which was recommended to Congress in January 1910 by former President Taft, redrafted to meet the modern situation.

This bill would protect labor and foster commerce.

It would put an end to the most flagrant abuses of corporate power. It would solve the holding company problem by giving to the stockholders of the companies which are strangled in the holding company net the voting power to control their own capital.

It would protect the rights of the minority stockholder.

It would mean actual self-government in industry and would put an end to the expansion of bureaucracy.

It would confine the Government to its proper sphere, which is not to run the businesses of the country but to prevent one citizen or class of citizens from taking advantage of the rest.

It would mean a real distribution of the wealth of the country, not in the sense of destroying or distributing capital assets but by providing for a more equitable distribution of national income. Because it would do that, it would stimulate business.

It is a comprehensive program to raise the standard of living among the people of the United States, and it is, in my opinion, perfectly constitutional.

COMMERCE IS NATIONAL IN SCOPE

Mr. President, the bill is intended as an answer to the most important question of our time, namely, whether or not the Constitution of the United States has preserved to the people of the United States the power to regulate in all its phases that commerce which is their economic life, and upon the proper regulation of which depend their happiness and prosperity. Surely there is no person of normal mentality who does not know that a tremendous proportion of all present-day commercial activity is wholly national in scope, and that the lives of all our people, wherever they may reside, are indissolubly bound up with that commerce. Not labor alone but capital; not the worker and the employer alone but the investor and the consumer; the entire population—all are vitally concerned with the manner in which commerce is conducted.

With respect to the problem of national commerce, State lines are practically meaningless. By train and motor and airplane, persons and commodities are transported from one end of the country to the other in a fraction of the time it took the framers of the Constitution to move from Boston, Richmond, or New York to Philadelphia. By telephone and telegraph and radio intelligence is transmitted from coast to coast in the twinkling of an eye. The powers of the Federal Government have been used in divers ways to foster and encourage the development of a national system of transportation and communication. The national market has been broadened until it includes every village and every crossroad. Every nook and corner of the country has been made readily accessible to every other. Production in New England has its repercussions in the Southwest. Distribution in the South is reflected in the North. Consumption in the Northwest has its effect in the South Atlantic States. Commercially the country is a unit.

Corporations organized in Delaware and New Jersey, or in any other of the 48 States, under local and special laws, carry on a national business. Every single inhabitant of the Nation is intimately affected in his daily life by the manner in which it is carried on. Some are affected by the prices they pay for the things they buy, others by the prices they receive for the labor or service which they render, others again by the return or lack of return on their investments—the security holders of these national business corporations, operating under local charters, are scattered throughout the land—and still others by the competition they must meet in apparently purely local matters from some national organization, as, for example, the corner grocery, from some Nation-wide chain.

National standards of labor, the national purchasing power, the national standard of living, all are directly influenced by this national business—and everybody knows it. National prosperity is dependent upon it—and everybody knows it. Every 4 years we go to the polls to elect a national government to protect or restore this prosperity, as though that national government had the power to regulate the business upon the conduct of which that prosperity depends, but now, we are told, the power is lacking because, it is asserted, the Constitution does not give it to the Federal Government, because the Constitution does not clothe the Federal Government with the authority to interfere with those matters that concern what is called "intrastate" commerce.

A MISTAKEN ASSUMPTION

It is assumed that the Constitution has drawn a distinction between interstate and intrastate commerce, giving jurisdiction over the former to the Congress and reserving jurisdiction over the latter to the States, at least, unless it directly affects, burdens, or obstructs what is called the "flow of interstate commerce." It follows from this assumption that some of the most important factors of our national commerce, namely, those which concern the production and distribution of the articles and commodities which are the essential subject matter of that commerce are held to be beyond the power of Congress to regulate. As a consequence, if we hold that theory, we are driven to the conclusion that in drafting the Constitution the authors of that document so framed it that, while depriving the States of the power to control national commerce, they at the same time made it impossible for the Central Government to perform the task in an adequate manner, although they thought they were creating that Central Government to safeguard the national interests of all the people.

Mr. President, I deny the accuracy of that assumption. I assert that there is neither a practical nor a logical basis for it. I assert that the instrument which the Constitutional Convention bequeathed to the people of the United States is entirely adequate to meet the needs of this hour. It remains only for us to study that instrument in the light of history and common sense, cutting ourselves free the while from habits of thought that obscure our mental vision.

The Constitution makes no distinction between interstate and intrastate commerce. It mentions neither. Nowhere within the four corners of the instrument is either word to be found. Nay, more, there is nothing in it that even remotely suggests the fine-spun theories we hear about direct and indirect effects, burdens, and obstructions upon inter-

state commerce. These are all interpolations of judicial construction and of congressional attempts to anticipate judicial action by legislating in the light of the interpolations instead of in the light of the Constitution.

The error arises out of the fact that, until recently, the only substantial exercise of congressional authority under the commerce clause has had to do with the movement of commodities from one State to another, and that some of the most important cases that went to the courts had to do with the effect of State laws upon national commerce. When Congress passed the Interstate Commerce Act to regulate transportation, it gave currency to the notion that the power of Congress did not go beyond the control of commodity movement. The fact, however, was only that Congress had not found it necessary to employ its full power. On the other hand, when the Supreme Court found itself confronted with the necessity of construing State statutes taxing corporations engaged in national commerce, it found itself obliged to devise a formula that would permit the States to raise revenue while denying them the right to interfere with the actual transaction of national commerce. The result was the rule that the States may not directly interfere with the flow of interstate commerce or burden or obstruct it. From this premise we have apparently come to the altogether unsound conclusion, as it seems to me, that the power of the Federal Government to interfere with what is called "intrastate" commerce is limited to that which directly burdens "interstate" commerce. Thus the sword which was forged by the courts to defend the Federal Government from unwarranted action by the States is now being used to hamstring the National Government at a time when it most needs all its power if it is properly to safeguard the public interest.

LET US STAND BY THE CONSTITUTION

We shall not clearly see this problem until we cast out of our minds the judicial phrases and go back to the language of the Constitution itself. Mr. President, I take my position on the Constitution. It gives to the Congress, in the third clause of section 8 of article I, the plenary power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

This is not a power to regulate merely the movement of commodities. This is not a power that stops at a State line. This is not a power that vanishes before the assertion of State authority. This is a plenary power that dominates the entire field of national commerce, and there is no creature of the Constitution, no official serving under the Constitution whether he be in the legislative, executive, or judicial branch of the Government who can limit it. That power was granted to the Congress of the United States for the protection of the people of the United States, and it remains today absolutely unimpaired, as full and complete as it was on the day when, ratified by the requisite number of States, the Constitution came into existence as the living charter of our liberties.

Mr. President, I do not ask the acceptance of this conclusion upon the declaration of the junior Senator from Wyoming. I ask it upon the authority of John Marshall, who exactly 100 years ago forever laid aside his robes as Chief Justice of the Supreme Court of the United States, after having, by his immortal interpretations, made the Constitution the frame of an enduring and effective Union.

Let us read again his language in the famous case of Gibbons against Ogden, handed down in 1824, Ninth Wheaton, 1. Gibbons was operating between New York and New Jersey two steamboats licensed under an act of Congress. The Legislature of New York had granted to Livingston and Fulton the exclusive right to operate steamboats between the same States. Ogden obtained this right by assignment, and, by an action in the State courts, secured an injunction to restrain Gibbons, the licensee of Congress, from continuing to navigate. If Congress had the right to grant that license, it was under the commerce clause. Ogden contended that the operation of the clause was limited to the interchange of commodities and that the commerce over which the Federal Government had power did not include navigation. In other words, Ogden was occupying practically the same ground as those who now seem to feel that the power of Congress is restricted to the "flow of interstate commerce." Marshall made short work of that argument and defined the commerce power with logic and language that no one who reads it can possibly misunderstand.

WHAT JOHN MARSHALL THOUGHT

This is what Marshall said:

He is about to quote from the Constitution—

The words are: "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic; but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

* * * * * * *

To what commerce does this power extend?—

Asks Chief Justice Marshall—

The Constitution informs us to commerce "with foreign nation, and among the several States, and with the Indian tribes." It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word in its application to foreign nations, it must carry the same meaning throughout the sentence and remain a unit, unless there be some plain, intelligible cause which alters it.

The subject to which the power is next applied is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary line of each State, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary.

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State. The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the Nation and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

THE COMMERCE POWER IS A PLENARY POWER

Mr. President, this language in phrase after phrase, in argument after argument, upholds the plenary power of the Federal Government to regulate completely the whole field of national commerce. Let us reexamine it:

Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches.

Here are no weasel words about intrastate commerce. The power that Marshall saw extends to intercourse in all its branches, not to some of them, but to all of them. Why did he say that? Because he knew, as any common-sense mind must know, that to exclude power over some of the branches would be to defeat the power itself.

Again the great Chief Justice says:

The subject to which the power is next applied is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary line of each State, but may be introduced into the interior.

Here is no talk about interstate commerce. The phrase had not been invented. Marshall, in the words of the Constitution, talks about "commerce among the States." That is the subject over which power is granted—"commerce among the several States", commerce "in all its branches." Shall we undertake now, when the welfare of the people of the United States requires national control of national commerce, to limit the commerce power by reading into the Constitution a word which is not there or to give it a narrower interpretation than that which Chief Justice Marshall gave it?

Marshall, it is true, did give the word "among" a more restricted meaning than he might have done. Said he:

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more States than one.

ONLY COMPLETELY INTERNAL STATE COMMERCE EXCLUDED

The commerce with which this generation must deal is certainly that which concerns more States than one, and, if we are to accept the interpretation of John Marshall, the power bestowed by the Constitution is ample for the purpose. The only field which in his judgment is beyond the jurisdiction of Congress is not intrastate commerce, nor even intrastate commerce which does not directly affect commerce among the States. The only commerce which Marshall excludes is that which as to any State is completely internal. Over and over again in delimiting the field to which the national power does not extend he uses variations of this phrase "completely internal." Observe:

The subject to which the power is next applied is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary line of each State, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary.

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What, then, are the concerns which Marshall believes are not within the power of the commerce clause? They are:

Those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government.

Here are three items: Intrastate commerce to be free from Federal control must be—

First, completely within a particular State;

Second, it must not affect other States; and

Third, it must be that with which it is not necessary to interfere for the purpose of executing some general power of the Government of the United States.

In other words, it is clear, on the authority of John Marshall, that even though intrastate commerce may be completely within a particuar State and in addition be absolutely without effect in any other State, Congress may still regulate it if it becomes necessary to do so in order to make effective any one of the powers of the Government. Mr. President, he who would say that the power of Congress to regulate commerce among the States does not extend to the internal commerce of a State unless it directly affects commerce among the States must overrule Chief Justice John Marshall.

WHAT JUSTICE HUGHES THOUGHT

More than that, Mr. President, he must overrule the Justice Charles Evans Hughes, who wrote the *Minnesota Rate decision* (230 U. S. 352–398). In that opinion Justice Hughes quoted Marshall with approval in the following language:

The general principles governing the exercise of State authority, when interstate commerce is affected, are well established. The power of Congress to regulate commerce among the several States is supreme and plenary. It is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." (*Gibbons* v. *Ogden*, 9 Wheat. 1, 196).

The conviction of its necessity sprang from the disastrous experiences under the Confederation when the States vied in discriminatory measures against each other. In order to end these evils, the grant in the Constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from State control and to provide effective regulation of that intercourse as the national interest may demand. The words "among the several States" distinguish between the commerce which concerns more States than one and that commerce which is confined within one State and does not affect other States. "The genius and character of the whole Government", said Chief Justice Marshall, "seems to be, that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself" (Id., p. 195). This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere.

In the light of this authority, it must be clear that to hold that Congress may not regulate intrastate commerce even though it concerns more States than one, or affects commerce among the States, unless it directly affects interstate commerce, amounts to amending the Constitution by judicial construction.

