that this pledge will have a desirable effect upon the electorate in West Germany and will give to Adenauer's candidacy a genuine lilt and lift. Undoubtedly President Eisenhower promised Chancellor Adenauer a declaration of this sort when the Chancellor recently visited the White House.

It is interesting to note that in the past, particularly under Chancellor Bismarck, the German political and military strategists claimed that the cornerstone of Germany's foreign policy should be "a reinsurance treaty" with Russia. Now the political strategists of West Germany under Chancellor Adenauer believe that the linchpin of the Federal Republic's strength is "a reinsurance treaty" with NATO and the Western allies. I believe by the end of the year the Federal Republic will have become the most important continental member of NATO. West Germany is bound to dominate the "Little Europe" of the Coal and Steel Community, Euratom, and the Euromarket. West Germany will be able to exert a great influence on United States policy. If developed and used properly, Germany's great miracle of recovery, with a remarkable Adenauer victory, could be used by the United States and the Western allies to deal with and cut down the truculence of Russia.

Mr. Khrushchev, wise and foxy, knows of the strength in Adenauer and timed his recent visit to East Germany in an all-out effort to defeat Adenauer in the forthcoming German elections. It is part of the Soviet campaign to wreck the North Atlantic Alliance. Fortunately, his loudly hailed demonstrations of so-called indestructible Soviet and East German friendship were deemed a flop. Surrounded by steel-helmeted members of the East German Red Army—creation of the Soviets—Khrushchev denounced both Chancellor Adenauer and the United States for rearming West Germany. The language of his attack against us was most vitriolic. He sounded off in a way to help, indirectly, the opponents of Adenauer, namely, those led by Ollenhauer. That visit of Khrushchev to East Berlin and East Germany is clearest justification of our more than friendly attitude toward Adenauer and our rooting for him for reelection.

It may be that this kind of intervention in the politics of another country is very new to us. We get a little embarrassed when we are reminded of it. But we are now a world power and it is essential for us to express keen interest in certain elections. Frankly, we have been known to favor Latin American claimants for offices for many years. Such intervention, therefore, is not entirely unprecedented. Frankly, it would be insane not to offset and counterbalance the effects of Khrushchev's visit to East Berlin.

The Adenauer story is like a romance. It is the country hicktown boy who made good. He first saw Paris and Rome and Washington when he was 75 years old. For 70 years his was the life of mediocrity in and around Cologne. He was its town councilor. He arose to lord mayor and remained such 16 years. The Nazis deposed him. He remained in the political background during the Hitler regime, was twice arrested by his hoodlums and twice set free.

In 1945 American occupation forces rediscovered him and again set him up as lord mayor of Cologne.

He became chairman of the biggest branch of the Christian Democratic Union and in September 1949 he formed the first government with a majority of two votes in the Bundestag. He has been Chancellor ever since.

His has been a consistent policy of reconciliation with the West.

As was stated by Terence Prittee recently:

> He preserved in the face of the occupiers of his country a dignity that was virtually unique, thus marking himself out as the best man to deal with them on behalf of his fellow Germans. In them he inspired confidence alike by his refusal to complain about material discomforts and by his steely insistence on getting on with the tasks of political organization. Work and responsibility were making him into a younger, healthier man.
>
> He was given a unique chance by the cold war. This put him on the path which the Western Powers were bound to tread—that of consolidating a Western Germany of 50 million people politically, economically, and spiritually and incorporating it in a Western defense system and in a Europe in process of unification. The milestones along this path have been the Petersberg agreement (for converting the Allied Military Government into a High Commission which administered under the terms of the Occupation Statute), the entry of West Germany into the Coal and Steel Community and the Council of Europe, the Bonn and Paris agreements which conferred sovereignty and the right to rearm, and German entry into NATO and WEU.

An exasperated comment of a political opponent of Chancellor Adenauer as "Der Alte's" seeming indestructibility was, "at his age men never die."

Now at 81 he campaigns like one at 41. He dominates the present campaign with his amazing personality, whistlestopping with a 30-man party in a special campaign train—not unlike the Eisenhower or Stevenson technique—the candidate Adenauer warned that his rivals would weaken ties with the United States and the West so that we Germans would cease to exist as a free people.

Also I have naught but praise for the efforts afoot to reestablish diplomatic relations between West Germany and Israel. I understand that the Chancellor is sympathetic to this idea and desires to further relations of peace and accord with Israel.

The Premier of Israel David Ben-Gurion is desirous of such a proposal being fulfilled. He recently said in the Israel Parliament that the Germany of today is not the same country as that of the Nazi regime. He pointed out that despite the skeptics, Bonn had scrupulously observed its reparations agreements both with respect to Israel and to the Jews in general. Germany is fulfilling an important role in a united Europe, he pointed out, and Israel must look forward to establishing relations with that entire region, particularly since the Jewish state is planning to embark on gigantic projects which are well beyond the strength of Israel and world Jewry alone.

Indeed we do well to support "Der Alte."

SENATE

THURSDAY, AUGUST 29, 1957

[Continuation of Senate proceedings of Wednesday, August 28, 1957, from 2 a. m. Thursday, August 29]

Mr. THURMOND. Mr. President, I now wish to take up Chief Justice Taft's opinion on jury trials in contempt cases. Considerable has been said about what Chief Justice Taft said concerning contempt and jury trials. Chief Justice Taft was at one time President of the United States, and he was Chief Justice of the United States. He was a great man and a great American. His opinions are highly revered, but some of his opinions have been quoted out of context or when not applicable. I wish to take up at this time his opinions on jury trials in contempt cases.

On June 5, 1957, at his White House press conference, President Eisenhower in answer to a question asked by the National Negro Press Association as to how he stood on the jury-trial amendment to the so-called civil-rights bill quoted President Taft as being opposed to a jury trial in contempt cases. President Eisenhower stated that Mr. Taft made this statement when he was President in 1908 and there is no evidence that he ever changed his mind.

In the first place the statement was not made by Mr. Taft while President. The statement was made by Mr. Taft in a political speech at Cincinnati, Ohio, on Tuesday, July 28, 1908, in acceptance of the Republican nomination for President. Mr. Taft at the time was Secretary of War. He did not become President until March 4, 1909.

In this political speech Mr. Taft also said a trial by jury in contempt cases was never known in the history of the jurisprudence of England, or America, except in the constitution of Oklahoma. See Presidential Addresses and Papers, William H. Taft, 1910 cd., page 26.

Also in this speech Mr. Taft said the popular impression that a judge, in punishing for contempt of his own order, may be affected by a personal feeling was unfounded.

Did Mr. Taft change his mind when he became Chief Justice? He most assuredly did. He not only changed his mind on the subject of whether jury trials were had at common law in contempt cases but also changed his mind about judges having personal vindictiveness in contempt orders.

While Chief Justice of the Supreme Court Mr. Taft delivered the opinion in *Ex parte Grossman* ((1924) 267 U. S. 87) and cited eight cases at common law to show that in England a jury trial was had

in contempt cases. This decision was rendered by him in upholding a pardon granted by President Hoover to a man imprisoned by a United States district judge in Illinois for contempt in a summary proceeding. Chief Justice Taft declared at page 118 of volume 267, United States Reports:

The King of England before our Revolution, in the exercise of his prerogative, had always exercised the power to pardon contempts of court, just as he did ordinary crimes and misdemeanors and as he has done to the present day. In the mind of a common-law lawyer of the 18th century the word pardon included within its scope the ending by the King's grace of the punishment of such derelictions, whether it was imposed by the court without a jury or upon indictment, for both forms of trial for contempts were had. *Thomas of Chartham* v. *Benet of Stamford* ((1313), 24 Selden Society, 185); *Fulwood* v. *Fulwood* ((1585), Toothill, 46); *Rex* v. *Buckenham* ((1665), 1 Deble 751, 707, 852); Anonymous (1674), Cases in Chancery (238); *King and Codrington* v. *Rodmap* ((1630), Cr. Car. 198); *Bartram* v. *Dannett* ((1676), Finch, 253); *Phipps* v. *Earl of Angelsea* ((1721), 1 Peere Williams, 696).

In all probability Mr. Taft was induced to recognize the fact that jury trials were customarily had at common law in contempts as a result of research conducted by the distinguished historian of English law Mr. W. S. Holdsworth. The efforts of this great historian were first made public in 1909 after Mr. Taft had made his earlier statement.

Mr. Holdsworth declared that the only cases in which contempts were punished summarily was where the contemnor confessed his guilt. If he did not confess the accused was tried by the ordinary course of law which meant trial by jury. To quote Mr. Holdsworth:

A History of English Law, volume III, pages 392–393. * * * But all through the medieval period, and long afterwards, the courts, though they might attack persons who were guilty of contempts of court, could not punish them summarily. Unless they confessed their guilt, they must be regularly indicted and convicted. Mr. Fox has given a list of 40 cases of various contempts—insults to the judges, an assault on the attorney general, beating jurors, striking a witness, trampling on a writ of prohibition—in all of which the offender was tried by the ordinary course of law. That this was the correct course to pursue was stated by Anderson, C. J., in 1599.

In another opinion while Chief Justice Mr. Taft changed his mind about the immunity of Federal judges from vindictiveness in issuing contempt orders.

On November 19, 1923, in a concurring opinion in *Craig* v. *Hecht* (263 U. S. 255 at p. 279), the Chief Justice said:

The delicacy there is in the judge's deciding whether an attack upon his own judicial action is mere criticism or real obstruction, and the possibility that impulse may incline his view to personal vindication, are manifest. But the law gives the person convicted of contempt in such a case the right to have the whole question on facts and law reviewed by three judges of the circuit court of appeals who have had no part in the proceedings, and if not successful in that court, to apply to this Court for an opportunity for a similar review here.

Mr. President, on June 10, 1957, the Supreme Court delivered an opinion in the case of Reid against Covert. Since this opinion deals with the question "the right of trial by jury," I think it is advisable for the Senate to consider this decision of the Supreme Court. I shall read a number of pages from the opinion and a concurring opinion by Justice Frankfurter.

Some of the material in this opinion necessarily discusses the background of the cases. However, I believe it appropriate to read this material because it is necessary to a full understanding of this decision which upheld the constitutional right of trial by jury which H. R. 6127 would deny under certain conditions. I read from the opinion of the Court:

SUPREME COURT OF THE UNITED STATES, NOS. 701 AND 713, OCTOBER TERM, 1955—CURTIS REID, SUPERINTENDENT OF THE DISTRICT OF COLUMBIA JAIL, APPELLANT, *v.* CLARICE B. COVERT; NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA, PETITIONER, *v.* WALTER KRUEGER, ON REHEARING, JUNE 10, 1957

Mr. Justice Black announced the judgment of the Court and delivered an opinion, in which the Chief Justice, Mr. Justice Douglas, and Mr. Justice Brennan join.

These cases raise basic constitutional issues of the utmost concern. They call into question the role of the military under our system of government. They involve the power of Congress to expose civilians to trial by military tribunals, under military regulations and procedures, for offenses against the United States thereby depriving them of trial in civilian courts, under civilian laws and procedures and with all the safeguards of the Bill of Rights. These cases are particularly significant because for the first time since the adoption of the Constitution wives of soldiers have been denied trial by jury in a court of law and forced to trial before courts-martial.

In No. 701 Mrs. Clarice Covert killed her husband, a sergeant in the United States Air Force, at an airbase in England. Mrs. Covert, who was not a member of the armed services, was residing on the base with her husband at the time. She was tried by a court-martial for murder under Article 118 of the Uniform Code of Military Justice (UCMJ). The trial was on charges preferred by Air Force personnel and the court-martial was composed of Air Force officers. The court-martial asserted jurisdiction over Mrs. Covert under Article 2 (11) of the UCMJ, which provides:

"The following persons are subject to this code:

"(11) Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, all persons serving with, employed by, or accompanying the Armed Forces without the continental limits of the United States."

Counsel for Mrs. Covert contended that she was insane at the time she killed her husband, but the military tribunal found her guilty of murder and sentenced her to life imprisonment. The judgment was affirmed by the Air Force Board of Reviews (16 CMR 465) but was reversed by the Court of Military Appeals (6 USCMA 48), because of prejudicial errors concerning the defense of insanity. While Mrs. Covert was being held in this country pending a proposed retrial by court-martial in the District of Columbia, her counsel petitioned the district court for a writ of habeas corpus to set her free on the ground that the Constitution forbade her trial by military authorities. Construing this court's decision in *United States ex rel. Toth* v. *Quarles* (350 U. S. 11), as holding that "a civilian is entitled to a civilian trial" the district court held that Mrs. Covert could not be tried by court-martial and ordered her released from custody. The Government appealed directly to this court under, title 28, United States Code, section 1252. See Three Hundred and Fiftieth United States Reports, page 985.

In No. 713 Mrs. Dorothy Smith killed her husband, an Army officer, at a post in Japan where she was living with him. She was tried for murder by a court-martial and despite considerable evidence that she was insane was found guilty and sentenced to life imprisonment. The judgment was approved by the Army Board of Review (10 CMR 350, 13 CMR 307), and the Court of Military Appeals (5 USCMA 314). Mrs. Smith was then confined in a Federal penitentiary in West Virginia. Her father, respondent here, filed a petition for habeas corpus in a district court for West Virginia. The petition charged that the court-martial was without jurisdiction because article 2 (11) of the UCMJ was unconstitutional insofar as it authorized the trial of civilian dependents accompanying servicemen overseas. The district court refused to issue the writ (137 F. Supp. 806), and while an appeal was pending in the Court of Appeals for the Fourth Circuit we granted certiorari at the request of the Government (350 U. S. 986).

The two cases were consolidated and argued last term and a majority of the Court, with 3 Justices dissenting and 1 reserving opinion, held that military trial of Mrs. Smith and Mrs. Covert for their alleged offenses was constitutional. Three hundred and fifty-first United States Reports, page 470, 487. The majority held that the provisions of article III and the fifth and sixth amendments which require that crimes be tried by a jury after indictment by a grand jury did not protect an American citizen when he was tried by the American Government in foreign lands for offenses committed there and that Congress could provide for the trial of such offenses in any manner it saw fit so long as the procedures established were reasonable and consonant with due process. The opinion then went on to express the view that military trials, as now practiced, were not unreasonable or arbitrary when applied to dependents accompanying members of the Armed Forces overseas. In reaching their conclusion the majority found it unnecessary to consider the power of Congress "To make rules for the Government and regulation of the land and naval forces" under article I of the Constitution.

Subsequently, the Court granted a petition for rehearing. Three Hundred and Fifty-second United States Reports, page 901. Now, after further argument and consideration, we conclude that the previous decisions cannot be permitted to stand. We hold that Mrs. Smith and Mrs. Covert could not constitutionally be tried by military authorities.

I

At the beginning we reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights. The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land. This is not a novel concept. To the contrary, it is as old as government. It was recognized long before Paul successfully invoked his right as a Roman citizen to be tried in strict accordance with Roman law. And many centuries later an English historian wrote:

"In a settled colony the inhabitants have all the rights of Englishmen. They take with them, in the first place, that which no Englishman can by expatriation put off, namely, allegiance to the Crown, the duty of

obedience to the lawful commands of the Sovereign, and obedience to the laws which Parliament may think proper to make with reference to such a colony. But, on the other hand, they take with them all the rights and liberties of British subjects; all the rights and liberties as against the prerogative of the Crown, which they would enjoy in this county."

The rights and liberties which citizens of our country enjoy are not protected by custom and tradition alone, they have been jealously preserved from the encroachments of Government by express provisions of our written Constitution.

Among those provisions, article III, section 2, and the fifth and sixth amendments are directly relevant to these cases. Article III, section 2, lays down the rule that—

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

The fifth amendment declares:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."

And the sixth amendment provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

The language of article III, section 2, manifests that constitutional protections for the individual were designed to restrict the United States Government when it acts outside of this country, as well as here at home. After declaring that all criminal trials must be by jury, the section states that when a crime is "not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." If this language is permitted to have its obvious meaning, section 2 is applicable to criminal trials outside of the States as a group without regard to where the offense is committed or the trial held. From the very first Congress, Federal statutes have implemented the provisions of section 2 by providing for trial of murder and other crimes committed outside the jurisdiction of any State "in the district where the offender is apprehended, or into which he may first be brought." The fifth and sixth amendments, like article III, section 2, are also all inclusive with their sweeping references to "no person" and to "all criminal prosecutions."