Mr. President, the Constitution cannot be amended except in the manner provided by that instrument itself. No court may, by judicial construction, limit the constitutional power of Congress, and, I apprehend, none has ever tried. The Court may, and properly should, give to any particular statute only the force and effect which Congress itself has given it. When Congress has not chosen to exercise its full power, or has attempted to exercise that power in a manner that the Constitution does not authorize—and I have no doubt that is exactly what Congress did in the National Industrial Recovery Act—the Court has no choice but to say so. But when Congress does choose to exercise its full power, and goes about it in a constitutional manner, then, it may be safely predicted, the Court will uphold it.

That Congress is the sole judge of the necessity for the use of a particular power has been universally laid down in the opinions. The present Chief Justice, in the Minnesota Rate cases, declared:

Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for its local needs, it cannot be regarded as left to the unrestrained will of individuals

because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such a case Congress must be the judge of the necessity of Federal action.

In like manner, if Congress has acted unwisely or even unconstitutionally, it still has the power—nay, the duty—to retrace its steps, if need be, and act again, but in a constitutional manner.

THE BASIS OF CONGRESSIONAL ACTION

Accordingly, Mr. President, in the bill which I have introduced it is proposed specifically to assert the purpose and intention of Congress to exercise so much of the power to regulate commerce among the States as will enable it to protect the production of articles and commodities for such commerce, and their distribution in that commerce, from practices that in the past have victimized both employee and investor. It is proposed to declare the belief of Congress that the exercise of this power is necessary to preserve domestic tranquillity and promote the general welfare. The constitutional theory of the bill is set forth in the following declaration of policy:

The Congress finds and hereby declares—

(1) That the Constitution of the United States vests in the Federal Government full and complete power to regulate all commerce with foreign nations, all that commerce among the States which concerns more States than one, and all that commerce, whether or not carried on wholly within a particular State, which affects other States and which is not completely within a particular State.

(2) That for the purpose of executing the power granted to the Congress in the commerce clause of the Constitution, and for the purpose of insuring the domestic tranquillity as well as of promoting the general welfare of the people of the United States, it is necessary to regulate the manner and means of the production and distribution to the retail trade of all articles and commodities produced or distributed for the purpose of commerce with foreign nations or among the States in order that—

(a) The standard of living among the people of the United States may be improved; and

(b) Commerce may be fostered by the elimination of unfair competitive practices, by increasing the purchasing power of the people, by conserving the natural resources of the Nation and insuring a more equitable distribution among the people of the benefits of commerce.

(3) That the franchises, powers, and privileges of all corporations are derived from the people, and are granted by the governments of the State or of the United States as the agents of the people for the public good and general welfare, that it is the right and duty of the Federal Government to control and regulate all corporations engaged in commerce with foreign nations or among the States, and that to effectuate the policy herein declared it is necessary and proper to provide a national licensing system and a national system of incorporation.

In considering this proposal to base a regulatory act upon the judgment of Congress that it is necessary and proper, let us not forget the classic pronouncement of Marshall in McCulloch against Maryland—

We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

Now, what are the means which are proposed? Simply the use of a quasijudicial body, the Federal Trade Commission, which already bears the imprimatur of the Supreme Court, to establish, after investigation and hearing, fair trade and labor practices, and with the approval of Congress, to make those practices effective through the issuance of licenses, and to require all corporations engaged in commerce among the States to adhere to certain fundamental canons of honesty toward their own stockholders, toward their employees, and toward the public. Added to this is a national incorporation law designed to allow those who desire to do so to obtain a Federal corporate charter.

This is not a new N. R. A. True, it declares the fundamental rights of collective bargaining, of freedom from child labor; and for women workers, freedom from discrimination as to rates of pay. Those are principles which have been and are endorsed by all political parties. The bill would merely write them permanently into the charter of industry. As to all other matters, the bill imposes no new conditions upon industry, but establishes the tribunal in which industrial democracy may be brought into being.

This measure does not give Government control over industry. It does not create a new bureau to deprive industry of freedom. It does not authorize the appointment of a new horde of agents to tell industry what to do. Quite the contrary; as I have already said, it puts Government back in its own sphere, which is not to run the business of the country, but to prevent any individual or class of individuals from taking advantage of the rest of us. This bill is founded on the Jeffersonian doctrine that "That government is best which governs least." Through the instrumentality of a quasi-judicial body, it would enable business and industry to control themselves within the law.

NOTHING NEW IN THIS MEASURE

Mr. President, there is nothing new or startling in this measure. There is nothing radical in it. There is nothing in it that has not been tested in the experience of our people and found altogether sound.

The provisions of title III authorizing national corporations for commerce among the States, I took from the measure that was recommended to Congress by President William Howard Taft in a special message to Congress on January 7, 1910. Those who may be interested will find that message at pages 381 to 383 of the CONGRESSIONAL RECORD of the second session of the Sixty-first Congress. There they will find the declaration of a President who was later a Chief Justice of the United States of his belief in the constitutionality of the plan.

The provisions of title II prescribing the underlying conditions on which licenses are to issue to corporations, I modeled on a bill which was introduced in this body on April 20, 1911, by one of the greatest and ablest men who ever trod the floor of this Chamber, the late Honorable John Sharp Williams, of Mississippi. Let me say here, Mr. President, that had the bill of that distinguished Mississippian been passed, the people of this country, who have seen their savings vanish through the manipulation of corporate finance, would have been saved great misery.

The provisions of title I are based upon the experience of the Federal Trade Commission. The declaration of the preamble, with respect to the power of Congress over commerce among the States, I took from the decisions of Chief Justice John Marshall and of the present Chief Justice, Charles Evans Hughes.

The declaration of the preamble, with respect to the primacy of the people over the corporation, I took from the constitution of the State of Wyoming, of which I have the honor to be one of the Senators.

There, Mr. President, we have the genesis of this measure. Every word of it is rooted in the inherited principles of Americanism.

Is there need for it? Can anyone doubt that need? The individual States cannot protect the public interest in commerce among the States, because the Constitution has taken that power away from them. The Federal Government has not protected the people, because Congress has not chosen to exert the power; and some constitutional experts who have lost the principles of the Constitution in a maze of technicalities tell us that the power does not exist.

THE ALTERNATIVE IS IRRESPONSIBLE CONTROL

Mr. President, the power does exist. And if it does not repose in the hands of the representatives of the people in their own National Government, then it rests in the hands of those men whom chance or fate has placed in charge of the huge corporations that dominate the economic life of our country.

These men are not responsible to the people. They are not responsible to their employees. They are not responsible even to their own stockholders. Any person who is willing to make this confession of Federal impotence to protect the citizens of the United States will find himself at variance with the principle announced by Chief Justice Hughes in

the Minnesota rate cases when he said that where the subject matter is one of local concern, though it involves an instrumentality of commerce among the States, and Congress has not acted, though it had the power, "it cannot be regarded as left to the unrestrained will of individuals."

Mr. President, paraphrasing the language of Chief Justice Hughes, I unhesitatingly assert that—

> Where the subject-matter is one of national concern, and from its nature belongs to the class with which Congress must deal if it is effectively to perform its specific power under the commerce clause, it cannot be regarded as left to the unrestrained will of irresponsible corporate managers because Congress has not acted—

Or let me add, because it has been assumed by some that the people's Constitution can be amended by judicial interpolation.

Mr. President, I have said that this bill contains nothing new. It may also be said that the problem we must solve is likewise not new. It was recognized over 30 years ago; and a distinguished Commissioner of Corporations, the son of a former President, and himself later a member of a President's Cabinet, James Rudolph Garfield, in a special report to Congress pointed out the need for legislation of the kind which has now been introduced in this body.

On December 21, 1904, President Theodore Roosevelt transmitted that report to Congress. Those who may be interested will find it filed away among the forgotten archives of the National Legislature, Document No. 165, of the third session of the Fifty-eighth Congress. In that report Mr. Garfield pointed out that the corporation is an artificial entity, which, by grace of the Government, possesses certain peculiar characteristics, among them being permanence of succession, impersonal nature, divisibility of ownership and limited liability, and which, while it should have all the necessary powers for business efficiency, should be subjected to—

> Such restrictions as will properly safeguard the interests of those peculiarly concerned in the corporation, as well as the public.

THE GARFIELD REPORT

He pointed out that since the corporate form exists only by virtue of governmental authority, it is logical and necessary that there should be adequate Government control. The particular reasons why the Government should act, he set forth in the following words:

> The great reduction of personal responsibility that has followed the corporate form, the divisibility of stock interests, and the separation of the laborer, stockholder, and creditor from contact with and control of the instruments of industry, has left a very large gap to be filled by Government control, and has left more or less unprotected various important interests which must have the supervision and intervention of the State for the following purposes:
>
> (a) To protect property rights in corporations held by those now unable to protect themselves by reason of lack of information or power.
>
> (b) To protect those dealing with corporations as employees, creditors, or consumers.
>
> (c) To protect the public from the abuse of great economic power coupled with little personal responsibility.
>
> The economic powers of the Government and of public officers are checked by a corresponding publicity and responsibility to the voters, while the economic powers of great corporations, although often governmental in their size and scope, have no such publicity or responsibility.
>
> (d) To protect the Government itself from the pressure of great commercial and financial powers directed upon it for the attainment of purely private ends.

Mr. President, who having lived through the crash of 1929, having witnessed the greed of corporate managers, and experienced the subservience of government itself to the pressure of commercial and financial powers, can willingly see the reconstruction of that ungoverned and unregulated temple which they pulled down about the ears of all of us? Who can doubt that the evils against which Garfield warned the Congress have materialized? I shall not attempt to summarize the flagrant abuses of the corporate power from which this great Republic has suffered. I call upon Justice Harlan Stone, of the Supreme Court of the United States, to do that for me. Let me quote from the admirable address which he delivered at the dedication of the Law Quadrangle of the University of Michigan on June 15, 1934. Said he:

> I venture to assert that when the history of the financial era which has just drawn to a close comes to be written most of its mistakes and its major faults will be ascribed to the failure to observe the fiduciary principle, the precept as old as Holy Writ, that "a man cannot serve two masters." More than a century ago equity gave a hospitable reception to that principle, and the common law was not slow to follow in giving it recognition. No thinking man can believe that an economy built upon a business foundation can permanently endure without some loyalty to that principle. The separation of ownership from management, the development of the corporate structure so as to vest in small groups control over the resources of great numbers of small and uninformed investors, make imperative a fresh and active devotion to that principle if the modern world of business is to perform its proper function. Yet those who serve nominally as trustees, but relieved by clever legal devices from the obligation to protect those whose interests they purport to represent; corporate officers and directors who award to themselves huge bonuses from corporate funds without the assent or even the knowledge of their stockholders; reorganization committees created to serve interests of others than those whose securities they control; financial institutions which, in the infinite variety of their operations, consider only last, if at all, the interests of those whose funds they command, suggest how far we have ignored the necessary implications of that principle. The loss and suffering inflicted on individuals, the harm done to a social order founded upon business and dependent upon its integrity, are incalculable. There is little to suggest that the bar has yet recognized that it must bear some burden of responsibility for these evils. But when we know and face the facts we shall have to acknowledge that such departures from the fiduciary principle do not usually occur without the active assistance of some member of our profession, and that their increasing recurrence would have been impossible but for the complacence of a bar too absorbed in the workaday care of private interests to take account of these events of profound import or to sound the warning that the profession looks askance upon these as things that are not done.

Mr. President, we know the facts. Let us face them. Let us not be misled by personal or partisan feelings. Let us not open our ears to the suggestions of those corporate managers who desire to continue to do the work of Congress and regulate commerce among the States for their own private advantage. I appeal to the sound common sense of the people of America. The great majority of those people are honest, fair-minded, and patriotic. Whether they are employees, officers and directors, or stockholders, most of them want only what is fair. Our danger proceeds from a small group who take advantage of our failure to act and use the power the State and Federal Governments have allowed to drop from their hands to prey upon us all.

Mr. President, I ask that there be incorporated in the RECORD as a part of my remarks an article which appeared in a publication called "Credit and Financial Management", of the issue of April 1935, written by Henry H. Heimann, executive manager of the National Association of Credit Men.

I also ask to have printed in the RECORD a telegram and a letter which I have received.

There being no objection, the matters were ordered to be printed in the RECORD, as follows:

[From Credit and Financial Management for April 1935]

IN THE PUBLIC INTEREST

(By Henry H. Heimann, executive manager National Association of Credit Men)

Small business management is usually on intimate terms with its stockholders. Such management normally is substantially the owner of the business, and this very type of ownership insures equitable treatment to stockholders.