This Court and other Federal courts have held or asserted that various constitutional limitations apply to the Government when it acts outside the continental United States. While it has been suggested that only those constitutional rights which are "fundamental" protect Americans abroad, we can find no warrant, in logic or otherwise, for picking and choosing among the remarkable collection of "Thou shalt nots" which were explicitly fastened on all departments and agencies of the Federal Government by the Constitution and its amendments. Moreover, in view of our heritage and the history of the adoption of the Constitution and the Bill of Rights, it seems peculiarly anomalous to say that trial before a civilian judge and by an independent jury picked from the common citizenry are not fundamental rights. As Blackstone wrote in his Commentaries:

"The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases. * * * [I]t is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of 12 of his neighbors and equals."

Trial by jury in a court of law and in accordance with traditional modes of procedure after an indictment by grand jury has served and remains one of our most vital barriers to governmental arbitrariness. These elemental procedural safeguards were embedded in our Constitution to secure their inviolateness and sanctity against the passing demands of expediency or convenience.

The keystone of supporting authorities mustered by the Court's opinion last June to justify its holding that article III, section 2, and the fifth and sixth amendments did not apply abroad was *In re Ross* (140 U. S. 453). The Ross case is one of those cases that cannot be understood except in its peculiar setting; even then, it seems highly unlikely that a similar result would be reached today. Ross was serving as a seaman on an American ship in Japanese waters. He killed a ship's officer, was seized and tried before a consular court in Japan. At that time, statutes authorized American consuls to try American citizens charged with committing crimes in Japan and certain other non-Christian countries. These statutes provided that the laws of the United States were to govern the trial except:

"Where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies."

The consular power approved in the Ross case was about as extreme and absolute as that of the potentates of the non-Christian countries to which the statutes applied. Under these statutes consuls could and did make the criminal laws, initiate charges, arrest alleged offenders, try them, and after conviction take away their liberty or their life—sometimes at the American consulate. Such a blending of executive, legislative, and judicial powers in one person or even in one branch of the Government is ordinarily regarded as the very acme of absolutism. Nevertheless, the Court sustained Ross' conviction by the consul. It stated that constitutional protections applied "only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad." Despite the fact that it upheld Ross' conviction under United States laws passed pursuant to asserted constitutional authority, the Court went on to make a sweeping declaration that "[t]he Constitution can have no operation in another country."

The Ross approach that the Constitution has no applicability abroad has long since been directly repudiated by numerous cases. That approach is obviously erroneous if the United States Government, which has no power except that granted by the Constitution, can and does try citizens for crimes committed abroad. Thus the Ross case rested, at least in substantial part, on a fundamental misconception and the most that can be said in support of the result reached there is that the consular court jurisdiction had a long history antedating the adoption of the Constitution. The Congress has recently buried the consular system of trying Americans. We are not willing to jeopardize the lives and liberties of Americans by disinterring it. At best, the Ross case should be left as a relic from a different era.

The Court's opinion last term also relied on the Insular Cases to support its conclusion that article III and the fifth and sixth amendments were not applicable to the trial of Mrs. Smith and Mrs. Covert. We believe that reliance was misplaced.

The Insular Cases can be distinguished from the present cases in that they involved the power of Congress to provide rules and regulations to govern temporarily territories with wholly dissimilar traditions and institutions whereas here the basis for governmental power is American citizenship. None of these cases had anything to do with military trials and they cannot properly be used as vehicles to support an extension of military jurisdiction to civilians. Moreover, it is our judgment that neither the cases nor their reasoning should be given any further expansion. The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our Government. If our foreign commitments become of such nature that the Government can no longer satisfactorily operate within the bounds laid down by the Constitution, that instrument can be amended by the method which it prescribes. But we have no authority, or inclination, to read exceptions into it which are not there.

II

At the time of Mrs. Covert's alleged offense, an executive agreement was in effect between the United States and Great Britain which permitted United States military courts to exercise exclusive jurisdiction over offenses committed in Great Britain by American servicemen or their dependents. For its part, the United States agreed that these military courts would be willing and able to try and to punish all offenses against the laws of Great Britain by such persons. In all material respects, the same situation existed in Japan when Mrs. Smith killed her husband. Even though a court-martial does not give an accused trial by jury and other Bill of Rights' protections, the Government contends that section 2 (11) of the UCMJ, insofar as it authorizes the military trial of dependents accompanying the Armed Forces in Great Britain and Japan, can be sustained as legislation which is necessary and proper to carry out the United States obligations under the international agreements made with those countries. The obvious and decisive answer to this, of course, is that no agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution.

Article VI, the supremacy clause of the Constitution, declares:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

There is nothing in this language which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result. These debates as well as the history that surrounds the adoption of the treaty provision in article VI make it clear that the reason treaties were not limited to those made in pursuance of the Constitution was so that agreements made by the United States under the Articles of Confederation, including the important peace treaties which

concluded the Revolutionary War, would remain in effect. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the executive or by the executive and the Senate combined.

There is nothing new or unique about what we say here. This court has regularly and uniformly recognized the supremacy of the Constitution over a treaty. For example, in *Geofroy* v. *Riggs* (133 U. S. 258, 267), it declared:

"The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the Government or of its departments, and those arising from the nature of the Government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent."

This Court has also repeatedly taken the position that an act of Congress, which must comply with the Constitution, is on a full parity with a treaty, and that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null. It would be completely anomalous to say that a treaty need not comply with the Constitution when such an agreement can be overridden by a statute that must conform to that instrument.

There is nothing in *Missouri* v. *Holland* (252 U. S. 416), which is contrary to the position taken here. There the Court carefully noted that the treaty involved was not inconsistent with any specific provision of the Constitution. The Court was concerned with the 10th amendment which reserves to the States or the people all power not delegated to the National Government. To the extent that the United States can validly make treaties, the people and the States have delegated their power to the National Government and the 10th amendment is no barrier.

In summary, we conclude that the Constitution in its entirety applied to the trials of Mrs. Smith and Mrs. Covert. Since their court-martial did not meet the requirements of article III, section 2, or the fifth and sixth amendments we are compelled to determine if there is anything within the Constitution which authorizes the military trial of dependents accompanying the Armed Forces overseas.

III

Article I, section 8, clause 14, empowers Congress "To make rules for the government and regulation of the land and naval forces." It has been held that this creates an exception to the normal method of trial in civilian courts as provided by the Constitution and permits Congress to authorize military trial of members of the armed services without all the safeguards given an accused by article III and the Bill of Rights. But if the language of clause 14 is given its natural meaning, the power granted does not extend to civilians—even though they may be dependents living with servicemen on a military base. The term "land and naval forces" refers to persons who are members of the armed services and not to their civilian wives, children, and other dependents. It seems inconceivable that Mrs. Covert or Mrs. Smith could have been tried by military authorities as members of the land and naval forces had they been living on a military post in this country. Yet this constitutional term surely has the same meaning everywhere. The wives of servicemen are no more members of the land and naval forces when living at a military post in England or Japan than when living at a base in this country or in Hawaii or Alaska.

The Government argues that the necessary and proper clause, when taken in conjunction with clause 14, allows Congress to authorize the trial of Mrs. Smith and Mrs. Covert by military tribunals and under military law. The Government claims that the two clauses together constitute a broad grant of power without limitation authorizing Congress to subject all persons, civilians and soldiers alike, to military trial if necessary and proper to govern and regulate the land and naval forces. It was on a similar theory that Congress once went to the extreme of subjecting persons who made contracts with the military to court-martial jurisdiction with respect to frauds related to such contracts. In the only judicial test a Circuit Court held that the legislation was patently unconstitutional. *Ex parte Henderson* (11 Fed. Cas. 1067, No. 6349).

It is true that the Constitution expressly grants Congress power to make all rules necessary and proper to govern and regulate those persons who are serving in the land and naval forces. But the necessary and proper clause cannot operate to extend military jurisdiction to any group of persons beyond that class described in clause 14—"the land and naval forces." Under the grand design of the Constitution civilian courts are the normal repositories of power to try persons charged with crimes against the United States. And to protect persons brought before these courts, article III and the fifth, sixth, and eighth amendments establish the right to trial by jury, by indictment by a grand jury, and a number of other specific safeguards. By way of contrast the jurisdiction of military tribunals is a very limited and extraordinary jurisdiction derived from the cryptic language in article I, section 8, and, at most, was intended to be only a narrow exception to the normal and preferred method of trial in courts of law. Every extension of military jurisdiction is an encroachment on the jurisdiction of the civil courts, and, more important, acts as a deprivation of the right to jury trial and of other treasured constitutional protections. Having run up against the steadfast bulwark of the Bill of Rights, the necessary and proper clause cannot extend the scope of clause 14.

Nothing said here contravenes the rule laid down in *McCulloch* v. *Maryland* (4 Wheat. 316, at 421), that:

"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."

In McCulloch this Court was confronted with the problem of determining the scope of the necessary and proper clause in a situation where no specific restraints on governmental power stood in the way. Here the problem is different. Not only does clause 14, by its terms, limit military jurisdiction to members of the land and naval forces, but article III, section 2 and the fifth and sixth amendments require that certain express safeguards, which were designed to protect persons from oppressive governmental practices, shall be given in criminal prosecutions—safeguards which cannot be given in a military trial. In the light of these as well as other constitutional provisions, and the historical background in which they were formed, military trial of civilians is inconsistent with both the letter and spirit of the Constitution.

Further light is reflected on the scope of clause 14 by the fifth amendment. That amendment which was adopted shortly after the Constitution reads:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."

Since the exception in this amendment for cases arising in the land or naval forces was undoubtedly designed to correlate with the power granted Congress to provide for the government and regulation of the armed services, it is a persuasive and reliable indication that the authority conferred by clause 14 does not encompass persons who cannot fairly be said to be in the military service.

Even if it were possible, we need not attempt here to precisely define the boundary between civilians and members of the land and naval forces. We recognize that there might be circumstances where a person could be in the armed services for purposes of clause 14 even though he had not formally been inducted into the military or did not wear a uniform. But the wives, children, and other dependents of servicemen cannot be placed in that category, even though they may be accompanying a serviceman abroad at Government expense and receiving other benefits from the Government. We have no difficulty in saying that such persons do not lose their civilian status and their right to a civilian trial because the Government helps them live as members of a soldier's family.

The tradition of keeping the military subordinate to civilian authority may not be so strong in the minds of this generation as it was in the minds of those who wrote the Constitution. The idea that the relatives of soldiers could be denied a jury trial in a court of law and instead be tried by courts-martial under the guise of regulating the Armed Forces would have seemed incredible to those men, in whose lifetime the right of the military to try soldiers for any offenses in time of peace had only been grudgingly conceded. The founders envisioned the Army as a necessary institution, but one dangerous to liberty if not confined within its essential bounds. Their fears were rooted in history. They knew that ancient republics had been overthrown by their military leaders. They were familiar with the history of 17th century England, where Charles I tried to govern through the army and without Parliament. During this attempt, contrary to the common law, he used courts-martial to try soldiers for certain nonmilitary offenses. This court-martialing of soldiers in peacetime evoked strong protests from Parliament. The reign of Charles I was followed by the rigorous military rule of Oliver Cromwell. Later, James II used the army in his fight against Parliament and the people. He promulgated articles of war (strangely enough relied on in the Government's brief) authorizing the trial of soldiers for nonmilitary crimes by courts-martial. This action hastened the revolution that brought William and Mary to the throne upon their agreement to abide by a bill of rights which, among other things, protected the right of trial by jury. It was against this general background that two of the greatest English jurists, Lord Chief Justice Hale and Sir William Blackstone—men who exerted considerable influence on the founders—expressed sharp hostility to any expansion of the jurisdiction of military courts. For instance, Blackstone went so far as to assert:

"For martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is, as Sir Matthew Hale observes, in truth and reality no law, but something indulged rather than allowed as

a law. The necessity of order and discipline in an army is the ony thing which can give it countenance; and therefore it ought not to be permitted in time of peace, when the king's courts are open for all persons to receive justice according to the laws of the land."

The generation that adopted the Constitution did not distrust the military because of past history alone. Within their own lives they had seen royal governors sometimes resort to military rule. British troops were quartered in Boston at various times from 1768 until the outbreak of the Revolutionary War to support unpopular royal governors and to intimidate the local populace. The trial of soldiers by courts-martial and the interference of the military with the civil courts aroused great anxiety and antagonism not only in Massachusetts but throughout the colonies. For example, Samuel Adams in 1768 wrote:

"[I]s it not enough for us to have seen soldiers and mariners forejudged of life, and executed within the body of the county by martial law? Are citizens to be called upon, threatened, ill-used at the will of the soldiery, and put under arrest, by pretext of the law military, in breach of the fundamental rights of subjects, and contrary to the law and franchise of the land? * * * Will the spirits of people as yet unsubdued by tyranny, unawed by the menaces of arbitrary power, submit to be governed by military force? No! Let us rouse our attention to the common law—which is our birthright, our great security against all kinds of insult and oppression."

Colonials had also seen the right to trial by jury subverted by acts of Parliament which authorized courts of admiralty to try alleged violations of the unpopular Molasses and Navigation Acts. This gave the admiralty courts jurisdiction over offenses historically triable only by a jury in a court of law and aroused great resentment throughout the colonies. As early as 1765 delegates from nine colonies meeting in New York asserted in a declaration of rights that trial by jury was the inherent and invaluable right of every citizen in the colonies.

With this background it is not surprising that the Declaration of Independence protested that George III had affected to render the military independent of and superior to the civil power and that Americans had been deprived in many cases of the benefits of trial by jury. And those who adopted the Constitution embodied their profound fear and distrust of military power, as well as their determination to protect trial by jury, in the Constitution and its amendments. Perhaps they were aware that memories fade and hoped that in this way they could keep the people of this Nation from having to fight again and again the same old battles for individual freedom.

In the light of this history, it seems clear that the founders had no intention to permit the trial of civilians in military courts, where they would be denied jury trials and other constitutional protections, merely by giving Congress the power to make rules which were necessary and proper for the regulation of the land and naval forces. Such a latitudinarian interpretation of these clauses would be at war with the well-established purpose of the founders to keep the military strictly within its proper sphere, subordinate to civil authority. The Constitution does not say that Congress can regulate the land and naval forces and all other persons whose regulation might have some relationship to maintenance of the land and naval forces. There is no indication that the founders contemplated setting up a rival system of military courts to compete with civilian courts for jurisdiction over civilians who might have some contact or relationship with the Armed Forces. Courts-martial were not to have concurrent jurisdiction with courts of law over nonmilitary America.

On several occasions this Court has been faced with an attempted expansion of the jurisdiction of military courts. *Ex parte Milligan* (4 Wall. 2), one of the great landmarks in this Court's history, held that military authorities were without power to try civilians not in the military or naval service by declaring martial law in an area where the civil administration was not deposed and the courts were not closed. In a stirring passage the Court proclaimed:

"Another guaranty of freedom was broken when Milligan was denied a trial by jury. The great minds of the country have differed on the correct interpretation to be given to various provisions of the Federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was fortified in the organic law against the power of attack. It is now assailed; but if ideas can be expressed in words, and language has any meaning, this right—one of the most valuable in a free country—is preserved to everyone accused of crime who is not attached to the Army, or Navy, or militia in actual service."

In *Duncan* v. *Kahanamoku* (327 U. S. 304), the Court reasserted the principles enunciated in *Ex parte Milligan* and reaffirmed the tradition of military subordination to civil authorities and institutions. It refused to sanction the military trial of civilians in Hawaii during wartime despite Government claims that the needs of defense made martial law imperative.

Just last term, this Court held in *United States ex rel. Toth* v. *Quarles* (350 U. S. 11), that military courts could not constitutionally try a discharged serviceman for an offense which he had allegedly committed while in the Armed Forces. It was decided (1) that since Toth was a civilian he could not be tried by military court-martial, and (2) that since he was charged with murder, a crime in the constitutional sense, he was entitled to indictment by a grand jury, jury trial, and the other protections contained in article III, section 2 and the fifth, sixth, and eighth amendments. The Court pointed out that trial by civilian courts was the rule for persons who were not members of the Armed Forces.

There are no supportable grounds upon which to distinguish the Toth case from the present cases. Toth, Mrs. Covert, and Mrs. Smith were all civilians. All three were American citizens. All three were tried for murder. All three alleged crimes were committed in a foreign country. The only differences were: (1) Toth was an exserviceman while they were wives of soldiers; (2) Toth was arrested in the United States while they were seized in foreign countries. If anything, Toth had closer connection with the military than the two women for his crime was committed while he was actually serving in the Air Force. Mrs. Covert and Mrs. Smith had never been members of the Army, had never been employed by the Army, had never served in the Army in any capacity. The Government appropriately argued in Toth that the constitutional basis for court-martialing him was clearer than for court-martialing wives who are accompanying their husbands abroad. Certainly Toth's conduct as a soldier bears a closer relation to the maintenance of order and discipline in the Armed Forces than the conduct of these wives. The fact that Toth was arrested here while the wives were arrested in foreign countries is material only if constitutional safeguards do not shield a citizen abroad when the Government exercises its power over him. As we have said before, such a view of the Constitution is erroneous. The mere fact that these women had gone overseas with their husbands should not reduce the protection the Constitution gives them.

The Milligan, Duncan, and Toth cases recognized and manifested the deeply rooted and ancient opposition in this country to the extension of military control over civilians. In each instance an effort to expand the jurisdiction of military courts to civilians was repulsed.

There have been a number of decisions in the lower Federal courts which have upheld military trial of civilians performing services for the Armed Forces in the field during time of war. To the extent that these cases can be justified, insofar as they involved trial of persons who were not members of the Armed Forces, they must rest on the Government's war powers. In the face of an actively hostile enemy, military commanders necessarily have broad power over persons on the battlefront. From a time prior to the adoption of the Constitution the extraordinary circumstances present in an area of actual fighting have been considered sufficient to permit punishment of some civilians in that area by military courts under military rules. But neither Japan nor Great Britain could properly be said to be an area where active hostilities were underway at the time Mrs. Smith and Mrs. Covert committed their offenses or at the time they were tried.

The Government urges that the concept in the field should be broadened to reach dependents accompanying the military forces overseas under the conditions of world tension which exist at the present time. It points out how the war powers include authority to prepare defenses and to establish our military forces in defensive posture about the world. While we recognize that the war powers of the Congress and the Executive are broad, we reject the Government's argument that present threats to peace permit military trial of civilians accompanying the Armed Forces overseas in an area where no actual hostilities are underway. The exigencies which have required military rule on the battlefront are not present in areas where no conflict exists. Military trial of civilians in the field is an extraordinary jurisdiction, and it should not be expanded at the expense of the Bill of Rights. We agree with Colonel Winthrop, an expert on military jurisdiction, who declared: "A statute cannot be framed by which a civilian can lawfully be made amenable to the military jurisdiction in time of peace."

As this Court stated in *United States ex rel. Toth* v. *Quarles* (350 U. S. 11), the business of soldiers is to fight and prepare to fight wars, not to try civilians for their alleged crimes. Traditionally, military justice has been a rough form of justice emphasizing summary procedures, speedy convictions, and stern penalties with a view to maintaining obedience and fighting fitness in the ranks. Because of its very nature and purpose the military must place great emphasis on discipline and efficiency. Correspondingly, there has always been less emphasis in the military on protecting the rights of the individual than in civilian society and in civilian courts.

Courts-martial are typically ad hoc bodies appointed by a military officer from among his subordinates. They have always been subject to varying degrees of command influence. In essence, these tribunals are simply executive tribunals whose personnel are in the executive chain of command. Frequently, the members of the court-martial must look to the appointing officer for promotions, advantageous assignments, and efficiency ratings—in short, for their future progress in the service. Conceding to military personnel that high degree of honesty and sense of justice which nearly all of them undoubtedly have, the members of a court-martial, in the nature of things, do not and cannot have the independence of jurors

drawn from the general public or of civilian judges.

We recognize that a number of improvements have been made in military justice recently by engrafting more and more of the methods of civilian courts on courts-martial. In large part these ameliorations stem from the reaction of civilians, who were inducted during the two World Wars, to their experience with military justice. Notwithstanding the recent reforms, military trial does not give an accused the same protection which exists in the civil courts. Looming far above all other deficiencies of the military trial, of course, are the absence of trial by jury before an independent judge after an indictment by a grand jury. Moreover, the reforms are merely statutory; Congress—and perhaps the President—can reinstate former practices, subject to any limitations imposed by the Constitution, whenever it desires. As yet it has not been clearly settled to what extent the Bill of Rights and other protective parts of the Constitution apply to military trials.

It must be emphasized that every person who comes within the jurisdiction of courts-martial is subject to military law—law that is substantially different from the law which governs civilian society. Military law is, in many respects, harsh law which is frequently cast in very sweeping and vague terms. It emphasizes the iron hand of discipline more that it does the even scales of justice. Moreover, it has not yet been definitely established to what extent the President, as Commander in Chief of the Armed Forces, or his delegates, can promulgate, supplement, or change substantive military law as well as the procedures of military courts in time of peace, or in time of war. In any event, Congress has given the President broad discretion to provide the rules governing military trials. For example, in these very cases a technical manual issued under the President's name with regard to the defense of insanity in military trials was of critical importance in the convictions of Mrs. Covert and Mrs. Smith. If the President can provide rules of substantive law as well as procedure, then he and his military subordinates exercise legislative, executive, and judicial powers with respect to those subject to military trials. Such blending of functions in one branch of the Government is the objectionable thing which the draftsmen of the Constitution endeavored to prevent by providing for the separation of governmental powers.

In summary, "it still remains true that military tribunals have not been and probably never can be constituted in such way that they can have the same kind of qualifications that the Constitution has deemed essential to fair trials of civilians in Federal courts." In part this is attributable to the inherent differences in values and attitudes that separate the Military Establishment from civilian society. In the military, by necessity, emphasis must be placed on the security and order of the group rather than on the value and integrity of the individual.

It is urged that the expansion of military jurisdiction over civilians claimed here is only slight, and that the practical necessity for it is very great. The attitude appears to be that a slight encroachment on the Bill of Rights and other safeguards in the Constitution need cause little concern. But to hold that these wives could be tried by the military would be a tempting precedent. Slight encroachments create new boundaries from which legions of power can seek new territory to capture. "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Moreover we cannot consider this encroachment a slight one. Throughout history many transgressions by the military have been called slight and have been justified as reasonable in light of the uniqueness of the times. We cannot close our eyes to the fact that today the peoples of many nations are ruled by the military.

We should not break faith with this Nation's tradition of keeping military power subservient to civilian authority, a tradition which we believe is firmly embodied in the Constitution. The country has remained true to that faith for almost 170 years. Perhaps no group in the Nation has been truer than military men themselves. Unlike the soldiers of many other nations, they have been content to perform their military duties in defense of the Nation in every period of need and to perform those duties well without attempting to usurp power which is not theirs under our system of constitutional government.

Ours is a Government of divided authority on the assumption that in division there is not only strength but freedom from tyranny. And under our Constitution courts of law alone are given power to try civilians for their offenses against the United States. The philosophy expressed by Lord Coke, speaking long ago from a wealth of experience, is still timely:

"God send me never to live under the law of conveniency or discretion. Shall the soldier and justice sit on one bench, the trumpet will not let the cryer speak in Westminster Hall."

In No. 701, *Reid* v. *Covert*, the judgment of the district court directing that Mrs. Covert be released from custody is affirmed.

In No. 713, *Kinsella* v. *Krueger*, the judgment of the district court is reversed and the case is remanded with instructions to order Mrs. Smith released from custody. Reversed and remanded.

Mr. Justice Whittaker took no part in the consideration or decision of these cases.

SUPREME COURT OF THE UNITED STATES, NOS. 701 AND 713, OCTOBER TERM, 1955—CURTIS REID, SUPERINTENDENT OF THE DISTRICT OF COLUMBIA JAIL, APPELLANT, *v.* CLARICE B. COVERT; NINA KINSELLA, WARDEN OF THE FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA, PETITIONER, *v.* WALTER KRUEGER, ON REHEARING JUNE 10, 1957

Mr. Justice Frankfurter, concurring in the result.

These cases involve the constitutional power of Congress to provide for trial of civilian dependents accompanying members of the Armed Forces abroad by court-martial in capital cases. The normal method of trial of Federal offenses under the Constitution is in a civilian tribunal. Trial of offenses by way of court-martial, with all the characteristics of its procedure so different from the forms and safeguards of procedure in the conventional courts, is an exercise of exceptional jurisdiction, arising from the power granted to Congress in article I, section 8, clause 14, of the Constitution of the United States "To make rules for the Government and regulation of the land and naval forces." *Dynes* v. *Hoover*, (20 How. 65); see *Toth* v. *Quarles* (350 U. S. 11); Winthrop, Military Law and Precedents (2d ed. 1896), 52. Article 2 (11) of the Uniform Code of Military Justice, 64th United States Statutes at Large, pages 107, 109, title 50, United States Code, section 552, and its predecessors were passed as an exercise of that power, and the agreements with England and Japan recognized that the jurisdiction to be exercised under those agreements was based on the relation of the persons involved to the military forces. See the agreement with Great Britain (57 Stat. 1193, E. A. S. No. 355) and the United States of America (Visiting Forces) Act (1942, 5 and 6 Geo. 6, ch. 31); and the 1952 administrative agreement with Japan (3 U. S. Treaties and Other International Agreements 3341, T. I. A. S. No. 2492).

Trial by court-martial is constitutionally permissible only for persons who can, on a fair appraisal, be regarded as falling within the authority given to Congress under article I to regulate the "land and naval forces," and who therefore are not protected by specific provisions of article III and the fifth and sixth amendments. It is, of course, true that, at least regarding the right to a grand-jury indictment, the fifth amendment is not unmindful of the demands of military discipline. Within the scope of appropriate construction, the phrase "except in cases arising in the land and naval forces" has been assumed also to modify the guaranties of speedy and public trial by jury. And so, the problem before us is not to be answered by recourse to the literal words of this exception. The cases cannot be decided simply by saying that since these women were not in uniform, they were not "in the land and naval forces." The Court's function in constitutional adjudications is not exhausted by a literal reading of words. It may be tiresome, but it is nonetheless vital, to keep our judicial minds fixed on the injunction that "it is a Constitution we are expounding." *M'Culloch* v. *Maryland* (4 Wheat. 316, 407). Although Winthrop in his treatise states that the Constitution "clearly distinguishes the military from the civil class as separate communities" and "recognizes no third class which is part civil and part military—military for a particular purpose or in a particular situation, and civil for all other purposes and in all other situations. * * *" Winthrop, Military Law and Precedents (2d edition 1896), 145, this Court, applying appropriate methods of constitutional interpretation, has long held, and in a variety of situations, that in the exercise of a power specifically granted to it, Congress may sweep in what may be necessary to make effective the explicitly worded power. See *Jacob Ruppert* v. *Caffey* (251 U. S. 264) especially 289 and following; *Purity Extract Co.* v. *Lynch* (226 U. S. 192, 201); *Railroad Commission* v. *Chicago, Burlington & Quincy R. Co.* (257 U. S. 563, 588). This is the significance of the necessary and proper clause, which is not to be considered so much a separate clause in article I, section 8, as an integral part of each of the preceding 17 clauses. Only thus may be avoided a strangling literalness in construing a document that is not an enumeration of static rules but the living framework of Government designed for an undefined future. *M'Culloch* v. *Maryland* (4 Wheat. 316); *Hurtado* v. *California* (110 U. S. 516, 530–531).

Everything that may be deemed, as the exercise of an allowable judgment by Congress, to fall fairly within the conception conveyed by the power given to Congress "to make rules for the government and regulation of the land and naval forces" is constitutionally within that legislative grant and not subject to revision by the independent judgment of the Court. To be sure, every event or transaction that bears some relation to "the land and naval forces" does not ipso facto come within the tolerant conception of that legislative grant. The issue in these cases involves regard for considerations not dissimilar to those involved in a determination under the due process clause. Obviously, the practical situations

before us bear some relation to the military. Yet the question for this Court is not merely whether the relation of these women to the "land and naval forces" is sufficiently close to preclude the necessity of finding that Congress has been arbitrary in its selection of a particular method of trial. For although we must look to article I, section 8, clause 14, as the immediate justifying power, it is not the only clause of the Constitution to be taken into account. The Constitution is an organic scheme of government to be dealt with as an entirety. A particular provision cannot be dissevered from the rest of the Constitution. Our conclusion in these cases therefore must take due account of article III and the fifth and sixth amendments. We must weigh all the factors involved in these cases in order to decide whether these women dependents are so closely related to what Congress may allowably deem essential for the effective "government and regulations of the land and naval forces" that they may be subjected to court-martial jurisdiction in these capital cases, when the consequence is loss of the protections afforded by article III and the fifth and sixth amendments.

We are not concerned here even with the possibility of some alternative nonmilitary type of trial that does not contain all the safeguards of article III and the fifth and sixth amendments. We must judge only what has been enacted and what is at issue. It is the power actually asserted by Congress under article I, section 8, clause 14, that must now be adjudged in the light of article III and the fifth and sixth amendments. In making this adjudication, I must emphasize that it is only the trial of civilian dependents in a capital case in time of peace that is in question. The Court has not before it, and therefore I need not intimate any opinion on, situations involving civilians, in the sense of persons not having a military status, other than dependents. Nor do we have before us a case involving a noncapital crime. This narrow delineation of the issue is merely to respect the important restrictions binding on the Court when passing on the constitutionality of an act of Congress. "In the exercise of that jurisdiction, it is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. These rules are safe guides to sound judgment. It is the dictate of wisdom to follow them closely and carefully." *Steamship Co.* v. *Emigration Commissioners* (113 U. S. 33, 39).

We are also not concerned here with the substantive aspects of the grant of power to Congress to make rules for the Government and regulation of the land and naval forces. What conduct should be punished and what constitutes a capital case are matters for Congressional discretion, always subject, of course, to any specific restrictions of the Constitution. These cases involve the validity of procedural conditions for determining the commission of a crime in fact punishable by death. The taking of life is irrevocable. It is in capital cases especially that the balance of conflicting interests must be weighted most heavily in favor of the procedural safeguards of the Bill of Rights. Thus, in *Powell* v. *Alabama* (287 U. S. 45, 71), the fact "above all that they stood in deadly peril of their lives" led the Court to conclude that the defendants had been denied due process by the failure to allow them reasonable time to seek counsel and the failure to appoint counsel. I repeat. I do not mean to imply that the considerations that are controlling in capital cases involving civilian dependents are constitutionally irrelevant in capital cases involving civilians other than dependents or in noncapital cases involving dependents or other civilians. I do say that we are dealing here only with capital cases and civilian dependents.

The Government asserts that civilian dependents are an integral part of our Armed Forces overseas and that there is substantial military necessity for subjecting them to court-martial jurisdiction. The Government points out that civilian dependents go abroad under military auspices, live with military personnel in a military community, enjoy the privileges of military facilities, and that their conduct inevitably tends to influence military discipline.

The prosecution by court-martial for capital crimes committed by civilian dependents of members of the Armed Forces abroad is hardly to be deemed, under modern conditions, obviously appropriate to the effective exercise of the power to make rules for the Government and regulation of the land and naval forces when it is a question of deciding what power is granted under article I and, therefore, what restriction is made on article III and the fifth and sixth amendments. I do not think that the proximity, physical and social, of these women to the land and naval forces is, with due regard to all that has been put before us, so clearly demanded by the effective Government and regulation of those forces as reasonably to demonstrate a justification for court-martial jurisdiction over capital offenses.

The Government speaks of the "great potential impact on military discipline" of these accompanying civilian dependents. This cannot be denied, nor should its implications be minimized. But the notion that discipline over military personnel is to be furthered by subjecting their civilian dependents to the threat of capital punishment imposed by court-martial is too hostile to the reasons that underlie the procedural safeguards of the Bill of Rights for those safeguards to be displaced. It is true that military discipline might be affected seriously if civilian dependents could commit murders and other capital crimes with impunity. No one, however, challenges the availability to Congress of a power to provide for trial and punishment of these dependents for such crimes. The method of trial alone is in issue. The Government suggests that if trial in an article III court subject to the restrictions of the fifth and sixth amendments is the only alternative, such a trial could not be held abroad practicably, and it would often be equally impracticable to transport all the witnesses back to the United States for trial. But although there is no need to pass on that issue in this case, trial in the United States is obviously not the only practical alternative and other alternatives may raise different constitutional questions. The Government's own figures for the Army show that the total number of civilians (all civilians serving with, employed by, or accompanying the Armed Forces overseas and not merely civilian dependents) for whom general courts-martial for alleged murder were deemed advisable was only 13 in the 7 fiscal years, 1950–56. It is impossible to ascertain from the figures supplied to us exactly how many persons were tried for other capital offenses, but the figures indicate that there could not have been many. There is nothing to indicate that the figures for the other services are more substantial. It thus appears to be a manageable problem within the procedural restrictions found necessary by this opinion.