Large industries, involving huge investments, can hardly be expected to have the management that possesses stock ownership of a substantial ratio to total issues outstanding. And because of this situation not infrequently in the past management has not completely realized its responsibility and has been more concerned over the rewards of management than over the returns to employees or stockholders.

In a sense of fairness, as a realization of responsibility and as a measure of self-protection, our large industries should not object to any sound movements looking toward protection of stockholders, particularly minority stockholder groups. Perhaps we have reached the point where, professionally, we could begin the building of a competent and qualified group of men, who are properly licensed after examination, with experience to serve as directors in corporate organizations. The purpose of the selection of such a director in a corporation would be as representative of the minority stockholders and the public, including the employees. The director should be chosen by minority stockholders to represent them, and a director's interest should be unprejudiced in the protection of the stockholders and employees.

Although the work these men would do would be in the nature of a quasi-public assignment, they should not be government offi-

cials. They could render a service comparable to certified public accountants in the accounting field. Such representation in large industries might well help to eliminate the evils which have been revealed during the depression years as existing in what is too often referred to in a slurring way as "big business."

Big business is paying the price for labor trouble because it did not clearly realize in time the employer-employee relationship that would follow the development of large organizations. It may be forced to pay the penalty for stockholder responsibility unless it recognizes its obligation in sufficient time to graciously accept public directors. A man who would make it a business to serve as a director in one or more large organizations, with a variety of assignments, could give to the job sound and constructive thought. His work could well be a service with triple reward—to the stockholders, to the management, and to the employees.

LEWISTON, MAINE, *August 5, 1935.*

Hon. JOSEPH O'MAHONEY:

Reading A. P. dispatch dated August 4 regarding program for Government regulation and licensing of industry. Believe this offers real protection for labor and industry. Best wishes for success of legislation you propose. Shall watch for full account of bill.

WILLIAM BOURASSA,
General Manager American Bobbin Co.

NEW YORK, *August 5, 1935.*

Hon. Senator O'MAHONEY,
Senate Office Building, Washington, D. C.

DEAR SENATOR: In this morning's Times appears a most interesting announcement regarding the introduction of a bill by yourself for the regulation of national commerce.

This trade association, consisting of small enterprises, operated under a code of fair competition during the life of the N. R. A. The code accomplished a great deal to save this industry from the ravages of the depression.

We are now operating as a trade association on a voluntary basis. But what can be controlled on a voluntary basis? Could we dismiss the police and depend upon voluntary observance of the traffic laws? Could we voluntarily depend upon society to observe the Ten Commandments?

Industry must be governed by law as are all the other departments of human affairs. Those who think otherwise are out of touch with modern developments.

Anything that is done to restore self-government by industry, subject to Government supervision in accordance with N. R. A. theories, will certainly go a long way toward the gradual adjustment of the great economic question in our country.

Industry will certainly be interested in any bill that aims at the above objectives. If it is possible, could I secure a copy of the bill so that we can become acquainted with its purposes? I believe that industry and labor should get behind measures that aim at the solution of this great question.

Very truly yours,

ADVERTISING TYPOGRAPHERS OF AMERICA,
ALBERT ABRAHAMS, *Secretary.*

LEST WE FORGET

Mr. SCHALL. Mr. President, I ask permission to read my remarks by the sight of the clerk.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the clerk will read.

The legislative clerk read as follows:

Mr. SCHALL. Mr. President, lest we forget, I am asking our excellent reading clerk to read into the RECORD a few golden ratiocinations bearing upon the bills before the Senate, directly or indirectly, with no comment of my own, that the Senate may have before it the wisdom of the centuries from some of its greatest minds, including the wisdom of such philosophers as Franklin D. Roosevelt, Oliver Wendell Holmes, Will Rogers, as well as the Democratic national platform of 1932.

These golden excerpts have their appropriate captions to guide our statesmen in their search for truth. The brief list of golden nuggets here follows:

THE PRESIDENT AND HIS PLATFORM

Franklin D. Roosevelt, Albany, N. Y., July 30, 1932:

I propose tonight to state the broad policies of my party—to sketch the first outline of the final picture.

Where do we look for this? In the platform, of course. A platform is a proposal and at the same time a promise, binding on the party and its candidates.

Now, even the partisan opposition press has found it hard to criticize the Democratic platform this year. It is brief, only one-fifth of the length of the Republican platform, and easily understood. Eighty percent of it is constructive and only 20 percent critical.

Moreover, it is forthright and genuine—honest to the core.

DEMOCRATIC PLATFORM OF 1932

Platform covenant:

Believing that a party platform is a covenant with the people to be faithfully kept by the party when entrusted with power. * * *

National credit:

Maintenance of the national credit by a Federal Budget annually balanced. * * *

Reduce Government costs:

Immediate and drastic reduction of Government expenditures by abolishing useless commissions and offices * * * to accomplish a saving of not less than 25 percent in the cost of the Federal Government. * * *

Unemployment:

Unemployment and old-age insurance under State laws.

Tariff:

Competitive tariff for revenue, with a fact-finding tariff commission free from executive interference. * * *

We condemn:

Unsound policy of restricting agricultural production to the demands of domestic markets.

Cut out extravagance:

Open and covert resistance of administrative officials to every effort made by congressional committees to curtail the extravagant expenditures of the Government, and revoke improvident subsidies granted to favored interests.

Monopoly:

Strict and impartial enforcement of the antitrust laws to prevent monopoly. * * *

Agriculture:

Enactment of every constitutional measure that will aid the farmer. * * *

Veterans:

Fullest measure of justice and generosity for all war veterans who have suffered disability. * * *

Sound currency:

A sound currency to be preserved at all hazards. * * *

War debts:

We oppose cancelation of the debts owing to the United States by foreign nations.

Campaign funds:

Strengthening of the Corrupt Practices Act and severe penalties for misappropriation of campaign funds.

Economic liberty:

To recover economic liberty we pledge the nominees of this convention and the best effort of a great party, whose founder announced the doctrine which guides us now in the hours of our country's need: "Equal rights to all, special privileges to none."

INTERPRETATION OF NEW DEAL

Will Rogers, as Democratic interpreter of new deal:

Equal rights to none, special privileges to all.

VALUE OF VERACITY

Oliver Wendell Holmes:

Sin has many tools, but a lie is a handle to them all.

SHIP OF STATE

Joseph Conrad, the sailor:

Any fool can carry on, but only the wise man knows how to shorten sail.

ALPHABETICAL BUREAUS

Will Rogers:

Nothing you can't spell will ever work.

POLITICAL HULLABALOO

Prince of Wales:

If men who did things talked half as much as men who know how things ought to be done, life would not be worth living.

SOUND CURRENCY

Ed Wynn:

What this country needs is a good 5-cent nickel.

LAWMAKING EXPERIMENTS

Clarence Darrow:

Laws should be like clothes. They should be made to fit the people they are meant to serve.

BRAINSTORM FOLLY

Winston Churchill:

No folly is more costly than the folly of intolerant idealism.

HOLLYWOOD

Vicki Baum:

What I like about Hollywood is that one can get along by knowing two words of English—swell and lousy.

EXECUTIVES

J. G. Pollard:

Executive ability is deciding quickly and getting somebody else to do the work.

EUGENICS

Bertrand Russell:

Eugenics is supported by politically minded scientists and scientifically minded politicians as an antidote to democracy.

EXECUTIVE RESPONSIBILITY

Vernon L. Parrington:

The heartbreaking hesitation of Lincoln, the troublesome doubts and perplexed questionings, reveal as nothing else could the simple integrity of his nature.

WHAT DOLES ACCOMPLISH

Dean Inge:

The dole is utterly demoralizing. Its chief effect is to turn the unemployed into the unemployable.

DEMOCRACY

Robert M. Hutchins:

Democracy has not failed; the intelligence of the race has failed before the problems the race has raised.

DICTATORSHIP

Emil Ludwig:

Dictatorship is always an aria, never an opera.

BOLD EXPERIMENTS

Herbert Spencer Dickey:

Adventures are an indication of inefficiency. Good explorers don't have them.

SECURING MONEY UNDER FALSE PRETENSES AND BARRING JUDICIAL RECOVERY

Mr. President, it seems that the Secretary of the Treasury aims to celebrate the financial achievements of the administration by issuing some new coins—a ½-cent coin and 1-mill coins with a hole in the middle.

This appears entirely harmonious with former achievements of the new deal in coinage and finance. It harmonizes with the 59-cent dollar, the baby bonds for the small investor, the 100-percent pledge for a "Federal Budget annually balanced", with a deficit of $3,500,000,000, the demonetization of gold, the fiat dollar and fiat bond, and the White House demand to outlaw all suits lest the Government shall be compelled to keep its contracts.

No country in the past half century has presented such a picture of complete financial irresponsibility as the proposal to follow the example of China and issue one-half coppers with holes in them and 1-mill coins to match the shells of the Fiji Islands. Soon we may be using the beads of the South Sea islanders and the necklaces of teeth worn in the cannibal isles. It seems to be entirely fitting to the kind of prosperity yielded by an administration that has accumulated $23,000,000,000 of debt and deficits and created 22,000,000 public charges and 13,000,000 unemployed as the crowning result of 2½ years of bold experiments with the Constitution and the Nation's resources.

But why the hole in that ½-cent coin? Is the President or his Secretary afraid to place their faces in the ½-cent coin? Why not have the faces of the "brain trust", moreover, in the 1-mill coins? Why this sudden modesty? The administration which puts out a 59-cent dollar should not duck at enclosing its face in a half-cent penny. It would give the world a picturesque revelation of the financial status we have achieved.

It is certainly no worse a disgrace to see the face of the Secretary of the Treasury filling the ½-cent hole than to see the Treasury itself in the hole for 3 fiscal years in succession with an aggregate 3-year accumulated deficit of $11,000,000,000. We have financial holes enough without flooding the country with millions of other holes in the center of ½-cent pieces. It is time we were filling up the holes, instead of enlarging the picture of our worm-eaten financial condition.

Our latest financial disgrace is the attempt, by acts foisted upon Congress by the White House, to outlaw the suits of citizens to obtain justice in the courts pursuant to gold-bond contracts and bureau assessments of unconstitutional processing taxes. A government which will attempt such things, in the face of the Constitution's guaranty of due process of law and the right of the citizen to a day in court, should at least give the citizen the gratification of beholding the faces of the autocrats on ½-cent and 1-mill pewter coins.

We should have millions of such coins as campaign souvenirs in 1936, showing the faces of the "new dealers" thereon. Every man in the street should have the pleasure of gazing upon the faces of the statesmen who have produced half-cent and 1-mill finance.

To go along with these coins and the 59-cent dollar, we should have 13-cent quarters, and 23-cent half dollars, and Government baby bonds, stating that every 100-percent pledge printed thereon is repudiated in advance, and is just as dependable as any other "whopper" told between Washington and Hollywood. In short, every coin and bond issued by the Government under the new deal should bear this slogan:

Our specialty is obtaining money under false pretenses, and closing the courts against legal redress.

There should be photographs of the Treasury, with its bond-issue and tax-collection divisions on each bond and tax assessment, bearing Dante's famous warning on the archway, saying:

All hope abandon, ye who enter here!

Every Treasury note should read:

This is unredeemable wind. My redeemer does not reside on earth! Look below!

Every gold bond should say:

This is an undisputed falsehood! Collect your gold if you can by looking for it in the Government cache in the Kentucky mountains, and take along a machine gun!

On the moving-picture screens which nightly entertain the country, let our new-deal statesmen, including those responsible for these Government issues and coins, the gold-bond repudiation, the processing taxes, the 59-cent dollar, the ½-cent and 1-mill coinage, and the tax bills and Budget deficits, appear in a grand opera of the Pirates of Penzance, and present as an encore the Ali Baba and the Forty Thieves.

At least, our swindled victims would have this satisfaction. They could say:

At last I have seen one Government show which approximates the truth.

MINNESOTA'S NEW DECLARATION OF INDEPENDENCE

Mr. President, on August 1 I read a news dispatch from Minnesota which contained hopeful and interesting news.