A further argument is made that a decision adverse to the Government would mean that only a foreign trial could be had. Even assuming that the NATO Status of Forces Agreement, (4 U. S. Treaties and Other International Agreements 1792, T. I. A. S. No. 2846) covering countries where a large part of our Armed Forces are stationed, gives jurisdiction to the United States only through its military authorities, this court cannot speculate that any given nation would be unwilling to grant or continue such extraterritorial jurisdiction over civilian dependents in capital cases if they were to be tried by some other manner than court-martial. And even if such were the case, these civilian dependents would then merely be in the same position as are so many Federal employees and their dependents and other United States citizens who are subject to the laws of foreign nations when residing there. See also the NATO Status of Forces Agreement, supra, article VII, sections 2, 3.

The Government makes the final argument that these civilian dependents are part of the United States military contingent abroad in the eyes of the foreign nations concerned and that their conduct may have a profound effect on our relations with these countries, with a consequent effect on the Military Establishment there. But the argument that military courts-martial in capital cases are necessitated by this factor assumes either that a military court-martial constitutes a stronger deterrent to this sort of conduct or that in the absence of such a trial no punishment would be meted out and our foreign policy thereby injured. The reasons why these considerations carry no conviction have already been indicated.

I therefore conclude that in capital cases the exercise of court-martial jurisdiction over civilian dependents in time of peace cannot be justified by article I, considered in connection with the specific protections of article III and the fifth and sixth amendments.

Since the conclusion thus reached differs from what the Court decided last term, a decent respect for the judicial process calls for reexamination of the two grounds that then prevailed. The court sustained its action on the authority of the cases dealing with the power of Congress to make all needful rules and regulations for the territories, reinforced by *In re Ross* (140 U. S. 453), in which this Court, in 1891, sustained the criminal jurisdiction of a consular court in Japan. These authorities grew out of, and related to, specific situations very different from those now here. They do not control or even embarrass the problem before us.

Legal doctrines are not self-generated abstract categories. They do not fall from the sky; nor are they pulled out of it. They have a specific judicial origin and etiology They derive meaning and content from the circumstances that gave rise to them and from the purposes they were designed to serve. To these they are bound as is a live tree to its roots. Doctrines like those expressed by the Ross case and the series of cases beginning with *American Insurance Co.* v. *Canter* (1 Pet. 511), must be placed in their historical setting. They cannot be wrenched from it and mechanically transplanted into an alien, unrelated context without suffering mutilation or distortion. "If a precedent involving a black horse is applied to a case involving a white horse, we are not excited. If it were an elephant or an animal ferae naturae or a chose in action, then we would venture into thought. The difference might make a difference. We really are concerned about precedents chiefly when their facts differ somewhat from the facts in the case at bar. Then there is a gulf or hiatus that has to be bridged by a concern for principle and a concern for practical results and practical wisdom." Thomas Reed Powell, Vagaries and Varieties in Constitutional Interpretation 36. This attitude toward precedent underlies the whole system of our case law. It was thus summarized by Mr. Justice Brandeis: "It is a peculiar virtue of our system of law that the process of inclusion and exclusion, so often employed in developing a rule, is not allowed to end with its enunciation and that an expression in an opinion yields later to the impact of facts unforeseen." *Jaybird Mining Co.* v. *Weir* (271

U. S. 609, 619 (dissenting)). Especially is this attitude to be observed in constitutional controversies.

The Territorial cases relied on by the Court last term held that certain specific constitutional restrictions on the Government did not automatically apply in the acquired Territories of Florida, Hawaii, the Philippines, or Puerto Rico. In these cases, the Court drew its decisions from the power of Congress to "make all needful rules and regulations respecting the Territory * * * belonging to the United States," for which provision is made in article IV, section 3. The United States from time to time acquired lands in which many of our laws and customs found an uncongenial soil because they ill accorded with the history and habits of their people. Mindful of all relevant provisions of the Constitution and not allowing one to frustrate another—which is the guiding thought of this opinion—the Court found it necessary to read article IV, section 3 together with the fifth and sixth amendments and article III in the light of those circumstances. The question arose most frequently with respect to the establishment of trial by jury in possessions in which such a system was wholly without antecedents. The Court consistently held with respect to such Territory that Congressional power under article IV, section 3 was not restricted by the requirement of article III, section 2, clause 3, and the sixth amendment of providing trial by jury.

"If the right to trial by jury were a fundamental right which goes wherever the jurisdiction of the United States extends, or if Congress, in framing laws for outlying territory belonging to the United States, was obliged to establish that system by affirmative legislation, it would follow that, no matter what the needs or capacities of the people, trial by jury, and in no other way, must be forthwith established, although the result may be to work injustice and provoke disturbance rather than to aid the orderly administration of justice. If the United States, impelled by its duty or advantage, shall acquire territory peopled by savages, and of which it may dispose or not hold for ultimate admission to statehood, if this doctrine is sound, it must establish there the trial by jury. To state such a proposition demonstrates the impossibility of carrying it into practice. Again, if the United States shall acquire by treaty the cession of territory having an established system of jurisprudence, where jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long-established code, the preference of the people must be disregarded, their established customs ignored and they themselves coerced to accept, in advance of incorporation into the United States a system of trial unknown to them and unsuited to their needs. We do not think it was intended, in giving power to Congress to make regulations for the territories, to hamper its exercise with this condition." *Dorr* v. *United States* (195 U. S. 138, 148.)

The fundamental right test is the one which the Court has consistently enunciated in the long series of cases—e. g., *American Ins. Co.* v. *Canter* (1 Pet. 511); *De Lima* v. *Bidwell* (182 U. S. 1); *Downes* v. *Bidwell* (182 U. S. 244); *Dorr* v. *United States* (195 U. S. 138); *Balzac* v. *Porto Rico* (258 U. S. 298)—dealing with claims of constitutional restrictions on the power of Congress to make all needful rules and regulations for governing the unincorporated territories. The process of decision appropriate to the problem led to a detailed examination of the relation of the specific territory to the United States. This examination, in its similarity to analysis in terms of due process, is essentially the same as that to be made in the present cases in weighing Congressional power to make rules for the government and regulation of the land and naval forces against the safeguards of article III and the fifth and sixth amendments.

The results in the cases that arose by reason of the acquisition of exotic territory do not control the present cases for the territorial cases rest specifically on article IV, section 3, which is a grant of power to Congress to deal with territory and other Government property. Of course the power sought to be exercised in Great Britain and Japan does not relate to territory. The Court's opinions in the territorial cases did not lay down a broad principle that the protective provisions of the Constitution do not apply outside the continental limits of the United States. This Court considered the particular situation in each newly acquired territory to determine whether the grant to Congress of power to govern territory was restricted by a specific provision of the Constitution. The territorial cases, in the emphasis put by them on the necessity for considering the specific circumstances of each particular case, are thus relevant in that they provide an illustrative method for harmonizing constitutional provisions which appear, separately considered, to be conflicting.

The Court last term relied on a second source of authority, the consular court case, *In re Ross* (140 U. S. 453). Pursuant to a treaty with Japan, Ross, a British subject but a member of the crew of a United States ship, was tried and convicted in a consular court in Yokohama for murder of a fellow seaman while the ship was in Yokohama Harbor. His application for a writ of habeas corpus to a United States circuit court was denied, 44 F. 185, and on appeal here, the judgment was affirmed. This Court set forth the ground of the circuit court, "the long and uniform acquiescence by the executive, administrative and legislative departments of the Government in the validity of the legislation," 140th United States Reports, at page 461, and then stated:

"The circuit court might have found an additional ground for not calling in question the legislation of Congress, in the uniform practice of civilized governments for centuries to provide consular tribunals in other than Christian countries * * * for the trial of their own subjects or citizens for offenses committed in those countries, as well as for the settlement of civil disputes between them; and in the uniform recognition, down to the time of the formation of our Government, of the fact that the establishment of such tribunals was among the most important subjects for treaty stipulations. * * *

"The treatymaking power vested in our Government extends to all proper subjects of negotiation with foreign governments. It can, equally with any of the former or present governments of Europe, make treaties providing for the exercise of judicial authority in other countries by its officers appointed to reside therein.

"We do not understand that any question is made by counsel as to its power in this respect. His objection is to the legislation by which such treaties are carried out * * *.

"By the Constitution a government is ordained and established 'for the United States of America,' and not for countries outside of their limits. The guarantees it affords against accusation of capital or infamous crimes, except by indictment or presentment by a grand jury, and for an impartial trial by a jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad. * * * The Constitution can have no operation in another country. When, therefore, the representatives or officers of our Government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither one being obligatory upon the other. The deck of a private American vessel, it is true, is considered for many purposes constructively as territory of the United States, yet persons on board of such vessels, whether officers, sailors, or passengers, cannot invoke the protection of the provisions referred to until brought within the actual territorial boundaries of the United States." (140 U. S., at 462–464.)

One observation should be made at the outset about the grounds for decision in Ross. Insofar as the opinion expressed a view that the Constitution is not operative outside the United States—and apparently Mr. Justice Field meant by "United States" all lands over which the United States flag flew, see John W. Burgess, How May the United States Govern Its Extra-Continental Territory? (14 Pol. Sci. Q. 1 (1899))—it expressed a notion that has long since evaporated. Governmental action abroad is performed under both the authority and the restrictions of the Constitution—for example, proceedings before American military tribunals, whether in Great Britain or in the United States, are subject to the applicable restrictions of the Constitution. See opinions in *Burns* v. *Wilson* (346 U. S. 137).

The significance of the Ross case and its relevance to the present cases cannot be assessed unless due regard is accorded the historical context in which that case was decided. Ross is not rooted in any abstract principle or comprehensive theory touching constitutional power or its restrictions. It was decided with reference to a very particular, practical problem with a long history. To be mindful of this does not attribute to Mr. Justice Field's opinion some unavowed historical assumption. On behalf of the whole court, he spelled out the considerations that controlled it:

"The practice of European governments to send officers to reside in foreign countries, authorized to exercise a limited jurisdiction over vessels and seamen of their country, to watch the interests of their countrymen and to assist in adjusting their disputes and protecting their commerce, goes back to a very early period, even preceding what are termed the Middle Ages. * * * In other than Christian countries they were, by treaty stipulations, usually clothed with authority to hear complaints against their countrymen and to sit in judgment upon them when charged with public offenses. After the rise of Islamism, and the spread of its followers over eastern Asia and other countries bordering on the Mediterranean, the exercise of this judicial authority became a matter of great concern. The intense hostility of the people of Moslem faith to all other sects, and particularly to Christians, affected all their intercourse, and all proceedings had in their tribunals. Even the rules of evidence adopted by them placed those of different faith on unequal grounds in any controversy with them. For this cause, and by reason of the barbarous and cruel punishments inflicted in those countries, and the frequent use of torture to enforce confession from parties accused, it was a matter of deep interest to Christian governments to withdraw the trial of their subjects, when charged with the commission of a public offence, from the arbitrary and despotic action of the local officials. Treaties conferring such jurisdiction upon these consuls were essential to the peaceful residence of Christians within those countries and the successful prosecution of commerce with their people." One Hundred and Fortieth United States Reports, at page 463.

"It is true that the occasion for consular tribunals in Japan may hereafter be less than at present, as every year that country progresses in civilization and in the assimi-

lation of its system of judicial procedure to that of Christian countries, as well as in the improvement of its penal statutes; but the system of consular tribunals * * * is of the highest importance, and their establishment in other than Christian countries, where our people may desire to go in pursuance of commerce, will often be essential for the protection of their persons and property" (id., at 480).

It is important to have a lively sense of this background before attempting to draw on the Ross case. Historians have traced grants of extraterritorial rights as far back as the permission given by Egypt in the 12th or 13th century B. C. to the merchants of Tyre to establish factories on the Nile and to live under their own law and practice their own religion. Numerous other instances of persons living under their own law in foreign lands existed in the later pre-Christian era and during the Roman Empire and the so-called Dark and Middle Ages—Greeks in Egypt, all sorts of foreigners in Rome, inhabitants of Christian cities and states in the Byzantine Empire, the Latin kingdoms of the Levant, and other Christian cities and states, Mohammedans in the Byzantine Empire and China, and many others lived in foreign lands under their own law. While the origins of this extraterritorial jurisdiction may have differed in each country, the notion that law was for the benefit of the citizens of a country and its advantages not for foreigners appears to have been an important factor. Thus, there existed a long-established custom of extraterritorial jurisdiction at the beginning of the 15th century when the complete conquest of the Byzantine Empire by the Turks and the establishment of the Ottoman Empire substantially altered political relations between Christian Europe and the Near East. But commercial relations continued, and in 1535 Francis I of France negotiated a treaty with Suleiman I of Turkey that provided for numerous extraterritorial rights, including criminal and civil jurisdiction over all disputes among French subjects. (1 Ernest Charrière, Negotiations de la France dans le Levant 283.) Other nations and eventually the United States in 1830 (8 Stat. 408), later negotiated similar treaties with the Turks. (For a more complete history of the development of extraterritorial rights and consular jurisdiction, see 1 Calvo, Le Droit International Théorique et Pratique (5th ed., Rousseau, 1896), 2–18, 2 id., 9–12; Hinckley, American Consular Jurisdiction in the Orient, 1–9; 1 Miltitz, Manuel des Consuls passim; Ravndal, The Origin of the Capitulations and of the Consular Jurisdiction, S. Doc. No. 34, 67th Cong., 1st sess. 5–45, 56–96; Shih Shun Liu, Extraterritoriality, 23–66; Twiss, The Law of Nations (1884 ed.), 443–457.)

The emergence of the nation-state in Europe and the growth of the doctrine of absolute territorial sovereignty changed the nature of extraterritorial rights. No longer were strangers to be denied the advantages of local law. Indeed, territorial sovereignty meant the exercise of sovereignty over all residents within the borders of the state, and the system of extraterritorial consular jurisdiction tended to die out among Christian nations in the 18th and 19th centuries. But a new justification was found for the continuation of that jurisdiction in those countries whose systems of justice were considered inferior, and it was this strong feeling with respect to Moslem and Far Eastern countries that was reflected, as we have seen, in the Ross opinion.

Until 1842, China had asserted control over all foreigners within its territory (Shih Shun Liu, op. cit. supra, 76–89) but, as a result of the Opium War, Great Britain negotiated a treaty with China whereby she obtained consular offices in five open ports and was granted extraterritorial rights over her citizens. On July 3, 1844, Caleb Cushing negotiated a similar treaty on behalf of the United States (8 Stat. 592). In a letter to Secretary of State Calhoun, he explained: "I entered China with the formed general conviction that the United States ought not to concede to any foreign state, under any circumstances, jurisdiction over the life and liberty of a citizen of the United States, unless that foreign state be of our own family of nations—in a word a Christian state." Quoted in 7 Op. Atty. Gen. 495, 496–497. Later treaties continued the extraterritorial rights of the United States, and the treaty of 1903 contained the following article demonstrating the purpose of those rights:

"The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of western nations, the United States agrees to give every assistance to such reform and will also be prepared to relinquish extra-territorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in doing so" (33 Stat. 2208, 2215).

The first treaty with Japan was negotiated by Commodore Perry in 1854 (11 Stat. 597). It opened two ports, but did not provide for any exercise of judicial powers by United States officials. Under the treaty of 1857 (11 Stat. 723), such power was given, and later treaties, which opened up further Japanese cities for trade and residence by United States citizens, retained these rights. The treaty of 1894, effective on July 17, 1899, however, ended these extraterritorial rights and Japan, even though a non-Christian nation, came to occupy the same status as Christian nations (29 Stat. 848). The exercise of criminal jurisdiction by consuls over United States citizens was also provided for, at one time or another, in treaties with Borneo (10 Stat. 909, 910); Siam (11 Stat. 683, 684); Madagascar (15 Stat. 491, 492); Samoan Islands (20 Stat. 704); Korea (23 Stat. 720, 721); Tonga Islands (25 Stat. 1440, 1442) and, by virtue of most-favored-nation clauses, in treaties with Tripoli (8 Stat. 154); Persia (11 Stat. 709); the Congo (27 Stat. 926); and Ethiopia (33 Stat. 2254). The exercise of criminal jurisdiction was also provided for in a treaty with Morocco (8 Stat. 100), by virtue of a most-favored-nation clause and by virtue of a clause granting jurisdiction if "any citizens of the United States * * * shall have any disputes with each other." The word "disputes" has been interpreted by the International Court of Justice to comprehend criminal as well as civil disputes. *France* v. *United States* (I. C. J. Rept. 1952, p. 176, 188–189.) The treaties with Algiers (8 Stat. 133, 224, 244); Tunis (8 Stat. 157); and Muscat (8 Stat. 458) contained similar disputes clauses.

The judicial power exercised by consuls was defined by statute and was sweeping:

"Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies." (Rev. Stat. sec. 4086.)

The consuls, then, exercised not only executive and judicial power, but legislative power as well.

The number of people subject to the jurisdiction of these courts during their most active periods appears to have been fairly small. In the Chronicle & Directory for China, Japan, and the Philippines, for the year 1870, there is a listing of the total number of foreign, not just United States, residents in these three places. The list is 81 pages long, with a total of some 4,500 persons (pp. 54–134). This same publication gives the following information about Japan. "The number of foreigners settled in Japan is as yet very small. At the end of the year 1862, the foreign community at Kanagawa, the principal of the three ports of Japan open to aliens, consisted of * * * 38 Americans * * * and in the latter part of 1864 the permanent foreign residents at Kanagawa had increased to 300, not counting soldiers, of which number * * * about 80 [were] Americans. * * * At Nagasaki, the second port of Japan thrown open to foreign trade by the Government, the number of alien settlers was as follows on the 1st of January 1866: * * * American citizens, 32. * * * A third port opened to European and American traders, that of Hakodadi, in the north of Japan, was deserted, after a lengthened trial, by nearly all the foreign merchants settled there * * *." (Appendix, p. 353.) The Statesman's Yearbook of 1890 shows: China at the end of 1888: 1,020 Americans (p. 411); Japan in 1887, 711 Americans (p. 709); Morocco, 1889 estimate: "The number of Christians is very small, not exceeding 1,500" (p. 739). The Statesman's Yearbook of 1901 shows: China at the end of 1899: 2,335 Americans (p. 484); Japan, December 31, 1898, just before the termination of our extraterritorial rights: 1,165 Americans (p. 809); Morocco: "The number of Christians does not exceed 6,000; the Christian population of Tangier alone probably amounts to 5,000" (p. 851). These figures of course do not include those civilians temporarily in the country coming within consular jurisdiction.

The consular court jurisdiction, then, was exercised in countries whose legal systems at the time were considered so inferior that justice could not be obtained in them by our citizens. The existence of these courts was based on long-established custom and they were justified as the best possible means for securing justice for the few Americans present in those countries. The Ross case, therefore, arose out of, and rests on, very special, confined circumstances, and cannot be applied automatically to the present situation, involving hundreds of thousands of American citizens in countries with civilized systems of justice. If Congress had established consular courts or some other nonmilitary procedure for trial that did not contain all the protections afforded by article III and the fifth and sixth amendments for the trial of civilian dependents of military personnel abroad, we would be forced to a detailed analysis of the situation of the civilian dependent population abroad in deciding whether the Ross case should be extended to cover such a case. It is not necessary to do this in the present cases in view of our decision that the form of trial here provided cannot constitutionally be justified.

The Government, apparently recognizing the constitutional basis for the decision in Ross, has, on rehearing, sought to show that civilians in general and civilian dependents in particular have been subject to military order and discipline ever since the colonial period. The materials it has submitted seem too episodic, too meager, to form a solid basis in history, preceding and contemporaneous with the framing of the

Constitution, for constitutional adjudication. What has been urged on us falls far too short of proving a well-established practice—to be deemed to be infused into the Constitution—of court-martial jurisdiction, certainly not in capital cases, over such civilians in time of peace.

Mr. President, the decision which I have read in the RECORD is in the case of Curtis Reid, Superintendent of the District of Columbia Jail, Appellant, against Clarice B. Covert, and Nina Kinsella, Warden of the Federal Reformatory for Women, Alderson, W. Va., petitioner, against Walter Krueger. The opinion, which was written by Mr. Justice Black, was concurred in by the Chief Justice, Mr. Justice Douglas, and Mr. Justice Brennan. It pointed out clearly that even though the court-martial so provided, the jury trial could not be denied to civilians accompanying the Armed Forces. It is very clear on that point.

There was a concurring opinion, which I have just included in the RECORD, by Justice Frankfurter, which upholds that contention.

There is no question that under the United States Constitution citizens are entitled to a trial by jury. It cannot be left to the discretion of a Federal judge to say whether he is going to grant a trial by jury. It cannot be left to the Congress to say that if the punishment is only a $300 fine or 45 days imprisonment we will let the judge try the case, but if it is above that the defendant can get a jury trial. That simply does not make sense. It violates the Constitution and is in derogation of the administration of justice in this country. As someone has said, it is a split-level statute.

Mr. President, on May 9, 1957, before the mountain and plain regional meeting of the American Bar Association in Denver, Colo., Associate Justice William J. Brennan, Jr., of the Supreme Court, made an address on our judicial systems. In this address he discussed the advantages of our traditional jury-trial system. Because of the clear, straightforward nature of this address, I want to quote the following statement made by Justice Brennan. This is what he said:

> We hear much, for example, of the proposal that we turn all automobile-accident litigation over to an administrative agency. The idea is that, because automobile litigation accounts for a major part of court business, the simple solution is to dispose of the problem by throwing it out the window. What an abject abdication of our profession's responsibility to provide judicial justice for our citizens. But, at best, there is utterly no hope for that idea, at least not in our lifetimes, when the job of judicial reform must be done. It will be a long day before our society will pay the price of damages for every automobile injury or death without regard to the fault of the person injured or killed. There is no true analogy between compensation for the injured workman who helps produce goods or services for profit, where the cost is passed on to the consumer in the price of the goods or services, and compensation to the automobile victim, where the cost would have to be borne by all of us.
>
> Another nostrum is that, because jury trials take more time than trials before a judge without a jury, the easy answer to calendar congestion is to get rid of jury trials in automobile accident cases. Actual studies are being made to prove that the average jury trial in a negligence case takes more time than a nonjury trial of a negligence case. I question the need for a study to prove something that every judge and lawyer knows. Of course jury trials usually take more time than nonjury trials. But those who propose this suggest also that fairer justice will result if a judge, unprejudiced for one side or the other—they really mean that juries are prejudiced in favor of plaintiffs—disposes of them. I doubt that that proposition can withstand analysis. As a trial judge I was always interested in how often the jury brought in the same verdict on liability that I would have reached. And that seems to be the experience of trial judges generally. A recent survey proved that in upwards of 85 percent of the cases the trial judge reported that the jury reached the result on liability that he would have reached. Moreover, the idea that juries go haywire in fixing damages where plaintiffs prevail should be looked at a little more closely. I think at least that judge-decided verdicts under the Federal Tort Claims Act (no jury trial is had under that act) do not persuade the Department of Justice that juries are any less conscientious in fixing damages. I know that at times juries do go overboard. But I can count on the fingers of one hand the instances in my time as a trial judge when I felt it necessary to set aside verdicts because they had done so. My experience left me with the definite impression that jurors almost always do try to fix damages within allowable limits.
>
> I think, at all events, this proposal to abolish jury trials in automobile accident cases also faces an almost insurmountable hurdle. The success of our British brothers in abolishing jury trials should not mislead us. American tradition has given the right to trial by jury a special place in public esteem that causes Americans generally to speak out in wrath at any suggestion to deprive them of it. Perhaps the emotion generated by proposals to modify or deny the right has its roots in the Jacksonian era of distrust of the legal profession and the insistence upon the people's control of the administration of justice. Perhaps it is a survival of the same thing which gave us the elective system of judges in most States and in some, as in my own, New Jersey, actual lay participation on the bench. One has only to remember that it is still true in many States that so highly is the jury function prized, that judges are forbidden to comment on the evidence and even to instruct the jury except as the parties request instructions. The jury is a symbol to Americans that they are bosses of their government. They pay the price, and willingly, of the imperfections, inefficiencies and, if you please, greater expense of jury trials because they put such store upon the jury system as a guaranty of the preservation of their liberties. The road of him who would take away jury trial in automobile accident cases is a long and rocky one.
>
> I submit that it is a sorry response to the litigant who suffers from long delay in having his accident suit tried that we can offer no relief beyond "let's throw accident litigation out of the courts," or "let's deny the victim the right of a jury trial." Our profession must stand up and reject those nostrums. We know now that there are judicial structures and techniques of judicial administration which not only can cope with problems of calendar control but to far more signficant purposes can also measurably assist in our ceaseless striving to give better justice. Our need is to get up our courage to fight for these things and to do battle with the powerfully entrenched opponents of any reform who too often take their position out of self-interest without sufficient consideration of what is best in the people's interest. It doubtless is true that achievement of a modernized, efficient judicial structure requires far-reaching legislative and constitutional changes in most jurisdictions. But, far better to do the arduous labor of getting that essential job done than to promote equally drastic changes which are nothing more than a humiliating confession of defeat.
>
> Let us not forget that the integrity and efficiency of the judicial process is the first essential in a democratic society. The confidence of the people in the administration of justice is a prime requisite for free representative government. The public entrusts the legal profession with the sacred mission of dealing with the vital affairs that affect the whole pattern of human relations and certainly has a stake entitling it to demand not only that judges dispense justice impartially and fairly but also that judicial business shall be handled and disposed of by a modernized process which assures a minimum of friction and waste, for such a process also plays a large role in the achievement of impartial and fair justice for all litigants. There is actually no difference between the business of judicial administration and the business of running an industrial or commercial enterprise in the sense that the efficient and businesslike conduct of each means better service for the public. An inefficient and wasteful judicial administration actually can and often does result in a denial of justice, however earnestly an honest and upright judge may strive to prevent that lamentable result.
>
> I think it is not difficult to account for today's heightened interest on the part of the general public throughout our Nation and, indeed, the Free World in the improvement of the process for administering justice. That growing interest is in large measure a product of the tumultuous times in which we live. For these are not only times which have produced a monstrous threat to all freedom, but, by the very reason of that threat, are times which have induced in free peoples everywhere an ever intensifying critical self-examination of the institutions upon which their freedoms depend—an insistence upon exposure of the imperfections of those institutions, a peremptory demand upon those who are entrusted with those institutions to improve and strengthen them the more surely to withstand the onslaught bent upon their destruction. It is but natural then that the judicial process should come under examination, for never was it more true than today that "Justice, sirs, is the chiefest interest of man on earth."

Mr. President, I submit, just as Justice Brennan has quoted here, which never was more true than today:

> Justice, sirs, is the chiefest interest of man on earth.

I contend that since our forefathers placed in the Constitution and in the Bill of Rights provisions which are so plain it seems no one could misinterpret them, providing for trial by jury in criminal cases, there can be no question that jury trials are not only desirable but are demanded under the Constitution. There should be no doubt in the mind of anyone, if he studies the Constitution, that the so-called compromise which tends to compromise the Constitution of the United States is not a just, is not a fair, is not a wise, and is not a constitutional provision, and that this bill should be killed.

Mr. President, one of the most interesting books ever written on the American system of Government was by Alexis de Tocqueville, a young Frenchman who wrote a book entitled "Democracy in America" after visiting this country during the 1830's. One of the chapters of

his book was entitled "Trial by Jury in the United States Considered as a Political Institution."

I shall read excerpts from this chapter because it provides an excellent insight into the prestige attained by the system of jury trial from the observation of an unbiased observer.

[From de Tocqueville's Democracy in America, written after visiting America in the 1830's]

TRIAL BY JURY IN THE UNITED STATES CONSIDERED AS A POLITICAL INSTITUTION

Trial by jury, which is one of the forms of the sovereignty of the people, ought to be compared with the other laws which establish that sovereignty: Composition of the jury in the United States; effect of trial by jury upon the national character; it educates the people; how it tends to establish the influence of the magistrates and to extend the legal spirit among the people.

Since my subject has led me to speak of the administration of justice in the United States, I will not pass over it without referring to the institution of the jury. Trial by jury may be considered in two separate points of view: as a judicial, and as a political institution. * * *

My present purpose is to consider the jury as a political institution; any other course would divert me from my subject. Of trial by jury considered as a judicial institution I shall here say but little. When the English adopted trial by jury, they were a semibarbarous people; they have since become one of the most enlightened nations of the earth, and their attachment to this institution seems to have increased with their increasing cultivation. They have emigrated and colonized every part of the habitable globe; some have formed colonies, others independent states; the mother country has maintained its monarchial constitution; many of its offspring have founded powerful republics; but everywhere they have boasted of the privilege of trial by jury. They have established it, or hastened to reestablish it, in all their settlements. A judicial institution which thus obtains the suffrages of a great people for so long a series of ages, which is zealously reproduced at every stage of civilization, in all the climates of the earth, and under every form of human government, cannot be contrary to the spirit of justice.

But to leave this part of the subject. It would be a very narrow view to look upon the jury as a mere judicial institution; for however great its influence may be upon the decisions of the courts, it is still greater on the destinies of society at large. The jury is, above all, a political institution, and it must be regarded in this light in order to be duly appreciated.

By the jury I mean a certain number of citizens chosen by lot and invested with a temporary right of judging. Trial by jury, as applied to the repression of crime, appears to me an eminently republican element in the government, for the following reasons.

The institution of the jury may be aristocratic or democratic, according to the class from which the jurors are taken; but it always preserves its republican character, in that it places the real direction of society in the hands of the governed, or of a portion of the governed, and not in that of the government. Force is never more than a transient element of success, and after force comes the notion of right. A government able to reach its enemies only upon a field of battle would soon be destroyed. The true sanction of political laws is to be found in penal legislation; and if that sanction is wanting, the law will sooner or later lose its cogency. He who punishes the criminal is therefore the real master of society. Now, the institution of the jury raises the people itself, or at least a class of citizens, to the bench of judges. The institution of the jury consequently invests the people, or that class of citizens, with the direction of society.

In England the jury is selected from the aristocratic portion of the nation; the aristocracy makes the laws, applies the laws, and punishes infractions of the laws; everything is established upon a consistent footing, and England may with truth be said to constitute an aristocratic republic. In the United States the same system is applied to the whole people. Every American citizen is both an eligible and a legally qualified voter. The jury system as it is understood in America appears to me to be as direct and as extreme a consequence of the sovereignty of the people as universal suffrage. They are two instruments of equal power, which contribute to the supremacy of the majority. All the sovereigns who have chosen to govern by their own authority, and to direct society instead of obeying its directions, have destroyed or enfeebled the institution of the jury. The Tudor monarchs sent to prison jurors who refused to convict, and Napoleon caused them to be selected by his agents.

However clear most of these truths may seem to be, they do not command universal assent; and in France, at least, trial by jury is still but imperfectly understood. If the question arises as to the proper qualification of jurors, it is confined to a discussion of the intelligence and knowledge of the citizens who may be returned, as if the jury was merely a judicial institution. This appears to me the least important part of the subject. The jury is preeminently a political institution; it should be regarded as one form of the sovereignty of the people; when that sovereignty is repudiated, it must be rejected, or it must be adapted to the laws by which that sovereignty is established. The jury is that portion of the nation to which the execution of the laws is entrusted, as the legislature is that part of the nation which makes the laws; and in order that society may be governed in a fixed and uniform manner, the list of citizens qualified to serve on juries must increase and diminish with the list of electors. This I hold to be the point of view most worthy of the attention of the legislator; all that remains is merely accessory.