It seems 25 farming counties of Minnesota have turned down the pretended aid of the W. P. A. and E. R. A., namely, the President's allocation fund; and Mower County, the great pioneer agricultural and industrial county, with Austin, the county seat, famous for its cooperative dairy and fruit industry, as for patriotism in time of war and loyalty to American ideals, has notified the carpetbaggers of the Federal Government that henceforth Mower will finance its own county relief from its own funds.

This means that loyal Americans decline to become the dole-receiving serfs of feudal lords.

There always has to be a starting point in every patriotic movement, and I am proud that my State of Minnesota is on the honor roll as furnishing the first volunteers of that patriotic army of loyal Americans who resist the tide of Federal subsidy, Federal doles, and all the dishonor and corruption involved therein, and has set in motion that real and fundamental march of national recovery so strenuously resisted by the new-deal administration—the moral recovery of the American people from the new-deal tyranny of conquest of the agricultural yeomanry by poorhouse alms in the name of Federal emergency relief.

This act recalls that patriotic wave in 1774 and 1776, which drove back the mercenaries of George III and his Tory agents enjoying royal grants from London, of which it was said by the poet Emerson that plowmen "fired the shot heard round the world."

Today, under the threats of Federal autocrats here in Washington, headed by the two Dukes of Dutchess County—Morgenthau and Roosevelt—I am proud that the plowmen of my State, the North Star State of our Union, had the courage to fire the first shot to be heard round the entire emperorship of Franklin the First.

This is not the first time that Minnesota has been the first to enroll in the call of volunteers to preserve the Union. When Abraham Lincoln called for volunteers to preserve the Union among those responding was my father. The first regiment of volunteers to respond to Lincoln's call was the noble 600 of the First Minnesota.

In 1861 Minnesota, from its farm lands, furnished the first yeomen infantry of America to uphold the flag of the Constitution. And in 1935 Minnesota plowmen again are the first volunteers to resist the invasion of autocracy by Federal mercenaries bent on conquest by doles and subsidy.

Twenty-five rural counties resist the grossly wasteful dole distribution by a combined Federal-State Tory machine; and the old county of Mower, which contributed so largely of its sons to form the First Minnesota Regiment of 1861 has issued its declaration of independence against the doles of the President's W. P. A. and E. R. A. and will finance its own relief out of its own county funds. It has resisted the bribe of selling its liberty and independence for a Federal mess of pottage.

In 1861 the counties of Mower, Freeborn, Fillmore, Washington, Ramsey, and my county, Hennepin, were the chief and foremost in manning the First Minnesota Regiment of Volunteer Infantry. And the sons of that First Minnesota today are the first to enlist in the army of true national recovery—the moral and patriotic recovery of the Union—in the campaign for liberty and union now before us.

Mower County will not have to stand alone. Not all the billions of Federal political allocation can stem the tide when the time has come that the people begin to understand the sinister motive behind this administration's seeking to wreck our Republic. There are 87 counties in Minnesota, and 87 of them are made of the same general backbone stuff, the same kind of common sense and common honesty, the same loyalty to country and flag, the same fidelity to the document that begins with the words, "We the people of the United States"—the same American qualities, I repeat, as the 25 which have fired the shot heard across America.

I was not a little surprised when, perhaps a month ago, a young farmer from north-central Minnesota called at my office and said that he had just come from a big mass meeting of "farm holiday" farmers held up there in the big woods on the upper Mississippi. I was glad to meet him, but I thought I knew that Milo Reno's army of "farm holiday" men was politically against me, and quite likely might be friends of my declared opponent, who, in conjunction with Federal mercenaries, had been distributing Federal doles and corn-hog checks, and $15 A. A. A. checks for $100 cows. What was my astonishment to hear this "farm holiday" volunteer remark:

"You got the biggest hand of all."

"What do you mean?"

"What I come to say is, the biggest cheer of the day came when the speaker mentioned the name of TOM SCHALL, and read his attacks on the A. A. A. and the N. R. A. and the rest of the poorhouse doles sent out from Washington to buy our patriotism and servile votes. That stuff does not go in Minnesota."

Then I received a letter from Milo Reno himself, which I published, with some difficulty, in the CONGRESSIONAL RECORD, and called down upon my head from the leader of the majority in the Senate, Farley's cognomen of me, "misrepresentative" of Minnesota.

Finally the antidictatorship sentiment of the State of Minnesota reached the ears of the White House, and came to the knowledge of James Aloysius Farley—Postmaster General, chairman of the Democratic National Committee, chairman of the New York Democratic Committee, chief distributor of Federal pork and pie, and personal campaign manager of Franklin "Delaware" Roosevelt, sworn to eliminate me from misrepresenting Minnesota, even if it does cost him hundreds of millions of the taxpayer's money to do so. He is a liberal "cuss."

This many-titled Tammany autocrat, among his many political activities, has a gang of Federal mercenaries from Washington in Minnesota trying to subsidize the State.

One of the most amusing activities is that he is financing "Roosevelt picnics" in county after county—from what funds we may only surmise—and he is sending carpetbagger orators from here around the State. He has to import them into Minnesota, either from Washington or some other Federal-owned precinct, because he is unable to get a true-blue, genuine son of Minnesota—except one bought by a Federal appointment—to preach Franklin "Delaware" Roosevelt and the Dukes of Dutchess County to the people of Minnesota.

On Sunday, July 28, they held the third "Roosevelt picnic", an all-day affair, at Spring Park, which, as I recall, is on the north bank of Lake Minnetonka, which the Federal officeholders of the Twin Cities were admonished not to fail to attend, and those who obeyed orders and did attend were as eloquent for Washington autocracy as the liquid refreshments of the day would permit.

But the great orator of the day was sent out from Washington. And here is the astounding message he delivered:

> Roosevelt has saved the country from a dangerous left turn, and if it weren't for Roosevelt there would be no Constitution or Government to save.

This is interesting news to Members of Congress, who have witnessed the daily attacks upon the Constitution in the White House bills laid before us and the sinister attacks of the White House upon the Supreme Court and have watched the movements of the Cabinet members and bureaucrats in their trips across the Delaware to file their royal charters for corporations having perpetual existence to take over and socialize all American industry after the Moscow plan and overthrow government by the people in the United States.

This Federal gang running that "Roosevelt picnic" bought two columns of space in Twin Cities dailies under a big black-faced heading running: "F. R. saved Nation."

I am wondering who is paying for those "Roosevelt picnics" and who is paying for the daily press space. Is Farley paying for his expensive advertising campaign? Do the Washington orators pay their own expenses to Minnesota and back? Do the Federal officeholders take the high-cost picnic costs out of their own jeans? Or do the beer sales at the Sunday picnics pay the "Roosevelt picnic" costs? Or does the W. P. A. and E. R. A. of the Dukes of Dutchess County pay the bills? Or, finally, is it just charged off to the Federal deficit account, which in 2½ years has now accumulated $11,000,000,000?

At any rate, that "Roosevelt picnic" of July 28 had its answer on August 1, when 25 rural counties of Minnesota threw off their Federal yoke, and Mower fired the first shot heard across America against feudal serfdom by Federal subsidy.

This first declaration of independence against Federal doles may look like a small beginning, but do not forget that it was only a small incident—the tossing of a few boxes of tea into Boston Harbor—that started the conflagration of 1776 that gave freedom to America from the princes and dukes of British autocracy—the first American recovery step, that made the American flag for 150 years, till now, the most beloved flag of freedom in the hearts of a liberty-loving and dole-hating world of self-respecting manhood and womanhood.

REVISION OF COPYRIGHT ACT

The Senate resumed the consideration of the bill (S. 3047) to amend the act entitled "An act to amend and consolidate the acts respecting copyright", approved March 4, 1909, as amended, and for other purposes.

Mr. LA FOLLETTE. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NEELY in the chair). The Senator from Wisconsin suggests the absence of a quorum. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Costigan	Lewis	Reynolds
Ashurst	Davis	Logan	Robinson
Austin	Dickinson	Lonergan	Russell
Bachman	Dieterich	McAdoo	Schall
Bankhead	Donahey	McCarran	Schwellenbach
Barbour	Duffy	McGill	Sheppard
Barkley	Fletcher	McKellar	Shipstead
Black	Frazier	McNary	Smith
Borah	George	Minton	Steiwer
Brown	Gerry	Moore	Thomas, Okla.
Bulkley	Gibson	Murphy	Thomas, Utah
Bulow	Glass	Murray	Townsend
Burke	Gore	Neely	Trammell
Byrd	Guffey	Norbeck	Tydings
Byrnes	Hale	Norris	Vandenberg
Capper	Hastings	Nye	Van Nuys
Caraway	Hatch	O'Mahoney	Wagner
Chavez	Hayden	Overton	Walsh
Clark	Johnson	Pittman	Wheeler
Connally	King	Pope	White
Copeland	La Follette	Radcliffe	

Mr. LEWIS. I reannounce the absence of certain Senators and the reasons for their absence as given by me on a previous roll call.

The PRESIDING OFFICER. Eighty-three Senators having answered to their names, a quorum is present.

Mr. BORAH. Mr. President, generally speaking, I am very much in favor of the proposed copyright legislation. I think those who have taken the burden of framing the legislation have performed a very excellent piece of work. However, there is one feature of it to which I desire to invite the particular attention of the Senate, and more especially the Senator who has charge of the bill.

I am disposed to move to strike out, on page 15, beginning in line 8, after the word "infringement", inserting there a period, all that follows on page 15 and down to and including line 7, on page 16. What I desire to reach by the amendment are the numerous handicaps as it were which the bill places upon a party who desires to secure an injunction against infringement of copyright.

Let me read section 25 (a):

SEC. 25. (a) That if any person shall infringe the copyright in any work protected under the copyright laws of the United States, such person shall, subject to the stipulations of this section, be liable:

(1) To an injunction restraining such infringement except as otherwise provided in this act. No temporary restraining order shall, however, be issued which would prevent the broadcasting of a program by radio or television, the publication or distribution of a newspaper, magazine, or periodical, or the production substantially commenced or the distribution or exhibition of a motion picture: *Provided*, That this limitation of liability in respect of temporary restraining orders shall not be applicable in any case where the plaintiff shall show to the satisfaction of the court (1) that defendant is unable to pay adequate damages for the infringing act complained of, or (2) that defendant has commenced the manufacture of the publication or motion picture, or the rehearsal for the broadcast, with actual knowledge of the plaintiff's copyright or of the fact that he, the defendant, is an infringer: *Provided further*, That no injunction shall issue restraining the construction, substantially begun, or use, of an architectural work, nor shall any order for its demolition or seizure be granted: *Provided further*, That, except after judgment that such reproduction is an infringement, no injunction shall issue restraining the reproduction of a copyrighted photograph in a newspaper, magazine, periodical, or newsreel.

I think from a reading of that provision one will reach the conclusion at once that so far as a preliminary injunction is concerned it is practically prohibited. The conditions under which it must be secured are such as to render nugatory the right to secure it, in my judgment. For instance, it is provided:

Provided, That this limitation of liability in respect of temporary restraining orders shall not be applicable in any case where the plaintiff shall show to the satisfaction of the court (1) that defendant is unable to pay adequate damages for the infringing act complained of, or (2) that defendant has commenced the manufacture of the publication or motion picture, or the rehearsal for the broadcast, with actual knowledge of the plaintiff's copyright or of the fact that he, the defendant, is an infringer.

In other words, only under those conditions may a party secure protection, and those conditions are such, it seems to me, that it would be very difficult to make the disclosure or proof which would be required. Under these provisions a copyright holder or author must stand by and see his property rights injured and destroyed and denied the right to apply to the court to stop the injury. That is wrong in principle.

I am going to read from a statement which has been furnished to me by a person who is interested in this subject, and is undoubtedly familiar with the practical effect of the bill to a greater extent than I claim to be.

In this statement it is said:

While this bill grants to authors certain defined rights in their creations, the enforcement sections of the bill are so unjust as to amount to practical nullification of the rights granted.

There are two major remedies by which the author's property should be protected. One is the right to prevent its illegal use by injunction. The other is the right to secure just monetary damages after its illegal use. Both remedies are of equal importance, and both should be available to the author at the same time, at his option. In the present law, they are.

That is, in the law now upon the statute books.

For example, as a practical illustration, where an infringement takes place over a continuing period of time, such as the publication of a book, or the production of a play, or the exhibition of a motion picture, or the publication of a magazine serial, the damage to the author can partially be rectified by an injunction against the future use of the infringing work. Where, however, an infringement is completed as soon as it has taken place, such as the publication in a magazine or newspaper of a short story or article the damage to the author has been completed, and an injunction is a mere formality, because the infringer would not in any event reuse the material. In that case the author's only practical remedy is monetary recompense.

Still another important remedy is the restraining of a threatened infringement which has not actually taken place in order to prevent the illegal use of the author's work, for which in many cases the damage to the author cannot be measured in terms of money. While these are protected in the present law, in the proposed bill they are not.

In section 25 of the proposed bill injunctive relief is denied in so many cases and under so many circumstances that the author has no practical remedy against the illegal use of his work.

In a large number of specified instances preliminary injunctions to prevent illegal use are practically abolished. There are many situations which arise with an author in which only a preliminary injunction would afford proper relief, since a permanent injunction could not be issued until too late. These restrictions on injunctions are imposed in this bill in spite of the fact that the infringer must necessarily have had legal notice of the copyright, since it is also stipulated elsewhere in the bill that the American author, to secure copyright at all, must register and affix notice to the published copies.

These limitations and practical prohibitions against the right to secure a preliminary injunction are imposed, notwithstanding the fact that there is a provision in the bill for registration, so that the party must know that he is infringing upon the rights of the author. He is placed in a position where under the law he is presumed to have notice. Notwithstanding the presumption of notice, and possibly actual notice, he is denied the right of preliminary injunction except under conditions which make it, it seems to me, practically impossible to secure it.

Mr. WAGNER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from New York?

Mr. BORAH. I do.

Mr. WAGNER. In the part of the bill which the Senator read a moment ago it specifically uses the words "actual notice"; so that constructive notice would not be sufficient.

Mr. BORAH. Yes; I see that.

Mr. WHITE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Maine?

Mr. BORAH. I do.

Mr. WHITE. I was just about to say substantially the same thing. The constructive notice which would follow from the registration of a copyright, and the notice incident to registration, is of no avail to an owner. There must be actual notice, which is something beyond the constructive notice.

Mr. DUFFY. Mr. President, will the Senator from Idaho yield?

Mr. BORAH. I yield to the Senator from Wisconsin.

Mr. DUFFY. In the first place, I am very much pleased to hear the Senator say he is in general agreement with the purpose of the bill, and thinks it is well drawn.

As to the point which the Senator criticizes, the testimony taken before our committee, as well as before the interdepartmental committee, shows situations which we have tried to meet by this language, though perhaps it is not the best way to have it stated.

Take the illustration I used the other day: Assume that the Saturday Evening Post is about to go to press. Inadvertently, a verse is included which may have been copyrighted. Under the present law, there is no reason why the copyright owner of that verse could not go into court and hold up the entire issue of the Saturday Evening Post, even though the company publishing the Saturday Evening Post is well able to respond to any damages which the owner of the poem might have sustained; and it seemed to the committee that that is a great injustice. The same thing is true of a radio broadcast, or something that is all prepared to go.

However, if there was knowledge, or if the infringing party could not respond in damages, the thought of the committee was to allow the law to stand just as it is, and let there be an injunction. They did think that cases such as I have illustrated might well be the subject of a refined blackmail, where a very large sum might well be paid to release the issue of a large magazine of that sort. It was to try to meet that situation that the language was phrased as it was.

Mr. BORAH. I can understand the objective which the framers of the bill had in mind. There might be instances such as the Senator has named where an injustice would be worked to the publisher; but I venture to say that such a publication as the Senator has named, or any other responsible publication, could under this proposed law, according to its other terms, always be advised as to whether or not it was infringing upon the rights of someone. Any reasonable effort upon the part of the publisher to know what its rights were, any reasonable knowledge, would be a guide against infringing upon the copyright.

Mr. DUFFY. I will say to the Senator that it was pointed out by representatives of the publishers of the principal magazines of the country that in spite of the fact mentioned by the Senator, by inadvertence those things do occasionally creep in, and that accidents for which they might well be required to respond in damages should not be used as a means of saying, "We will hold up your whole issue for a week, or else you will pay us $50,000 and we will release this preliminary injunction." It was to try to meet that situation that this language was framed.

Mr. BORAH. Under the bill as it would be with this provision stricken out, the owner of the copyright could recover only actual damages. If the owner of the copyright had suffered actual injury, he could recover for his injury, but he could not say to the publisher, "If you do not pay me $250, or something of the kind, I will obtain an injunction", because he must go to court to get the injunction. He must satisfy the court of his equity. He must satisfy the court of the justice of his claim. The injunction does not issue ipso facto. It does not issue upon the mere call of the complaining party. He must go into a court of equity and ask for an injunction, and the court reviews the facts; under such circumstances as the Senator has narrated, it would be very difficult, indeed, for complaining party to get a preliminary injunction.

Mr. DUFFY. I should think a court would be very reluctant to issue an injunction in any such situation. Nevertheless, the representatives of these large magazines, the principal magazines of the country, testified before the committee that it was a real danger. They had had some experience in the past—I do not recall the details—where there was a real threat, and it was the thought of the committee that where the publishers were able to respond in damages if there was the inadvertent use of copyrighted material, the owner of the copyright should not be permitted to hold up the entire issue of a great publication, but the publishers should respond in damages. If there were damage to the owner of the poem in the illustration I gave, let the publishers pay. They could do it. They are not prohibited from doing it.

Mr. BORAH. Mr. President, let me call the attention of the Senator to the fact that we have on one side of this controversy the publisher, who is in a position under the law where he must be advised that he is infringing upon the rights of the copyright owner. On the other hand, we have the man whose rights are actually being infringed. Is it unsafe to leave it to a court to say under what circumstances it will issue a preliminary injunction? Is it not reasonable, as between those two contestants, to leave an equity court in a position where it may exercise its discretion? But under the Senator's bill the court would have no discretion whatever in regard to the matter. The injured party may not apply for relief in the way of equity.

It seems to me, Mr. President, while there may be imaginary troubles upon both sides, and there may be real injury upon both sides, it cannot be unjust or unfair, as between two parties, to leave it to a court to say whether or not an injunction shall issue.

Mr. DUFFY. I will say to the Senator from Idaho that I am perfectly willing to take the judgment of the Senate without more ado. The committee in good faith tried to meet a situation which was claimed to be a real danger. I have no pride of authorship in the matter. Whatever the judgment of the Senate may be, I am willing to accept it.

Mr. BORAH. If I knew just how the Senate would vote, I would stop talking. Indeed, Mr. President, I am willing to take a vote on my motion now.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Idaho, which the clerk will state.

The LEGISLATIVE CLERK. It is proposed, on page 15, line 8, after the word "infringement", to strike out down to and through line 7 on page 16, as follows:

Except as otherwise provided in this act. No temporary restraining order shall, however, be issued which would prevent the broadcasting of a program by radio or television, the publication or distribution of a newspaper, magazine, or periodical, or the production substantially commenced or the distribution or exhibition of a motion picture: *Provided*, That this limitation of liability in respect of temporary restraning orders shall not be applicable in any case where the plaintiff shall show to the satisfaction of the court (1) that defendant is unable to pay adequate damages for the infringing act complained of, or (2) that defendant has commenced the manufacture of the publication or motion picture, or the rehearsal for the broadcast, with actual knowledge of the plaintiff's copyright or of the fact that he, the defendant, is an infringer: *Provided further*, That no injunction shall issue restraining the construction, substantially begun, or use, of an architectural work, nor shall any order for its demolition or seizure be granted: *Provided further*, That, except after judgment that such reproduction is an infringement, no injunction shall issue restraining the reproduction of a copyrighted photograph in a newspaper, magazine, periodical, or newsreel.

Mr. DUFFY. Mr. President, would not the Senator be willing to modify the amendment by striking out merely down through line 23, on page 15, to the proviso, which reads:

Provided further, That no injunction shall issue restraining the construction, substantially begun, or use, of an architectural work, nor shall any order for its demolition or seizure be granted.

Mr. BORAH. No; I do not feel that I could do that.

Mr. DUFFY. The point is, there might be an infringement of architectural work incorporated in a building.

Mr. BORAH. But under those circumstances the court would be sitting to determine under what conditions it would issue the preliminary injunction. Certainly under those conditions it would not issue it under such circumstances as to preclude any relief upon the part of the builder. In other words, the party seeking the injunction would have to put up bond, would have to give security, and the court would require of him to do what was equitable upon his part while it was proposing to do equity for him. I think I should like to have a vote on the amendment as I have offered it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment was agreed to.

Mr. WAGNER. Mr. President, the action the Senate has just taken has met one of several of my objections to the pending bill. I am very glad that the Senator from Idaho rose and offered the deleting amendment, for we all realize that he always speaks with authority upon important legal questions. I am very happy that the Senate has accepted his judgment and removed a provision that seemed to me to be very unfair to creative artists.

Before I address myself to other objections to the bill, I should like to have read at the desk three telegrams which I have just received, dealing with the proposed legislation.

The PRESIDING OFFICER. The clerk will read.

The legislative clerk read as follows:

NEW YORK, N. Y., *August 6, 1935.*

Hon. ROBERT F. WAGNER,
United States Senate:

Please note that Authors League with membership of three or four thousand playwrights is likewise opposed to this copyright bill. Kindest regards.

NATHAN BURKAN.

NEW YORK, N. Y., *August 5, 1935.*

Senator ROBERT F. WAGNER:

Re copyright bill now being discussed by Senate in answer to Senator WHEELER's question Thursday as to preferential treatment of foreign authors over American authors, we do not agree with Senator DUFFY's reply. There certainly is discrimination by the terms of this bill. Foreign authors would receive copyright in America automatically. This is admitted by Senator DUFFY. Foreign authors also receive this right in their own countries, but American authors would not receive copyright protection in America unless they comply with the compulsory requirements of registration and notice. Authors are constantly losing American copyright, due to these restrictions. Moreover, to the advantage of commercial interests exploiting the author, American authors would not even receive copyright abroad unless they receive it in America, so that they would be at a disadvantage compared with foreign authors, not only here but throughout the world, discriminated against, not by foreign governments, but by their own Government. It is stated that this is a reciprocal arrangement; it is not. Foreign governments will not give American citizens a greater right in their countries than citizens; only if that were the case would the arrangement be reciprocal. Senator DUFFY's statement that we are not suffering under the similar terms of the present law is not so. American authors have begged for years for the privilege of inherent copyright protection only to now find the suggestion arising that it be given to foreign authors and denied to citizens. American authors do not ask Senate for better treatment for themselves than for foreign authors. They ask for equal treatment only, and do not know why it should be denied them.

ELMER DAVIS,
Vice President Authors League of America, Inc.

NEW YORK, N. Y., *August 5, 1935.*

Senator WAGNER:

As former president of Dramatist Guild of Authors League, whose membership includes every leading American playwright, I most earnestly protest discrimination against American authors in copyright bill. Why should foreign authors be given automatic copyright here while American authors are denied it in their own country? Since all professional authors protest against this discrimination why should it remain in bill? Only groups who favor it are commercial interests who may thus financially exploit any nonconformity to technical requirements demanded of American authors which under this bill foreign authors would have had to comply with. Earnestly beg this discrimination be brought to attention of Senate.

GEORGE MIDDLETON.

Mr. WAGNER. Mr. President, I am not opposed to a copyright bill. I believe that legislation on the subject has too long been delayed. We had a copyright bill before us for consideration 3 or 4 years ago, and I was one of those in the Senate who supported that particular measure, which was not enacted.

Anything that I may say with reference to the effect of certain provisions of the bill now before us will not, I hope, be interpreted as impugning the motives of any protagonist of the proposed legislation. I accord to all who may be in favor of it the utmost sincerity, coupled with a desire to do justice to both sides involved in this controversy.

Let me make it perfectly clear, however, that the public at large is not interested in the proposed legislation, except indirectly as the beneficiaries of a free and untrammeled artist class.