I am so entirely convinced that the jury is preeminently a political institution that I still consider it in this light when it is applied in civil causes. Laws are always unstable unless they are founded upon the customs of a nation; customs are the only durable and resisting power in a people. When the jury is reserved for criminal offenses, the people witness only its occasional action in particular cases; they become accustomed to do without it in the ordinary course of life, and it is considered as an instrument, but not as the only instrument, of obtaining justice.

When, on the contrary, the jury acts also on civil causes, its application is constantly visible; it affects all the interests of the community; everyone cooperates in its work; it thus penetrates into all the usages of life, it fashions the human mind to its peculiar forms, and is gradually associated with the idea of justice itself.

The institution of the jury, if confined to criminal causes, is always in danger; but when once it is introduced into civil proceedings, it defies the aggressions of time and man. If it had been as easy to remove the jury from the customs as from the laws of England, it would have perished under the Tudors, and the civil jury did in reality at that period save the liberties of England. In whatever manner the jury be applied, it cannot fail to exercise a powerful influence upon the national character; but this influence is prodigiously increased when it is introduced into civil causes. The jury, and more especially the civil jury, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing judged and with the notion of right. If these two elements be removed, the love of independence becomes a mere destructive passion. It teaches men to practice equity; every man learns to judge his neighbor as he would himself be judged. And this is especially true of the jury in civil causes; for while the number of persons who have reason to apprehend a criminal prosecution is small, everyone is liable to have a lawsuit. The jury teaches every man not to recoil before the responsibility of his own actions and impresses him with that manly confidence without which no political virtue can exist. It invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge toward society and the part which they take in its government. By obliging men to turn their attention to other affairs than their own, it rubs off that private selfishness which is the rust of society.

The jury contributes powerfully to form the judgment and to increase the natural intelligence of a people; and this, in my opinion, is its greatest advantage. It may be regarded as a gratuitous public school, ever open, in which every juror learns his rights, enters into daily communication with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even the passions of the parties. I think that the practical intelligence and political good sense of the Americans are mainly attributable to the long use that they have made of the jury in civil causes.

I do not know whether the jury is useful to those who have lawsuits, but I am certain it is highly beneficial to those who judge them; and I look upon it as one of the most efficacious means for the education of the people which society can employ.

What I have said applies to all nations, but the remark I am about to make is peculiar to the Americans and to democratic communities. I have already observed that in democracies the members of the legal profession and the judicial magistrates constitute the only aristocratic body which can moderate the movements of the people. This aristocracy is invested with no physical power; it exercises its conservative influence upon the minds of men; and the most abundant source of its authority is the institution of the civil jury. In criminal causes, when society is contending against a single man, the jury is apt to look upon the judge as the passive instrument of social power and to mistrust his advice. Moreover, criminal causes turn entirely upon simple facts, which commonsense can readily appreciate; upon this ground the judge and the jury are equal. Such is not the case, however, in civil causes; then the judge appears as a disinterested arbiter between the conflicting passions of the parties. The jurors look up to him with confidence and listen to him with respect, for in this instance, his intellect entirely governs theirs. It is the judge who sums up the various arguments which have wearied their memory, and who guides them through the devious course of the proceedings; he points their attention to the exact question of fact that they are called upon to decide and tells them how to answer the question of law. His influence over them is almost unlimited.

If I am called upon to explain why I am but little moved by the arguments derived from the ignorance of jurors in civil causes, I reply that in these proceedings, whenever

the question to be solved is not a mere question of fact, the jury has only the semblance of a judicial body. The jury only sanctions the decision of the judge; they sanction this decision by the authority of society which they represent, and he by that of reason and of law.

The jury, then, which seems to restrict the rights of the judiciary does in reality consolidate its power; and in no country are the judges so powerful as where the people share their privileges. It is especially by means of the jury in civil causes that the American magistrates imbue even the lower classes of society with the spirit of their profession. Thus the jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it how to rule well.

Mr. President, De Tocqueville contributed a great deal to literature and to society. He was a Frenchman who came to our country and studied our form of government. He was so impressed that he wrote the chapter on trial by jury, in which he emphasized the fact that the jury is the heart of the administration of justice in a democracy.

On Friday, July 5, 1957, there was printed in the State, a newspaper published in Columbia, S. C., an article quoting the then president of the American Bar Association, Mr. David F. Maxwell, on the subject of jury trials.

I believe Mr. Maxwell is a member of the Philadelphia bar, of which our distinguished Presiding Officer [Mr. CLARK] is also a member. I am sure that the Presiding Officer, as well as the Senate, will be interested in what Mr. Maxwell had to say on the subject of jury trials, and that the views expressed by him will be of interest to everyone who believes in constitutional government. I read as follows:

The president of the American Bar Association today answered charges that trial by jury is an outmoded, time-consuming process which can be replaced by more efficient legal procedure.

David F. Maxwell, of Philadelphia, who heads the lawyers organization, said instead that jury trials are the ultimate protection against invasion of personal freedom.

He spoke at the diamond jubilee celebration of the State Bar of Texas.

"Too many persons today are prone to view trial by jury solely as a factfinding device, and hence expendable, if as good or better a method can be devised," he said.

These critics are influenced, Maxwell said, by the late Supreme Court Justice Oliver Wendell Holmes who wrote that an experienced judge should be able to represent the commonsense of the community far better than the average jury.

The Pennsylvania attorney said, "Such a contention presupposes the ability of the trial judge to discard foibles and prejudices built up within himself through his personal experience and background," adding that a group of average citizens can mete out more even justice than can the most competent and experienced judge.

"So let us in this country take warning," he said. "The jury alone is able to function as the thin wedge of reserved power that separates our system of law from the monolithic, totalitarian despotism behind the Iron and Bamboo Curtains."

Mr. President, an editorial appeared in the Greenville (S. C.) News of June 6, 1957. It is entitled "Jury Trial Is at Heart of Rights Issue" and has this to say on the jury-trial issue:

The day after it was reported from Washington that the administration would protest the southern claim that the so-called civil-rights bill would deny the right to trial by jury, the Judiciary Committee of the United States Senate approved an amendment intended to guarantee that right to persons who might come under an injunction authorized in the proposed law.

In his several appearances before the Senate and House committees studying the various proposals, Attorney General Brownell tried to claim that a trial by jury would not be denied. He had rough going, and at times was downright evasive, when Senator SAM J. ERVIN, of North Carolina, began to cross-examine him on his statements.

Senator ERVIN, an eminent lawyer and a former member of his State's supreme court, is of the opinion that trial by jury not only would not be guaranteed under the bills as submitted, but could be denied. Certainly, it would be possible for the courts to deny a jury hearing and a judge, if he chose, could sit in judgment on the testimony as well as the law.

Speaking for the administration, Attorney General Brownell is taking his case to the House of Representatives, but the action of the Senate committee on Monday indicates that even a number of northern Democrats and Republicans have been convinced of the facts.

The jury trial issue came up in this way:

Among the bills included in the civil rights packages (various versions of which have been offered by the administration and by individuals and groups of Democratic and Republican Members of Congress) is one which would set up a special civil rights division of the Department of Justice.

It would be manned by a number of assistants to the Attorney General and would have the authority to initiate civil suits against persons accused of violating the civil rights of others or whom it might have reason to believe were about to violate such rights.

(At present, it is a criminal offense to violate the civil rights of another. But a person accused of violating such laws has the right to be arraigned before a grand jury and to be tried by a petit jury.)

The administration proposal—and members of both parties have supported this or made similar proposals of their own—is to transfer civil rights cases from the criminal to the civil side of the Federal courts. The Government itself would bring such suits, with or without the request of the allegedly injured persons.

The Government could ask for and obtain an injunction forbidding anyone to do certain things, such as to refuse a voting certificate to a certain person or to oppose an integration order issued against a certain school. Such action on the part of the defendant might be a violation of an injunction or it might be a violation of a criminal law on civil rights.

But in such cases, the Government would bring the individual before the judge on a charge of contempt. And the judge could convict and sentence the individual without a trial by jury.

That is what prompted the southern amendment to the bill aimed at assuring a jury trial. And that is the principle Mr. Brownell is assailing in his statements to Congress.

He does not deny that trial by jury would be denied the defendants. He merely says the amendment would make the bill ineffective and would weaken the power of the Federal courts to enforce their orders. He says this power to punish for contempt has long been available to the Government in other Federal cases.

That much is true. When the Government brings a civil suit and obtains an injunction, contempt can be adjudged and punished without a jury. But these are cases entirely different from those Mr. Brownell proposes to bring in the name of civil rights.

In this instance, Mr. Brownell is trying to do in a roundabout way what the Constitution forbids him to do directly; that is, try and convict a person for an alleged crime without a jury.

Mr. President, here is an editorial from the Charleston (S. C.) News and Courier of April 17, 1957. It is entitled "Senator O'MAHONEY Understands Threat to Liberty in Civil-Rights Bill" and has this to say:

Speaking at the annual banquet of the Hibernian Society in Charleston, March 18, 1947, Senator JOSEPH C. O'MAHONEY, of Wyoming, stressed the fact that the United States has repudiated the doctrine of arbitrary power.

This week, 10 years after he made this statement, Senator O'MAHONEY gave evidence that he believes what he said. The Democratic Senator lined up with southern critics of the so-called civil-rights bill. He said he was in favor of a civil-rights bill but one that is conceived in justice and freedom rather than in any thought of punishment.

Senator O'MAHONEY told reporters that the proposed Presidential Civil Rights Commission to investigate complaints of civil-rights violations could easily do more harm than good. And with respect to another part of the bill vigorously opposed by southern Senators, he said, "I don't think we should be afraid of a jury trial in matters of this kind." In announcing his stand on the legislation, he said that the South has made many striking advances in racial relations, while such relations in some other parts of the country have worsened.

Senator O'MAHONEY's stand on the civil-rights bill is of major significance. His statement shows that the South is gaining ground in its battle to convince other regions that the force bills are a threat to the liberties of all Americans.

Senator O'MAHONEY is not a western conservative like, say, Senator BARRY GOLDWATER, Republican, of Arizona, who might be expected to line up with southern conservatives. The Senator from Wyoming is a western liberal and an oldtime supporter of the New Deal. Hence his acceptance of some of the southern constitutional arguments is all the more meaningful.

If Senator O'MAHONEY is convinced that the right to jury trial and other parts of our heritage are being threatened by the civil-rights bill, the likelihood of convincing other northern and western Senators is considerable.

In order to overcome the propaganda barriers of the NAACP and convince these Senators, the South must continue to argue its case—and on the highest level. Senator SAM ERVIN of North Carolina has done especially fine work this session in accomplishing just that.

The other task facing southerners is that of insisting on respect for law and order throughout our region. The enemies of the South must not have any excuse for urging Federal intervention. Hoodlumism must be put down. The ignorant elements who join the Ku Klux Klan must be made to realize they are under the eyes of local and State police. Responsible men must stay active in movements such as the citizens council, and prevent infiltration by troublemakers or hotheads.

If the South can speak with dignity in Washington and act with honesty and good sense at home, there will be more Senator O'Mahoneys who will realize southerners are fighting the good fight for American liberties.

Mr. President, here is another article from the Charleston (S. C.) News and Courier. It is entitled "Trial by Jury Right of All Americans" and it appears in the June 5, 1957, issue of the News and Courier, and has this to say:

A guaranty of trial by jury, squeezed into a civil-rights law by vote of a Senate subcommittee, has been hailed as a southern victory.

This victory—though it is little more than solace in a string of defeats—in fact belongs to the American Republic. Southerners are not alone in danger. If the Federal Government can deprive southerners of the right of trial by jury, on the ground that they are unfair to Negroes, it can do the same to citizens of other regions on equally flimsy grounds.

Thanks to the NAACP and its political allies, defense of Negroes' civil rights is popular today. Even at the sacrifice of rights of all citizens, restrictive laws have won serious support. The News and Courier finds biting irony in the need for Congress to guarantee the right of trial by jury. Americans have been brought up in the belief that the United States Constitution meant what it said in guaranteeing them this right.

Nowadays, the ruling clique no longer trusts ordinary people to govern themselves. Juries, they fear, will bring in unjust verdicts. The bosses prefer to entrust such delicate matters as civil rights to handpicked Federal judges, who are screened by the Department of Justice and appointed by the President. With both national parties committed to the NAACP program, no lawyer who takes a strong stand against that program stands much chance of appointment. As older judges die or retire, Attorney General Brownell will make sure, insofar as he is able, that replacements have a "liberal" view of race.

With administration of election laws removed from the hands of elected State officials and placed under Federal appointees, government is being removed ever further from the people. The jury system, safeguard of Anglo-Saxon liberty, may yet be a victim of alien notions now gathering power in our Republic.

Mr. President, I have an article from the May 10, 1957, issue of the Charleston, (S. C.) News and Courier. It is entitled "The Civil-Rights Fight and Trial-by-Jury Issue" and was written by the distinguished southern newspaperman, Dr. John Temple Graves. Here is what it has to say on the jury-trial issue:

"Backward, turn backward,
O Time in thy flight * * *"

Time accommodates.

Its comment on jury trials last week overlooked the Federal march of time.

Admitting that the trial-by-jury issue has come to dominate the civil-rights fight, the magazine pontificated that "the contempt citation is the judiciary's historic enforcement tool." It avowed that "jury trials in contempt cases have absolutely no basis in equity or constitutional law and precious little legislative sanction."

The trick in this extraordinary statement is in Time's small print at the bottom of the page. It explains there that "with a single exception (the Norris-La Guardia Act covering labor disputes) trial by jury has never been required in contempt cases to which the United States Government was a party." With the United States Government proposing now to be a party to just about everything in heaven, earth, and the waters beneath—a new situation exists.

The Constitution loves the principle of trial by jury and says so over and over again. That great basic principle, rather than any technicality, is what is involved for the South.

Call it contempt or something else, let the Government be a party or not a party, what concerns us and what concerned the makers of the Constitution is that citizens in handcuffs shall not be adjudged by those who put the handcuffs on them, that the right of an accused to be properly tried in the Anglo-Saxon ideal shall not be abridged in the name of contempt or participation of the Government.

The Constitution speaks for this principle in article 3. The fifth amendment speaks for it, and the sixth, and the seventh.

Nothing in the whole instrument is more emphatic.

Mr. President, I have an editorial from the April 8, 1957, issue of South, the news magazine of Dixie. It is entitled "Force Bill 'Liberals' Would Kill Jury Trial." Here is what it has to say:

It is incredible that those who like to boast that they are liberals and protectors of individual rights are crying the loudest for the currently misnamed civil-rights legislation which would deny alleged violators the right to trial by jury. The politically inspired anti-South force bill package has induced such a state of hypnosis in the self-styled liberals that they want to replace constitutional guaranties of civil liberties with their own false notions of civil rights.

If the question of race were not at issue, the very people who are pressing for passage of this abominable travesty on constitutional principle would be the first to denounce it for discarding the sacred right of trial by jury. At the outset the legislation violates the rights spelled out in article III, section 3, and by the seventh amendment, one of the historic ten making up the Bill of Rights. It would empower the United States Attorney General to seek injunctions against persons suspected of being about to violate the so-called civil-rights measure. Then a Federal judge, acting also as prosecutor and jury, would decree a whole community or State in contempt. An individual cited for contempt would be tried without a jury by the judge who cited him.

The proponents of this evil proposal know exactly what they are doing. By design they are taking away the right of jury trial. In fact, they are bold to say that if they did not set aside the right of trial by jury, they could not get convictions in the South. To allow jury trials, they say, would be to gut the bill. Attorney General Brownell is horror struck at the thought that the no-jury-trial provision be stricken. President Eisenhower, who violates a campaign pledge made at Miami by pushing this legislation, says he would have to get Brownell's opinion as to whether to sign or veto a civil-rights bill containing the assurance of jury trial in contempt cases. The civil strife proponents protest that this guaranty—in the Constitution which Eisenhower, Brownell, and all Congressmen are sworn to uphold—would cripple the bill. Has the President so soon forgotten that he said at Miami, 2 weeks before the election, that civil-rights problems should be handled to the greatest extent on a local and State basis?

Surely our liberals know that Hitler, Mussolini, and all tyrants from the time of King John (until forced to sign the Magna Carta) opposed jury trials because they would cripple their programs.

Mr. President, I have an article from the April 14, 1957, issue of the Greenville, S. C., News. It is entitled "Jackie Robinson on Meet the Press: Negro Athlete Favors Jury Trials" and has this to say:

Jackie Robinson, Negro baseball star, when asked if he favored jury trials for civil-rights defendants, said Sunday night he would personally prefer a jury trial.