There is involved here a clash of interests, with the playwrights, authors, and song writers on one side, and broadcasting stations, hotel associations, and the moving-picture industry on the other.

I do not profess to be an authority upon copyright law; quite the contrary, I know very little about it. My information as to the provisions of the pending bill was gathered from one reading of the bill on last Wednesday. While I favor some of its provisions, there are a number which I believe to be very unfair to the creative genius of our country.

The Senator from Wisconsin [Mr. DUFFY], who is in charge of the bill, did not, I am sure, intend to reflect upon the artists of this country, who have contributed so much to the cultural life of our people, and who have spread its fame throughout the world. I feel that the Senator is as conversant as I am with respect to the struggles and tribulations to which genius has been subject. I am sure that he is aware of the exploitation to which artists were prey, until some protective legislation was written in their behalf.

Yet, inadvertently I am sure, the junior Senator from Wisconsin has referred to these men and women as racketeers. I admire and respect the Senator too much to believe that he intended to do so.

Mr. DUFFY. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. DUFFY. In the absence of the Senator this afternoon I stated to the Senate that what I said about a racket and racketeers did not have reference to the writers or the composers individually but rather to the action of the society to which they assigned their rights and the manner in which such society had operated in a number of the States. I meant to cast no personal reflection on the writers.

Mr. WAGNER. It is very difficult to dissociate the men who are the important officers of this organization, or in fact any of its members, from the organization itself. A slur upon the organization is a slur upon its members. The society referred to is the American Society of Composers, Authors, and Publishers, although there are other leading artistic organizations as vigorously opposed to the legislation in its present form as is the American Society. Those who have read the charge that they are racketeers have resented it and have communicated their resentment to me.

And well they should feel resentment. A racketeer is one who bootlegs or who terrorizes legitimate business. Does that term apply to Jerome Kern, a member of this society? Jerome Kern is the author of the music of Show Boat. The melodious sadness of his Old Man River has moved the entire world.

He has brought renown to his State of New York and to the Nation.

Next, there is Gene Buck, now president of the society. Millions have been entertained by a long succession of Ziegfeld Follies, the products of his pen. He participates in almost every philanthropic movement in my State. Everyone in New York, may I say to the Senator from Wisconsin, would resent bitterly the suggestion that Gene Buck is a racketeer.

Victor Herbert organized this society. His death left a vacancy that none can fill; he gave us a treasury of light opera, unequaled by any single man America has produced, and in my opinion unsurpassed anywhere. Was Victor Herbert a racketeer?

Another of the directors of the society, who is an active member, shaping its policies day by day, is Mr. Deems Taylor. He is both critic and creator par excellence. Will anyone call this ornament to the cultural life of New York a racketeer?

Oley Speaks, of Ohio, is the composer of such world-famous compositions as The Road to Mandalay, Sylvia, Morning, and hundreds of other compositions. He is a brother of the late General Speaks, Member of Congress from Ohio. Can such a man be accused of terrorizing legitimate business?

Sigmund Romberg is a director of this society. His operatic successes are manifold. Who has not been thrilled by the romantic beauty of The Desert Song? Who could not enjoy again and again My Maryland or New Moon? Is he a racketeer?

Is Otto Harbach a racketeer? Are we under a delusion when we voice his praise as the gay lyricist of Rose Marie, Roberta, No, No, Nannette, and about 50 other musical hits? I think not.

John Philip Sousa was the head of this society until he died. His flaming patriotism is preserved forever in his stirring martial music.

Another member of the society is George M. Cohan. Is George M. Cohan a racketeer? He is one of whom all America is proud. Composer and actor, playwright and producer, artist of the stage and screen, he has brought a smile to all who have seen his face or heard his voice.

Irving Berlin is a member of the society. He is one of the most beloved young men in our State—and I think I can say in the whole country. His lightest songs have a pathos that touch the heart. He has given eternal expression to the sentiment of eternal love. Is Irving Berlin a racketeer?

Are George and Ira Gershwin racketeers? Who knows not the satiric sting of Of Thee I Sing, the genuine genius of Rhapsody in Blue? The rhapsody will live as long as American music.

I could read a long list of distinguished writers and authors who are members of this particular organization. I am sure that the Senator from Wisconsin did not mean to call any of those men and women racketeers, although he did so in an unguarded moment. I have felt it my duty at least to show that I resent any such insinuations.

Mr. DUFFY. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. DUFFY. I appreciate the persuasive argument which the Senator is using, but I will say that the Senator from Wisconsin at no time referred to any individuals belonging to the society as racketeers. I read letters from our Federal judge and Federal officials designating the practices of the society as savoring of a racket.

Mr. WAGNER. I will say to the Senator that when he calls the practices of an organization rackets, I cannot understand the distinction between that and calling the members racketeers. An organization acts through its officers, its directors, and its members. If it is a racket, it is a racket which has been created by the men and women who belong to it.

Mr. DUFFY. The Senator might belong to the Elks, as I do, and the Elks society, or its officers, might do something without his knowledge, but surely the Senator could not be condemned for such action.

Mr. WAGNER. Mr. President, we can go on indefinitely in this way. If the Senator will state that he did not intend to reflect upon any of the members or any of the officers of the society I am quite content.

Mr. DUFFY. I will say to the Senator that I made my statement earlier in the afternoon.

Mr. WAGNER. Mr. President, why was this society formed? It was formed to protect sorely pressed artists against powerful commercial interests that had been infringing upon their rights. It was designed to promote equality of bargaining power. Ninety percent of our playwrights and musicians even now earn less than $2,500 per year. It is their cause—the cause of the small, lonely individual that I plead.

And in making this plea for their protection, I do not seek to disparage in the slightest the large organizations of hotel men, stage and screen producers, or radio companies. I have hundreds of cherished friends in all these groups. I am proud of what these industries have done for the State of New York. They all want to do the fair thing. They want to preserve the soul and spirit of the true artist. They appreciate its worth. They have no desire to get protection for infringement. They are united with me, I am sure, in the desire to combat the tactics of the few who break the rules.

When reading this legislation for the first time last Wednesday, I was impressed with the fact that it seemed to show more solicitude and concern for those who may be guilty of infringing upon a copyright than for artists or for the vast majority of producers, publishers, and radio operators who adhere scrupulously to the law.

Let us take first the question of damages. Long ago experience proved that unless a statute set some minimum of damages to be awarded in the event of an infringement of a copyright, the law was absolutely ineffective so far as the average playwright or song writer was concerned. For that reason Congress provided that whenever an infringement was shown, there should be an assessment at least of minimum damages of $250. The fairness of this provision was considered by the United States Supreme Court, and sanctioned in the following strong language:

> The phraseology of the minimum damage section was adopted to avoid the strictness of construction incident to a law imposing a penalty, and to give the owner of a copyright some recompense for injury done him in a case where the rules of law render difficult or impossible proof of damages or discovery of profit.

Mr. DUFFY. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. DUFFY. There is nothing in the present bill which does away with anything which the Supreme Court approved. The statutory damages are there.

Mr. WAGNER. Let me finish. I think the Senator has spoken a little too soon. Of the unsatisfactory character of the law before the minimum damage provision was enacted, the Supreme Court said:

> In this respect the old law was unsatisfactory. In many cases plaintiffs, though proving infringement, were able to recover only nominal damages, in spite of the fact that preparation and trial of the case imposed substantial expense and inconvenience.

And here is a most significant sentence from the opinion of the court:

> The ineffectiveness of the remedy encouraged willful and deliberate infringement.

If the Supreme Court was correct, and I do not see how anyone can question its correctness in this matter, the pending bill proposes to return the law to a state encouraging willful and deliberate infringement. The lawyers in this body know that in most cases of this type it is a terribly difficult task to prove actual damages. For example, suppose that I have written a song which suddenly makes a hit. Some rarely unscrupulous radio broadcaster, realizing that fact and undeterred by any provision for minimum damages, sends it over the radio. I go into court. That I have been injured there can be no doubt. My chances to sell the song may have been ruined. But how can I prove the extent of actual damage? Yet under this new bill I should be able to recover not one cent except upon proof of loss.

Mr. DUFFY. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. DUFFY. The words of the bill are "in lieu of actual or proved damages." The Senator could get a million dollars of proved damages under the bill, and we have raised the maximum from $5,000 to $20,000 as to statutory damages. Under the old law the Senator would have been able to get only $5,000.

Mr. WAGNER. I have not made myself clear. The point I wish to make is that unless there is a statutory minimum, the injured party can recover only what he proves he has lost. You cannot get around this fact by using the words "in lieu of", or by referring the matter to the discretion of the final trial judge. Whatever damages the judge awards will be subject to reversal if it is not supported by proof, unless his action is protected by a statutory minimum.

I am positive that the Senator does not intend to do injury to anyone by returning to the old law which existed before Congress saw fit to amend it some years ago. Why take away again the only protection that the average playwriter and songwriter have? I am not pleading for the famous artists. They can take care of themselves. No one would dare to infringe upon Irving Berlin's songs, because they are too well known.

Mr. DUFFY. The expression used is "in lieu of proved damages." That means "instead of." If there is any other word or phrase the Senator prefers, let us have it. If he could prove damages up to a million dollars, he could get it. Either phrase is satisfactory, either "in lieu of" or "instead of."

Mr. WAGNER. Will the Senator accept a provision that, although only nominal damages are proved, a sum in excess of these may be awarded so as to prevent repetition of the infringement, and so as to guarantee justice to the injured artist?

Mr. DUFFY. I have no objection except to the insertion of a minimum damage, because when we provide a minimum damage then we incite the practice which has been going on in all these cases of holding up various individuals and institutions.

Mr. WAGNER. Of course, that depends upon one's viewpoint. For whom is the Senator pleading? Is he not speaking for those who infringe upon a copyright? Why should there be such tender solicitude for those who violate the law? It seems to me that this measure is more solicitous for the infringer than for the little fellow who once in 10 years may write a successful play or song.

I am sure that the radio and motion-picture companies do not want this kind of solicitude. They do not want to infringe at all. They want to be protected from the unfair competition of those who do. They want to give the artist just compensation when infringement is due to an honest mistake.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. WAGNER. Certainly.

Mr. CLARK. The Senator evidently misunderstood the purport of my remarks.

Mr. WAGNER. No; I am sure I did not.

Mr. CLARK. In my opinion, unless there be a minimum penalty or unless the jury be allowed to award a penalty in case of actual damages, there is nothing on the face of the earth to prevent the big broadcasting companies and the powerful people, who do infringe on the rights of the song writers and others, from continuing to do it, and throwing upon the author the responsibility of going into court in each particular case of infringement and proving actual damages. He cannot do it, and they could wear him out even though he should be able to prove actual damages.

Mr. WAGNER. Exactly. I thank the Senator. Now, I want to be fair to both sides. I recognize that a copyright law is needed. But it should protect the average artist.

What are we doing under this proposed law, as I see it? After all, Congress did not act thoughtlessly when it enacted the minimum damage provision. It responded to grave injustices. Why bring them back?

Mr. ADAMS. Mr. President, will the Senator yield for a suggestion?

Mr. WAGNER. Yes.

Mr. ADAMS. Would it in any way meet the Senator's problem if the court were specifically authorized to award exemplary or punitive damages, leaving the amount to the court?

Mr. WAGNER. That would partially cure the defect. It would remove the necessity of proving the extent of actual damages in order to recover anything.

Mr. DUFFY. Mr. President, will the Senator tell me where that appears in the bill? There is certainly nothing of that kind in the bill.

Mr. CLARK. It is the ordinary rule of law.

Mr. DUFFY. No; the infringement is shown, and statutory damages are awarded.

Mr. WAGNER. Even if I am not interpreting the bill correctly, would it not be clearer to say that although only nominal damages are proved, punitive damages may be awarded by the court?

Mr. DUFFY. I have no objection to such a provision. If the Senator will offer that as an amendment, I shall be willing to accept it.

Mr. WAGNER. I shall need a little time to frame the amendment.

Mr. ADAMS. Mr. President, if I may add a further suggestion, there might be inserted a phrase to the effect that infringement shall presumptively constitute actual damage. That would get away from the necessity of proving damages by making infringement presumptively damaging, even though only for a nominal amount.

Mr. WAGNER. Of course, that is what the present law really does, in setting a basic recovery of $250. In spite of the fact that there have been some abuses of the present law, they are trivial compared with those that would result from changing it.

I understand that while the State Department favored a reduction in the minimum allowed, they acknowledged the validity or the principle of protection. Am I mistaken about that?

Mr. DUFFY. Dr. McClure tells me that the Interdepartmental Committee, in discussing the matter, felt that the $250 provision had led to abuse, and thought it ought either to be reduced to a lower figure or else abolished. They tentatively put it, in the first draft, at $100. Later, they decided that the abuses were so many and so gross that it should be eliminated.

Mr. WAGNER. I can see that other provisions have crept into the bill which I do not think the Senator wishes to have remain in it.

Mr. BORAH. Mr. President, what is the agreement which the Senator from New York has reached with the Senator in charge of the bill?

Mr. WAGNER. On page 16, there is the following provision:

> To pay in lieu of the proved damages and profits provided for in the foregoing paragraph (2), such damages, not exceeding $20,000 for all infringement by any one infringer up to the date of suit, as shall in the opinion of the court be sufficient to prevent their operation as a license to infringe.

I should like to change the wording of that provision in order to provide that even though only nominal damages be proved, the court may award a sum in addition, by way of punitive damages. Also I propose to preserve a statutory minimum. I have not yet prepared the exact wording of the amendment which I shall offer.

Mr. WHITE. Mr. President——

Mr. WAGNER. I yield to the Senator from Maine.

Mr. WHITE. I desire to be sure that I understand the Senator. Am I right in my thought that the Senator wishes to write in the bill a provision restoring a statutory minimum which will serve as a restraint upon an infringer?

Mr. WAGNER. Yes; I wish to put in a provision which will serve as a restraint upon an infringer. I do not recede from my position that the bill should contain a minimum damage provision.

Mr. WHITE. Precisely such as there was in the old law?

Mr. WAGNER. Yes.

Mr. WHITE. And just such a provision as the court has expressed approval of?

Mr. WAGNER. Yes; expressed approval of. I am sorry to repeat, but every once in a while another Senator arrives, and I should like him to know my views.

Mr. WHITE. If the Senator will yield, I do not ask him to repeat the statement, because I am familiar with it.

Mr. WAGNER. I know the Senator from Maine was here. I appreciate his attention and cooperation on this proposition.

Mr. AUSTIN. Mr. President, will the Senator yield?

Mr. WAGNER. Yes.

Mr. AUSTIN. Would not the objective of the Senator from New York be attained by changing one word in line 18 on page 16; that is, by changing the word "proved" to "actual"?

Mr. DUFFY. I should say that if there is any difference in the significance of the two expressions, I should have no objection to that.

Mr. WAGNER. I prefer the word "nominal", because in many of these cases actual damages cannot be proved.

If I should write a song in a brilliant moment—which has not yet come to me in the course of my life, though it may—

I should want protection. Yet I would doubt my ability to prove actual damage in case of infringement.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WAGNER. Yes.

Mr. BARKLEY. Of course, there are many things that enter into the proof of what is actual damage.

I presume one of the things necessary to be shown would be that the sale of the song of the original writer had been lessened by an infringement, all of which is speculative. It might not be possible to prove actual monetary damage, yet there ought to be some penalty assessed against the man who sells my song, or the Senator's song, as the case may be, and it would more probably be the latter, in view of the recently expressed ambitions of the Senator from New York along that line.

Mr. WAGNER. Not yet attained.

Mr. BARKLEY. If I understand the Senator correctly, he wants to insert a provision as to what in damage suits are called "punitive damages."

Mr. WAGNER. Yes.

Mr. BARKLEY. Where there is no actual monetary loss susceptible of proof, so that a man would not promiscuously go out and infringe on the copyrights of others, although it would be difficult or impossible to prove that actual monetary damage resulted.

Mr. DUFFY. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. DUFFY. The case the Senator cited of a chain broadcast of a copyrighted song leads me to say that it was the thought of those who framed the bill that $250 would be no object in such a case; it would be so small; but the framers of the bill thought that the $5,000 maximum limit was too low. Therefore, in the bill they raised the maximum limit from $5,000 to $20,000, so that without proof of actual damages the court could, in a case of that kind, award up to $20,000 damages, instead of $5,000, as at the present time. The $250 minimum certainly would not have had any particular effect on a broadcasting company that was going intensively to steal.

The Senator recalls the "ancient days", but that was before "ASCAP", and the other organizations, which have now grown so strong that they are being prosecuted by the Federal Government for violation of the antitrust laws.

Mr. WAGNER. Speaking of the action brought by the Government, I understand that after a 4-day trial the Government asked that the case go over until November.

Mr. DUFFY. I understand it is to be resumed in November.

Mr. COSTIGAN. Mr. President, will the Senator yield to me?

Mr. WAGNER. I yield.

Mr. COSTIGAN. May we assume that the Senator from New York will tender an amendment proposing a minimum of nominal or actual damages and in addition exemplary damages?

Mr. WAGNER. Yes. I want the Senate to pass upon it. If it is the opinion of the Senate that I am mistaken in my apprehension, I am always ready to accept its decision.

There is another provision of the pending bill to which the artists object, and I think properly so. I refer to the divisibility section.

Mr. DUFFY. Mr. President, I may say to the Senator that that provision was inserted in the bill at the request of the Author's League.

Mr. WAGNER. I cannot understand how they could be for it.

Mr. DUFFY. I know it is hard to satisfy them.

Mr. WAGNER. I will state my objection to it. Under the present law, the writer of a play who has a copyright may contract for the production of his play upon the stage. He may then make another contract for the production of his story into a moving picture. At the same time, he could remain in control of the exhibitions of the moving picture, which might be a very valuable thing to do.

For example, there was a play on Broadway, which was quite a success, called "The Farmer Takes a Wife." Suppose that an identical moving picture had been produced on Broadway at the same time as the play. How long would the play have lasted with an admission charge of $2, contrasted with 25 cents for the movie? The playright can secure protection only by controlling the exhibition of the picture until the play has had its run. I have, within recent days, read that the moving picture The Farmer Takes a Wife is to be produced on Broadway. The play has run its course.

This new bill, however, provides that if a playwright sells production rights to a movie concern, he must in the same contract dispose of the exhibition rights. Why should it be provided that he must cover both at once? Why should we not, as in the case of other contracts, leave all parties free to agree upon whatever terms as they choose, without these restrictions?

Mr. DUFFY. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. DUFFY. The hearings on the copyright bills which have been before the Senate and the House for years have shown that the authors have struggled year after year for the divisibility provisions which is in the bill before us.

Mr. WAGNER. It is not divisibility, but indivisibility, that this bill provides.

Mr. DUFFY. Yes; they can divide it up.

Mr. WAGNER. It cannot be divided up under the bill.

Mr. DUFFY. The fact is that there is specific provision that it can be divided. An author, if he so desires, can sell his rights to a movie producer, so to have the play produced in a movie; he can sell it to a book publisher to have it produced in a book; he can divide it up.

Mr. WAGNER. That can be done today. But under the bill the production and exhibition rights cannot be separated.

Mr. DUFFY. It can only be done if specific exceptions are made in the contract.

Mr. WAGNER. Oh, no.

Mr. DUFFY. If the Senator is speaking for the poor authors, and wants the provision stricken from the bill, I am perfectly willing to have it stricken. It was included because the authors asked for it.

Mr. WAGNER. They do not say so in their communications to me. Any author today is free to make the contracts that the Senator mentions. He may make a contract with the producer, and he may make another with the exhibitor. But under the Senator's bill, as I read it, the author is not at liberty to do these two things. He must cede both rights at once. I want to be corrected if I am mistaken.

Mr. DUFFY. Making a moving picture would not be of much value unless one could exhibit it, I assume.

Mr. WAGNER. But the author should be allowed to arrange with the exhibitor as to the time of the showing, in order not to kill his play. To at least that protection, it seems to me, the writer is entitled. The bill clearly provides the contrary, for on page 3 it says:

> The right to produce a motion picture shall include the right to exhibit it.

Mr. BORAH. Mr. President, it would be interesting to know how one could compel a man to make a contract of that kind. May he not exercise his discretion?

Mr. WAGNER. I agree entirely with the Senator from Idaho.

Mr. LEWIS. Mr. President, I should like to seek information from the Senator from New York.

Mr. WAGNER. I will give it to the Senator if I can. However, I am not any too familiar with this bill.

Mr. LEWIS. I also seek information from the Senator from Wisconsin upon this question of divisibility and responsibility. I should like to ask a question in view of a certain late experience.

If a Senator should rise on the floor, and, in his presentation of a subject which interested him greatly and in which he was much concerned, succeed in making something of an acceptable speech, which might even be regarded as a brillant undertaking, and if on the following day, or 2 days after that, it should be discovered that a

Member of the House subsequently made a very full display of the subject matter, taking completely the speech of the Senator and heralding it as his own, is there any provision in the pending bill which will recognize the CONGRESSIONAL RECORD as having any value as a repository of the speech of the Senator which was thus appropriated by another?

Mr. WAGNER. I am afraid I cannot answer that question.

Mr. LEWIS. Then, Mr. President, I have no recourse. There is a complete loss.

Mr. WAGNER. Does anyone else ever contend that he is the author of a speech which the Senator from Illinois has delivered? No one else can make the brilliant speeches which the Senator from Illinois makes. I recognize them in a moment, and I could at once recognize an infringement of the Senator's copyright.

Mr. LEWIS. That observation by my able friend, the Senator from New York, does give some compensation, though not punitive damages.

Mr. WALSH. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. WALSH. I can understand what a very great benefit it would be to an author to be able to contract for the production only of his drama or his sketch, because if he could make such a contract and then make another contract for distribution he would be in the position of having knowledge of how popular his production might be after it was produced, and make better terms; but I cannot conceive of a producer and distributor dividing his contract with the author so as to permit the author to contract first for the production and then again for the distribution.

Mr. WAGNER. It is frequently done, I may say to the Senator from Massachusetts.

Mr. WALSH. It is done at the present time?

Mr. WAGNER. Yes.

Mr. WALSH. I can see great advantages to the author in such a contract.

Mr. WAGNER. The playwright is interested in not having his royalties from either source destroyed. If he has both a picture and a play on Broadway at once, one will destroy the other.

Mr. WALSH. Of course, the producer has to take a chance, and a great chance sometimes, as to how valuable the production will be after it is translated onto the screen.

Mr. WAGNER. Yes.

Mr. WALSH. While the author, after the picture was produced, would have the benefit of knowing whether or not he had developed a popular picture, and therefore would be in a position to exact larger and better terms from the producer.

Mr. WAGNER. I recognize both sides of the question.

Mr. WALSH. I think there is much to be said for what the Senator from New York says.

Mr. WAGNER. Of course, a playwright and a producer may make an indivisible contract, providing for both the production and the exhibition; but why on earth should we compel them by statute to do so?

Mr. WALSH. I am not satisfied that we should compel an author and a playwright to contract for both production and distribution at the same time. Each one should be optional.

Mr. DUFFY. Mr. President, I invite the Senator's attention to page 6 of the report of the committee, where this language appears:

"That the right to produce a motion picture shall include the right to exhibit it."

This language is intended solely to prevent an author who has granted motion-picture producing rights from claiming that he is entitled to prevent the produced picture from being exhibited.

Mr. WAGNER. This bill does everything possible to prevent the artist from doing anything that somebody may not want him to do. I do not understand what sin the artist has perpetrated to be so treated.

Mr. DUFFY. The report reads:

This language is intended solely to prevent an author who has granted motion-picture producing rights from claiming that he is entitled to prevent the produced picture from being exhibited.

In other words, if he has sold and been paid for the production rights, he should not be permitted to say, "I have sold the right to produce, but you may not exhibit here what I have sold."

Mr. WAGNER. I have not heard of such a case.

Mr. LA FOLLETTE. Mr. President, it seems to me offhand that we ought not to be concerned with the idea that motion-picture producers, with all their lawyers and their knowledge of the laws of contract, will not protect themselves so far as concerns their right to exhibit a picture after they have obtained the right to produce it. If any such case has arisen in one instance, they would certainly then be put on notice to provide in all their contracts against a recurrence in the future.