The National Association for the Advancement of Colored People strongly opposes a jury trial guaranty in criminal injunction cases arising under the bill.

Robinson is leading the NAACP's freedom-fund campaign for a million dollars to attain first-class citizenship for all members.

The former Brooklyn Dodger told an NBC Meet the Press television panel that he did not know what the million dollars would be spent for—possibly for lawsuits against school segregation.

He said he favored the civil-rights bill but knows very little about it.

Frank Van Der Linden, this newspaper's Washington correspondent, asked the questions about the civil-rights bill.

This is a man, Mr. President, who favors the civil-rights bill, but even he says he favors a trial by jury.

That is what the House did on this so-called compromise. In effect, they have nullified the right of trial by jury. There are very, very few instances in which a judge, when he finds a man guilty of contempt, would give a sentence of more than 45 days in prison or a fine of more than $300. That simply means the practical effect is that the jury trial has been completely nullified.

As I have said earlier, and as I will say later in my address, the right of jury trial is something the Constitution grants to the citizens of the United States. The Congress does not have the authority to take the jury trial away from the people of America.

Mr. President, I have an excerpt from an editorial from the August 26, 1957, issue of the Columbia (S. C.) Record. It is entitled "Jury-Trial Compromise No Compromise," and this is what it has to say:

The "compromise" on the jury-trial amendment to the civil-rights bill, worked out between the House and Senate leaders of both parties, is anything but a genuine compromise. It is a nullification of the jury-trial principle, for which the southern Democrats fought so valiantly in the Senate.

The amendment written into the bill by the Senate provided that in all cases of criminal contempt defendants should be entitled to jury trials, guaranteed by the Constitution to all persons accused of crime. This applied not only to criminal contempt charges growing out of voting-right cases, but also to other criminal contempt proceedings as well.

The so-called compromise allows jury trials only in voting-rights cases and then only after a defendant has been tried and convicted without a jury trial and sentenced to more than 45 days' imprisonment and a $300 fine. In such a case the defendant could ask for a jury trial and the case would then be tried de novo before a jury. But no jury, of course, could try such a case de novo in fact. Every juror would know that the defendant had been found guilty by a judge and given more than a minimum sentence. This is a condition precedent to a jury trial in these voting-right cases. And no jury trial under such circumstances is anything approaching the right of trial by jury guaranteed by the Constitution.

Mr. President, I have an editorial from the August 25, 1957, issue of the Charleston (S. C.) News and Courier. It is entitled "Jury Trial 'Compromise' Is False Bait in Wicked Trap for Liberty," and here is what it has to say:

A proposed compromise now pending in Congress is as wicked and immoral, in our

opinion, as total denial of trial by jury under Federal election laws.

Reports from Washington indicate a likelihood that the civil rights force bill may be rammed through Congress with this compromise to grease the way. Perhaps the northern scrambles for Negro votes and their "liberal" southern allies have the power in Congress to enact this hateful law. They should not get even silent support from anyone who loves the American Republic.

The compromise is really no compromise at all. It would grant the opportunity to seek a new trial before a jury by a defendant in an election case who had received a sentence greater than a $1,000 fine or 45 days in jail.

The amount there, incidentally, Mr. President, should be corrected. Instead of a $1,000 fine, it should be a $300 fine.

But the size of a fine and the duration of imprisonment are not the key issue in this legislation. Penalties may be amended once the principle is set up. Besides, imprisoning State election officials even for a short time could rig the outcome of voting.

The key issue here is whether the liberty of a citizen, and the constitutional rights of the States to conduct free elections, should be sacrificed for the sake of current political advantage of national parties and politicians.

As I have said before, Mr. President—to digress there—the only purpose of this so-called right-to-vote bill is to advance the cause of the national political parties with the minorities and to advance the cause of certain politicians. If it were not for the purpose of both parties playing to the minorities and advancing the cause of certain politicians to high offices, I do not believe this bill would ever have been introduced. It is a disgrace to the United States even to have the Congress consider such an abominable and obnoxious bill.

Behind this force bill lies a game of power politics. Both national parties are struggling to control the votes of herded Negroes in big northern cities and their liberal allies. These bloc voters are believed to hold the balance of political power in the United States.

Buried beneath the nauseating political greed that has produced this force bill are principles once dear to Americans. The bill has many of the earmarks of totalitarian government that the Constitution was built to prevent.

Among these earmarks are Federal control of elections, seizing the power of the ballot box from the people most likely to be affected; substitution of judges for juries in enforcement of the law; and secrecy in working up prosecutions.

The bill would set up a powerful commission on the phony pretense of guarding voting rights of minority groups. This Commission's actions would be shielded from public view. Persons are forbidden under penalties to make known what it is doing. The Star Chamber—a tyrannous device once used by English Kings—thus would be imposed for the first time on the United States.

Southerners may be overwhelmed by superior force, but they should go down fighting every step of the way.

In honorable defeat they may sound an alarm to fellow Americans not yet awake to dangers to the Republic. Passage of the civil-rights force bill would be a defeat for all citizens of whatever race or region, for it would help to set the stage for dictatorship and oppression. The compromise on which passage now seems to hinge is only a deceptive detail in a dirty business.

Mr. President, I have here an excellent editorial from the Washington Evening Star of July 12, 1957. It is an editorial full of quotes, but the editor made his point well in this editorial without even having to insert his own comments. Here is what the editorial says:

BROWNELL *v.* NORRIS

Attorney General Brownell (in a letter explaining the civil-rights bill):

"Enactment of legislation providing for jury trial in contempt cases arising out of governmental litigation would undermine the authority of the Federal courts by seriously weakening their power to enforce their lawful orders. The effect of adopting current proposals for jury trial would be to weaken and undermine the authority of the Federal courts by making their every order, even when issued after due hearing and affirmed on appeal, reviewable by a local jury. * * *

"Furthermore the proposed amendment to existing procedures that is being advocated under the innocuous slogan of jury trial would permit practical nullification of the effectiveness of the proposed civil-rights legislation. The enforcement of any court order may require prompt and vigorous action if it is to be effective. Prompt action will often be vital in civil-rights cases, especially election cases, where the registration period or the election may pass while enforcement is delayed. The injection of a jury trial between an order of a court enjoining discrimination against Negroes in an election, and the enforcement of that order would provide numerous opportunities for delay beyond the time when the order could have practical effect."

The late Senator George W. Norris (insisting on the right of trial by jury, by Congressional enactment, in every case of indirect contempt):

"I agree that any man charged with contempt in any court of the United States * * * in any case, no matter what it is, ought to have a jury trial."

I wish to repeat that statement. He said:

I agree that any many charged with contempt in any court of the United States * * * in any case, no matter what it is, ought to have a jury trial.

Under the proposed compromise amendment which came from the House, the people will not get a jury trial. In 99 percent of the cases the judge will sentence people without a jury trial. It is said, "Well, they are able to get a jury trial if the fine is more than $300 or if the imprisonment is for more than 45 days."

That is not the point. The point is that in 99 percent of the cases the compromise would deny to the citizens a jury trial, which is guaranteed to them by the Constitution. Congress should not be a party to violating the Constitution of the United States by passing the compromise amendment.

I continue to read from the editorial:

"It is no answer to say that there will sometimes be juries which will not convict. That is a charge which can be made against our jury system. Every man who has tried lawsuits before juries, every man who has ever presided in court and heard jury trials, knows that juries make mistakes, as all other human beings do, and they sometimes render verdicts which seem almost obnoxious. But it is the best system I know of. I would not have it abolished; and when I see how juries will really do justice when a biased and prejudiced judge is trying to lead them astray I am confirmed in my opinion that, after all, our jury system is one which the American people, who believe in liberty and justice, will not dare to surrender. I like to have trial by jury preserved in all kinds of cases where there is a dispute of facts."

Mr. President, I have before me an editorial from the Greenville (S. C.) News of March 29, 1957, entitled "How Secure Is Right of Jury Trial?"

It reads:

HOW SECURE IS RIGHT OF JURY TRIAL?

Rather smugly, perhaps, we Americans have taken for granted our right to a trial before a jury when we stand accused of violating the law.

So fixed in our system of jurisprudence and our common concepts of justice is the jury trial that few of us ever have stopped to consider the difference between having our guilt or innocence determined by a group of ordinary citizens and having a judge, a creature of the Government, mete out justice singlehandedly, as he alone sees it.

Article III, section 2 of the United States Constitution, says that "the trial of all crimes, except in cases of impeachment, shall be by jury."

The sixth amendment, article VI of the Bill of Rights, spells out further the right to the accused in criminal proceedings "to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed. * * *

It goes on to guarantee the accused the right to be informed specifically of the charges against him, to confront the witnesses against him, to subpena witnesses in his favor, and to be represented by counsel.

The seventh amendment, article VII of the Bill of Rights, provides that in suits at common law the right of trial by jury shall be preserved.

One would think that, with all these references in the Constitution, the right to a jury trial would be secure. But liberal elements, including our own Department of Justice, advocating passage of proposed civil-rights legislation are teaching us that this basic right is not so secure as we might have thought.

For the bills now before the Congress would, in fact, deny persons accused of violating the civil rights of others the right of a trial by a jury of citizens of their State and district. And the NAACP and Attorney General Brownell are insisting on this provision of the bill. Attempts of southern Senators and Congressmen to write into it a guaranty of that right have thus far been beaten down.

If the bill is enacted, the Government would be empowered to bring civil, rather than criminal charges, against an individual accused of violating someone else's rights. He would be prosecuted by a Government attorney before a Federal judge, who might be sent in from outside his State, who would pass on the facts as well as the law and would pass sentence.

The accused would be just as apt to go to jail on the civil charge as he would if he were charged with a criminal offense in which the jury trial would be guaranteed. Indeed, the chances of his going to jail might be even greater.

But that is only part of it.

The bill would create a new division in the Justice Department with an unlimited number of lawyers employed to investigate and bring civil-rights suits. This division could bring suit in behalf of a named plaintiff, even though that individual had never raised a complaint. If the individual did complain, the Government would bear the whole cost of prosecuting his case.

The defendant, on the other hand, would find himself faced with the necessity of hiring a lawyer and, perhaps, of going through a long series of court proceedings that could very well break him financially.

This could become vicious persecution instead of reasonable prosecution.

This threat of persecution is no less real in another phase of the proposed civil-rights legislation relating to the creation of a commission empowered to investigate alleged incidents of discrimination, economic boycotts, and the like.

If this plan became a reality, a citizen accused of discriminating against a member of a minority, or of applying economic pressure against him, could be ordered to report to a place in Washington at a given time and be subjected to an investigation. His need for counsel and, hence, the expense of defending himself, could be just as great as it would be if he were accused of some crime.

All of this is being proposed in the name of civil rights by persons calling themselves liberals.

How can we create rights by destroying rights? And how liberal is it?

Mr. President, I wish to repeat a paragraph in the editorial which I believe is most important. It should appeal to every lawyer, and, in fact, to every citizen. It reads:

The bill would create a new division in the Justice Department with an unlimited number of lawyers employed to investigate and bring civil-rights suits. This division could bring suit in behalf of a named plaintiff, even though that individual had never raised a complaint.

Mr. President, I believe we are setting a very dangerous precedent when the Government can bring suits of the kind provided in the civil-rights bill, even if an individual does not complain. The Government can file a suit in behalf of an individual, even if the individual has not complained, and it can bring a suit for an individual who has complained. In either case, the Government can substitute its name in behalf of the defendant in bringing the case.

Furthermore, the Government would bear the cost of prosecuting the case. The poor defendant must pay his own expense. If an individual wishes to bring a case in court, why should he not pay his own expense? Why should the Federal Government bear the expense of a person whose statement may be true or which may not be true? I can foresee untold litigation. I can see all kinds of fabrications being made in order to have cases brought. It is a dangerous bill, Mr. President. It is far more dangerous than I believe the average man on the street has been able to understand. The average man in the street does not realize what is in the bill. I cannot imagine why Members of Congress would even consider passing such a bill. Again I say that it would not even have been introduced, in my opinion, or given any consideration at all, if it were not purely a political bill.

Mr. President, I have an editorial published in the Greenville (S. C.) News of February 26, 1957, entitled "Civil-Rights Bills Threaten Liberty."

CIVIL RIGHTS BILLS THREATEN LIBERTY

(EDITOR'S NOTE.—The following editorial is taken from a statement prepared by the editor of the News at the request of the Governor of South Carolina. The statement is to be offered to the subcommittee of the House Judiciary Committee this afternoon by representatives of this State who are appearing in opposition to the civil-rights bills.)

The civil-rights bills of 1957, like those proposed during the last 20 years and more by individuals of both parties and by administrations of both parties, are anachronistic.

An anachronism is something that is misplaced in time. In this instance, it is a throwback to a more primitive age which is, at best, a misfit and, at worst, a destructive force in the age in which it occurs.

And when intelligent and otherwise dedicated men ignore more pressing and more serious problems and pass up greater opportunities for service to deliberately create such an anachronism, the result is bound to be tragic.

Even if we could assume, which we cannot, that the broad and untested powers these proposed laws would confer on an already oversized and unwieldy Federal bureaucracy would always be wisely and fairly administered, the need for them, if it ever existed, has long since passed.

The purposes now claimed for them have been better served by processes springing from the people themselves than ever they can be by pressure and threat of punishment imposed upon the people by an omnipotent and omnipresent "Big Brother" sort of government.

Furthermore, the instruments now proposed to protect liberty and to uplift men are such as to be capable of being used to destroy liberty and to oppress men.

To appreciate the origin of the civil-rights bills and the natural resistance to them in many parts of the country, especially the South, one must consider them in their proper perspective with past history and present trends.

To put it bluntly, this legislation grows out of a latter day extension of the overzealous efforts of the abolitionists, who profited and were exalted during the era preceding the War Between the States. It is being pushed in the same sort of spirit that motivated the vengeant and vindictive planners and executors of the reconstruction.

Not even during the tragic and oppressive reconstruction did a Congress, which was dominated by radicals and in which the conquered South had few friends and spokesmen, see fit to enact such laws as now proposed.

There was military occupation and corrupt government imposed from Washington, but there was no permanent board of inquisitors that could be turned into an agency of harassment and intimidation. There was injustice, but there was no permanent overturning of the processes of the courts.

Purged by bloodshed of the sin of slavery, which was not his alone, nor his country's alone, the southern white resisted the reconstruction. He resisted it because he feared, with justification, that it was intended to take from him in order to give to the Negro. He resists court-decreed integration and the civil-rights proposals for the same reason—again with justification for his fears.

NEGRO IS MISLED

The Negro was misled in those days, and he is being misled now.

The end of the abominable institution of slavery was inevitable, and it could have been accomplished without fratricide and without threatening the Union and creating abiding bitterness. At its end, the Negro was led to believe he could switch from the status of slave to that of master. In some instances, for a time, he did. In others, he was promised "40 acres and a mule," but more often than not he didn't know what to do with the 40 acres and he never got the mule.

The Negro again is being falsely led to believe that integration will solve all of his remaining problems and that all he needs to realize the millennium is a few more court decrees and Federal laws. He has been led to believe that political largesse will bring to him those things that he can best realize by earning and exercising the rights and privileges already available to him.

Until fairly recent decades, southern whites and Negroes engaged in a pathetic sort of competition for the lesser degree of poverty, but they have made progress together and they have achieved a mutual understanding. Education and a rising prosperity were easing the old bitterness and misunderstanding and improving relations between the races at a rate that has been positively amazing.

The tragedy of this era is that, since 1954, with the Supreme Court decision in the school cases, and especially since the renewal of agitation of civil-rights legislation with almost virulent vigor, this progress has been slowed down. And the Negro stands to lose the most. The bitterness and the old suspicions are being revived.

A few years ago in a prosperous South Carolina industrial city, a joint committee of white and Negro citizens conducted a survey of the needs of the Negro community, ranging from health and housing to transportation and recreation. Much progress came of it.

Also, a few years ago, with the help of the newspapers and interested white citizens, certain racial barriers in the public hospital were broken down and qualified Negro doctors were granted staff privileges for the first time on full equality with their white colleagues.

Along about the same time, the newspapers and interested white citizens campaigned for better housing for Negroes. City substandard housing laws were strengthened and better enforcement machinery established. The improvement in rental property has been marked.