I think the Senator from New York is absolutely correct when he says it is very important that in selling the motion-picture rights of a play which is at the time being currently produced on the legitimate stage, the author certainly ought to have some right to say when the motion picture is to be produced. Otherwise, the property, insofar as its value as a legitimate play is concerned, might be absolutely wiped out.

Mr. WAGNER. There is another provision of the bill to which I object. It has to do with what is termed "incidental use." On page 23 of the new bill it is provided that there shall be no liability for infringement in case of incidental and not reasonably avoidable use in motion pictures or broadcasts depicting current events. If the infringement is merely "incidental", the artist has absolutely no remedy. This is something absolutely new to our law, and I invite the special attention of the Senate to it.

Suppose a song writer has written a song which has been a great success. A current events moving picture is produced, and in it his song is sung. He would have absolutely no remedy if the use was "incidental."

Mr. DUFFY. The incident which caused the provision to be inserted in the bill was a case where a moving picture was being taken of some big scene, I think, in London, England, where a band happened to be in the parade and happened to be playing a particular song as it passed by the movie camera. It happened to be a copyrighted piece. It was held to be an infringement. It was very incidental. Only a few bars were reproduced in the moving picture. That seemed to the committee to be such an unfair situation that we tried to remedy it.

Mr. WAGNER. It seems to me a careless and dangerous procedure, merely because of some particular and odd incident, to put in jeopardy the copyright interests of all the song writers of the country. A very interesting picture may be made dealing with current events. Some very popular songs may be woven into the picture, and the crowds may swarm to hear these beautiful melodies. This would prove a very profitable commercial transaction to the picture house. Yet if the owner of the song should walk in and say, "Look at all the money that you have been making by appropriating my songs in your current events", the reply might be, "Congress has enacted a law which gives me permission to do that. You cannot get any damages for that, and I can keep all the gate receipts."

Obviously, very few moving-picture operators would do that. I do not know any who would. But those who would not do it do not need or want such unfair protection. Such a provision in this bill could protect only the very few who are interested in piracy.

Mr. DUFFY. The phraseology is, "merely incidental and not reasonably avoidable."

Mr. WAGNER. But why should not the author be compensated for even incidental use? If the use had no value, the producer would not resort to it. If it has value, the creator should get part of it. And even if the use is accidental or unavoidable, why should not the author get the

fair value of his product? Besides, what an indefinite term "merely incidental" is.

Mr. DUFFY. I am sustaining it in good faith.

Mr. WAGNER. The Senator never heard me utter a word impugning the good faith of anything he has done. I know he always acts in good faith. I am arguing about the merits of a particular provision. If there is an answer to my complaint, I am willing to stop right now. But I know that if I were a judge upon the bench, I should not want to have the question put up to me whether a popular current-events song in a moving picture was "incidental" or not. That would be a very perplexing problem to solve.

What vexes me here again is that we are solicitous not about the man who has written the successful and popular song, but about the infringer. I think that corrections could be made which would make this bill fairer to everybody.

May this "incidental" use be made over a radio as well as in a moving picture of current events?

Mr. DUFFY. The language is:

The merely incidental and not reasonably avoidable inclusion of a copyrighted work in a motion picture or broadcast depicting or relating current events.

Mr. WAGNER. Oh, then I have told only half the story. We may have a current-events program over the air, advertising something very interesting; and in that program there may be one of George M. Cohan's popular songs, or someone else's. If the song is "incidental" to the broadcasting program, there can be no liability. I respectfully submit to the junior Senator from Wisconsin that that is going pretty far to protect infringers. I know that at times, particularly if they are innocent, they ought not to be dealt with harshly; but they should never be treated more favorably than the victim whose property rights, innocently or not, have been taken without compensation.

Mr. DUFFY. For instance, in the broadcasting of a Rose Bowl football game, we might for a moment or two hear a band in the stands play a few bars of a copyrighted song. It must be incidental; it must be that it cannot be reasonably avoided; and it must be a current news event. I think the provision is very limited.

Mr. WAGNER. In New York City we have several motion-picture houses which exhibit nothing but current events. They are very profitable and very interesting. I attend them very frequently, and enjoy the speeches of some of my colleagues, along with other current events. I think that if they interspersed a few popular songs which were "incidental", they would increase the number of their patrons.

I am proud of these picture places. I have never known them to do wrong, and I am confident that they want to pay for what they get. They do not care for this vague "incidental use" provision, which could serve only to cloak the abuses of the occasional wrongdoer.

There is yet another provision of the bill about which I should like to ask the junior Senator from Wisconsin. The bill provides that "works prepared expressly for radio broadcasting" may be copyrighted. Is that an exceptional right being given a particular industry? We have a general copyright law whereby books and songs and plays may be copyrighted. Why this special provision? Does not the present law cover the radio industry?

Mr. DUFFY. This is a provision in favor of the authors. If an author prepares a special scenario or special plan or arrangement, he may copyright it. It is again something in favor of the author.

Mr. WAGNER. Very well; I see no objection to that.

I have a little more that I wish to say. May I ask the Senator from Kentucky how long today's session is to continue?

Mr. BARKLEY. Not longer than 5 o'clock. I understand the Senator has two or three amendments to offer which he is not prepared to offer tonight.

Mr. WAGNER. I am not prepared to offer them tonight. I did intend to offer an amendment I had prepared, but the Senator from Idaho offered a similar one, and it was adopted. I think the elimination of the provision practically denying the right to temporary injunctive relief constitues a great improvement in the bill.

Mr. BARKLEY. Has the Senator finished all he wishes to say this afternoon?

Mr. WAGNER. Yes; I have finished all I wish to say this afternoon.

Mr. BARKLEY. We are prepared, then, to have an executive session, and afterward to take a recess. Will the Senator yield to me for that purpose?

Mr. WAGNER. Certainly.

AIR MAIL SERVICE IN ALASKA

The PRESIDING OFFICER laid before the Senate the action of the House of Representatives disagreeing to the amendment of the Senate to the bill (H. R. 5159) to authorize the Postmaster General to contract for air mail service in Alaska, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. McKELLAR. I move that the Senate insist upon its amendment, agree to the conference requested by the House, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. McKELLAR, Mr. HAYDEN, and Mr. SCHALL conferees on the part of the Senate.

EXECUTIVE SESSION

Mr. BARKLEY. 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.

EXECUTIVE MESSAGE REFERRED

The PRESIDING OFFICER (Mr. THOMAS of Utah in the chair) laid before the Senate a message from the President of the United States nominating Cullen F. Thomas, of Texas, to be United States Commissioner General for the Texas Centennial Exposition and celebrations, which was referred to the Committee on the Library.

EXECUTIVE REPORTS OF COMMITTEES

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters.

Mr. BARKLEY, from the Committee on the Library, reported favorably the nomination of Cullen F. Thomas, of Texas, to be United States Commissioner General for the Texas Centennial Exposition and celebrations.

The PRESIDING OFFICER. The reports will be placed on the Executive Calendar.

If there be no further reports of committees, the clerk will state the first nomination in order on the calendar.

DIPLOMATIC AND FOREIGN SERVICE

The legislative clerk read the nomination of Hugh Gladney Grant, of Alabama, to be Envoy Extraordinary and Minister Plenipotentiary to Albania.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. McKELLAR. I ask unanimous consent that the nominations of postmasters on the Calendar be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations of postmasters are confirmed en bloc.

IN THE ARMY

The legislative clerk proceeded to read sundry nominations in the Regular Army.

Mr. SHEPPARD. I ask unanimous consent that the Army nominations be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the Army nominations are confirmed en bloc.

That completes the calendar.

COMMISSIONER GENERAL FOR TEXAS CENTENNIAL EXPOSITION

Mr. CONNALLY. Mr. President, I ask unanimous consent that the nomination of Mr. Cullen F. Thomas as Commissioner General for the Texas Centennial Exposition, which has been reported and is on the calendar, but not on the printed calendar, be considered at this time.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

The legislative clerk read the nomination of Cullen F. Thomas, of Texas, to be United States Commissioner General for the Texas Centennial Exposition and celebrations.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. CONNALLY. I ask unanimous consent that the President be notified of the confirmation of this nomination.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

RECESS

Mr. BARKLEY. I move that the Senate stand in recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 4 o'clock and 55 minutes p. m.) the Senate, in legislative session, took a recess until tomorrow, Wednesday, August 7, 1935, at 12 o'clock meridian.

NOMINATION

Executive nomination received by the Senate August 6 (legislative day of July 29), 1935

UNITED STATES COMMISSIONER GENERAL FOR THE TEXAS CENTENNIAL EXPOSITION AND CELEBRATIONS

Cullen F. Thomas, of Texas, to be United States Commissioner General for the Texas Centennial Exposition and celebrations.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 6 (legislative day of July 29), 1935

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY

Hugh Gladney Grant to be Envoy Extraordinary and Minister Plenipotentiary to Albania.

UNITED STATES COMMISSIONER GENERAL FOR THE TEXAS CENTENNIAL EXPOSITION AND CELEBRATIONS

Cullen F. Thomas, to be United States Commissioner General for the Texas Centennial Exposition and celebrations.

APPOINTMENTS IN THE REGULAR ARMY

Charles Evans Kilbourne to be major general.
Charles Frederic Humphrey, Jr., to be brigadier general.
Laurence Halstead to be brigadier general.
Robert White DuPriest to be first lieutenant, Medical Corps.

APPOINTMENTS BY TRANSFER IN THE REGULAR ARMY

TO ADJUTANT GENERAL'S DEPARTMENT

Maj. Lathrop Boyd Clapham.
Capt. William Edward Bergin.

TO CAVALRY

Second Lt. David Wagstaff, Jr.

TO FIELD ARTILLERY

Second Lt. James Rhoden Pritchard.

TO INFANTRY

Lt. Col. Robert Ross Welshmer.

TO AIR CORPS

First Lt. Clayton Earl Hughes.
Second Lt. John Bevier Ackerman.
Second Lt. Edward Joseph Hale.

TO QUARTERMASTER CORPS

Second Lt. Clifford Christopher Wagner.

PROMOTIONS IN THE REGULAR ARMY

Maurice Wendell Hale to be captain, Veterinary Corps.
John Kenneth Sitzman to be captain, Dental Corps.

POSTMASTERS

CALIFORNIA

Albert H. Abbott, La Verne.
John Ransom Casey, Pomona.
Joseph L. Hamilton, Puente.
Garrett Curley, Rivera.

FLORIDA

William E. Arthur, Bradenton.
Lewis S. Andrews, Cocoa.
Rubye C. Farmer, Holly Hill.
John A. Russell, Islamorada.
Howard W. Harrison, Jay.
Charlie B. Goodman, Shamrock.
John H. Dutill, Umatilla.

MISSOURI

Mary G. Ramsey, Lexington.

NEVADA

John J. Noone, Goldfield.
Margaret F. Rackliffe, Mina.

HOUSE OF REPRESENTATIVES

TUESDAY, AUGUST 6, 1935

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

The earth is the Lord's and the fullness thereof, the world and they that dwell therein.

Thy scepter swings over all spaces, laws, and forces. Thou hast established them and dost ever renew and sustain the universal frame. Almighty God, we rejoice that Thou hast made us and not we ourselves. We pray, Heavenly Father, to bring us into harmony with Thee. O make us worthy of the universe of light, beauty, and glory of which Thou art the center. Take our lives in these earthen vessels and purify them. When the wheels of circumstance grind hard, when our faces feel the spray of the tempest, and when heartstrings are stretched nighest to the breaking point, do Thou comfort us with these words: None of these shall be able to separate us from the love of God which is in Christ Jesus our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 1629. An act to amend the Interstate Commerce Act, as amended, by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, and for other purposes; and

S. 1633. An act to amend the Interstate Commerce Act, as amended, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 8554) entitled "An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1935, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1935, and June 30, 1936, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 6511) entitled "An act to amend the air-mail laws and to authorize the extension of the Air Mail Service."

SECOND DEFICIENCY APPROPRIATION BILL—1935–36

Mr. BUCHANAN, from the Committee on Appropriations, submitted a conference report and statement on the bill