Also, it was urged that property be made available to Negroes of means who wanted to build better homes away from congested areas in which Negroes tend to congregate. Subsequently, a fairly exclusive Negro residential section, near white neighborhoods, was started. There were no objections.

PROGRESS IS SLOWED

This sort of things would be more difficult now, if not impossible, in no small part because the Negro is reluctant to cooperate. Both he and his white friends are subject to pressure and unpleasantness from radical elements among their respective races. The Negro apparently has been led to believe the moon may be within his grasp; and lawless and more extreme whites have been aroused.

In many cities in the South, the newspapers have sought for years to treat the Negro with the dignity any citizen deserves in their handling of the news. Special sections devoted to news of the Negro community, often prepared by Negro reporters, were started. Until recently, there was no protest. Now there are murmurs, direct protests, and anonymous letters.

None of this has to do with integration. Neither race is ready for integration, and may never be. But if they become so it will be on the only basis of successful close human association—natural affinity, mutual appreciation, and individual choice. Neither court decrees nor laws can create these conditions.

In his speech on conciliation with the American Colonies in 1775, Edmund Burke said, "I do not know the method of drawing up an indictment against a whole people."

With the help of the proposed legislation, and the injunctive process, the Federal courts may one day find such a method, but the result will be the destruction, not the preservation of civil rights.

Burke also said in his Thoughts on the Cause of the Present Discontent in 1770 that, "When bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle."

This cause is not the South's alone. The extension of the judicial process into areas it was not intended to reach and stretching it for purposes it is incapable of serving; the striking down of the police power of the States in field after field; the unprecedented use of the injunctive power without jury trial to punish for contempt persons not before the court; all of these, as able judges and lawyers are solemnly warning, threaten the future security of all Americans.

The granting of the powers the Justice Department is now asking can only hasten this process. Even the layman can see that. The proposed commission, with power to investigate and harass at its own will could, in the wrong hands, become an instrument of coercion and intimidation.

Like other Americans, no southerner of good conscience condones the denial of rights, either by violation of the law or by threat or violence. But the atmosphere created by agitation is not only inciting lawless elements to violence, but is making such incidents even harder to deal with.

Of laws we have aplenty. The Federal Government has ample power to deal with the violations the Attorney General alleges but doesn't specify. The States have laws against violence, and many of them, like South Carolina, have laws making violation of any citizen's rights a crime.

They should be left free to enforce them.

Mr. President, I have an editorial from the Orangeburg (S. C.) Times and Democrat of June 5, 1957. It is entitled "On Jury Trials." This is what it has to say on this subject:

The committee in the Senate which has been considering the civil-rights bill has added an amendment to the bill which would allow persons accused of contempt to be given jury trials. Many Senators who were and are in favor of the civil-rights bill are supporting this amendment.

We do not see how Congress can go wrong in providing jury trials for persons accused of contempt. While we do not wish to join in a wholesale assault on the judiciary of this Nation, it is nevertheless true that the judiciary—like the other branches of the Government—must have its limitations.

No one branch of our Government functions perfectly, nor is it made up of perfect citizens. The judicial branch has assumed increasing power in recent years and it would be wise to safeguard the right of persons to a trial by jury because of what might follow if this right is denied citizens. It may be that only one issue is involved at present, but the future might well turn up an undesirable situation in which the principle wherein judges who find American citizens guilty of contempt, exercise such unlimited powers concerning various issues and freedom that any bill limiting the right of jury trial would be a tragedy and result in injustice to many Americans.

We do not believe that any one section of the country has a monopoly on all the good people in the United States. We believe that trial by jury is the best possible system establishing guilt and that the people themselves, who make up our juries, will come nearer seeing that justice is done than any group, acting individually, no matter how talented the various individuals may be.

Mr. President, I have an editorial from the Columbia (S. C.) State of June 5, 1957. It is entitled "A Wise Provision," and here is what it has to say on the question of jury trials:

Administration forces fell before six Democrats and a Republican on the Senate Judiciary Committee who insisted upon including in the so-called civil-rights bill a proviso guaranteeing trial by jury to persons accused in court in civil-rights cases. In supporting the amendment as a poor substitute for killing the bill, Senator EASTLAND explained that the section would give civil-rights defendants the same right now enjoyed by trade unionists in labor injunction cases.

The development does not, however, meet with the approval of Attorney General Brownell, who has been playing out of position before now in lobbying for controversial and doubtful legislation, arraying section against section and class against class. He complains the proviso would permit practical nullification of proposed civil-rights legislation. In the words of Orphan Annie, "Would that be bad?"

One wonders just what the advocates of such legislation are after. Could they be seeking to destroy the Constitution?

Everything considered, the section guaranteeing jury trials to defendants in civil-rights cases follows the orderly procedure defined by the Founding Fathers as to the rights and dignity of the individual. Trial by jury is one of the cardinal triumphs of our Constitution as inherited from Magna Carta. There is no reason why any exception should be made to gratify the unilateral zeal of special interests of self-appointed reregulators.

Mr. President, I have an editorial from the Nashville (Tenn.) Banner, of July 10, 1957. Here is what it has to say:

A PRINCIPLE OF RIGHTS: SOUTH MAKING ITS POINT

More Senators, it appears, are seeing the validity of the South's insistence on trial by jury as a fixed point of law and due process—bone of contention with the civil-rights brigade. They are seeing, surely, what logic underscores: that if this principle falls under the impact of biased thinking against the South, it falls for all. It is not, therefore, a regional issue, but national. The southern protest is not addressed to a narrow, selfish view, but to a view exactly as broad as the Constitution—and as far reaching.

Senator O'MAHONEY, of Wyoming, has paid tribute to the fairness of southern colleagues—having spoken out prior to this showdown for the stated right of due process; and recognizing the progress already made, and voluntarily, on race relations. As a further point of edification, the fact of voting rights enjoyed and practiced in the South should be laid before him.

Who, influenced by propaganda to the contrary, has bothered to examine the record in State after State? By what process of competent investigation have these civil-rights firebrands arrived at a conclusion of wholesale indictment?

Voting is a privilege, as well as a duty, of citizenship, asserted and protected by law. With that principle there can be no quarrel. The issue is invasion by Federal authority, and methods of enforcement begetting strife by the measures of force contemplated in this iniquitous legislation.

There are States, outside the South, where people of voting age are denied the right to vote—Indians, for example. Negro citizens do vote, under the same rules of eligibilty applied in the case of white citizens; and if any Senator doubts that, he should come this way and watch.

In Tennessee, and other Southern States, he would find Negroes holding public office. In Nashville they elect their own representatives to city council; they have membership on the school board. They staff their schools. They are employed on the police department and the fire department.

Facts, it appears, are coming out in the Senate and registering—and they are facts answering organized diatribe; substantiating both the concept of justice and of constitutional law.

The South does not stand at the bar of public opinion convicted—just accused. It is not on the defensive. It is defending a basic right of responsible treatment, and the place of that defense is the floor of the Senate.

As manifested by the implied readiness of opponents to concede the trial-by-jury point, its stand to date is influencing that decision. It cannot compromise any principle to the detriment of established, constitutional rights, much less yield to the whip of caprice.

A column written by Dr. John Temple Graves, one of the outstanding men in the South and in the Nation, printed in the Charleston, S. C., News and Courier of July 8, 1957, is entitled "South's Most Civil Right Is Right To Be Let Alone," reads as follows:

"The right to be let alone."

That is our most civil liberty.

Remember it and be of good cheer as Senators from the South fight against the so-called civil-liberty bill.

Civil liberty is indivisible.

It is the whole Constitution, the whole ideal. When you sacrifice one part for another you decrease and endanger the total. When the right to jury trial is impeached to save the right to vote there is net loss, and the same loss runs the whole constitutional gamut.

Basically, all American rights are civil rights. State rights are civil. The rights of Congress against the Supreme Court are civil, and of the executive against each, and vice versa.

And when the Federal Government (or the State) invades areas never intended or authorized there is violation of the most civil right of all—the right to be let alone.

If the Founding Fathers made a mistake, if they failed to look ahead enough, if they should have anticipated a future so social and interrelated that nothing short of a totalitarian central government and law would serve, we should face it and get a new Constitution. Certainly we should not undertake to cover the situation by ignoring the Constitution in one place and insisting on it in another, sacrificing one civil right to make another safe.

Most of us believe no mistake was made, that liberty and justice can still be had in the great terms of the Constitution.

If the President could just be reached on this jury-trial issue in the civil-force bill, many of us who go on liking him believe he would see the South's case as the Nation's. The Baltimore Sun nails it thus: "The injunction contemplated would forbid actions already forbidden under Federal criminal laws. This being so, the injunction procedure is obviously a judicial shortcut, and one which would deprive those cited for contempt of a right which would be guaranteed them under the Federal Constitution (if they) were indicted for the same offense. It is proposed to assure one right—the right to vote—by ignoring another right—the right to a jury trial."

As pointed out here many times, jury trials should be stretched just as far as contempt is stretched, you would think. The civil-rights bill would stretch contempt into areas that ordinarily involve jury trial. It should not be permitted to deny jury trial, therefore, on the plea that contempt cases don't allow for them.

Mr. President, I have an editorial from the Charleston (S. C.) News and Courier of July 4, 1957, entitled "Unless Citizens Fight Against Tyranny Independence Will Perish in the United States of America":

The 181st anniversary of the signing of the Declaration of Independence in 1776 today finds independence at low ebb in these United States.

There is a real question as to whether Americans of this day are capable of keep-

ing whatever measure of independence is left to them, let alone restoring lost liberties.

The original Independence Day was celebrated a long time ago.

The national memory of what it means is dim. There is a certain amount of speechifying by political leaders. And the White House will hand reporters a mimeographed Fourth of July statement, written by one of the President's ghostwriters.

But the deep meaning of the day will not be especially clear to millions of Americans who are looking forward to a long weekend at the beach or other pleasure resorts.

There is no reason why the Fourth of July should be a long-faced affair. Nor is there any reason why it should be just another holiday—another day for family picnics, parties, and romping in the surf.

Except for a few lines of it embodied in newspaper stories, no one will read the Declaration of Independence. And yet our ancestors read it with the greatest care, for it touched their lives.

It is an angry document, full of resentment toward a government that was steadily pushing Americans into a corner. Finally, in the Declaration, the people said they had enough.

Throughout June 1957 the American people were being pushed into a corner, precisely as the people of the province of South Carolina and 12 other colonies were being pushed in the broiling summer of 1776. No one attacked Sullivan's Island last month, except possibly mosquitoes. But liberties of South Carolinians and their fellow citizens in 47 States were under attack.

Who knows it? Who cares? Today Fort Moultrie, which should be a national shrine, is padlocked and the grounds overgrown with grass. Today, grass is growing over American liberties.

Americans cared in 1776. Of George III, the signers said: "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world."

And so they submitted the facts. They said that King George "has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws; giving his assent to their acts of pretended legislation; for depriving us in many cases of the benefits of trial by jury; for taking away our charters, abolishing our most valuable laws and altering fundamentally the forms of our governments; for suspending our legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever."

Does this have a familiar ring?

Is not the Congress, on recommendation of the President, preparing a civil-rights bill that would deny trial by jury to some Americans? Isn't the Supreme Court striking down State laws, abolishing important laws of Congress and altering fundamental forms of our State and Federal governments? Isn't the Supreme Court legislating school laws for the South?

The answer to all these questions is "Yes."

The Declaration of Independence says that it is the duty of a free people, when a design to reduce them to despotism has been perceived, to provide new guards for their future security.

That is what Americans living in 1957 must do. There is no need for flag-waving demonstrations—nothing of that sort. All that is needed is for millions of Americans to halt one moment, in the midst of holiday pleasure, to resolve that they will support their elected representatives in setting up new guards agains tyranny.

Unless there is such a resolve, there won't be much independence to celebrate in the years ahead.

Mr. President, I have an editorial from the July 9, 1957, Charleston (S. C.) News and Courier entitled "People Should Accept No Compromise on States Control of Elections":

Talk about compromise on civil rights force bills before Congress is in the news from Washington. What goes on behind the scenes the public seldom knows at the time, and doesn't always find out later. We speak with no knowledge other than what we read in press dispatches.

The comment of Senator MUNDT, Republican, of South Dakota, who has predicted a compromise in time to let the Senate adjourn by mid-August, is especially interesting. He said the compromise would be one "for which the South can't vote, but one with which the South can live." The terms of the compromise would be to guarantee the right of Negro and other minority groups to vote without harassment.

Qualified Negroes, like qualified white people, already have a right to vote. Race agitators from time to time dig up cases of alleged intimidation of Negro voters in the South. No doubt there are voting irregularities in the South, as in other regions of the country. In the areas that the News and Courier knows about, Negroes register and vote without hindrance. If there is widespread violation of anybody's civil rights we are not aware of it. The big question is not so much whether and where violations may occur, but who has authority to enforce guaranties of the rights.

Heretofore in our country the States have set up and supervised elections within their borders. We strongly believe that the future of the American Republic depends on saving a balance of power between State and Federal authorities. Control of the ballot and voting procedures is essential to that balance.

The force bill now before Congress, generally known as the civil-rights bill, would set up new Federal machinery, armed with power to imprison without trial by jury, to manage racial aspects of elections. It would be a short step to amend this law to put other, perhaps all, election machinery into Federal hands. Thus some of the safeguards—precious few of them remaining—would disappear.

Compromise on the force bill is a compromise with freedom. Today the Southern States may seem to be the target. But the danger exists for all 48 States.

Perhaps the danger cannot be avoided in the present mood of our Government. Senator MUNDT, in the past a stanch supporter of States rights, has forecast a compromise "with which the South can live," even though it cannot vote for the compromise.

The South could not live with Reconstruction after the Civil War. Some of the proposals today seem designed to revive the spirit of Reconstruction. The News and Courier does not believe the South can live with that spirit now any better than it could live with it 80 years ago.

For that reason we reject any compromise with basic rights and basic freedom.

If the South loses to superior power, either in the form of votes in Congress or any other form of force, let it not be said that the South gave its consent. Someday, if it is not then too late, the rest of the country may come to its senses. The South may be able to hasten that day by resisting wreckers of the Republic. If the people of the United States realized what was being done to their country, they would not offer up the South as a sacrifice, nor compromise with liberty.

The South might be able to live with compromise, but not at the same time with pride and self-respect.

Mr. President, there have been a number of occasions on which I have spoken before the subcommittees of the Committees on the Judiciary of the House and Senate, and on the floor of the Senate, in opposition to the provisions of H. R. 6127 and the other so-called civil-rights bills which were introduced both in the House and in the Senate. The first of these statements was made before the Committee on the Judiciary of the House of Representatives on February 26. Because a good portion of the statement was made with reference to certain so-called civil-rights bills then being considered, but which are not now before the Senate, I have edited out portions of the statement. I now read my statement as edited.

I am here today to oppose the so-called civil-rights bills.

Tyranny by any other name is just as bad.

In other countries tyranny has taken the forms of fascism, communism, and absolute monarchy. I do not want to see it foisted on the American people under the alias of "civil rights."

Real civil rights and so-called civil rights should not be confused. Everybody favors human rights. But it is a fraud on the American people to pretend that human rights can long endure without constitutional restraint on the power of government.

The actual power of the Federal Government should not be confused with power longed for by those who would destroy the States as sovereign governments.

USURPATION BY JUDICIARY

There have been a number of instances of attempted and real usurpation of power by the Federal Government, which these pending bills would attempt to legalize, expand, and extend.

The most notorious illustration of this type of usurpation is the May 17, 1954, school segregation decision by the United States Supreme Court. Since that time there have been several other decisions by the Court which I think have wakened people all over the country who previously paid little attention, or cared little, what the result might be in the school segregation cases.

There are two recent cases. One arose in Pennsylvania and one in New York. The Pennsylvania case is *Pennsylvania* v. *Steve Nelson*, decided April 2, 1956, dealing with the right of the State to take action against a Communist. The Supreme Court of the United States ruled that because there was a Federal sedition law, the State of Pennsylvania had no authority in that field. The laws of 42 States were invalidated by the decision. Even the protest of the Department of Justice that the laws of the States did not interfere with enforcement of the Federal law did not stop the Court.

The author of the Federal law, the Honorable HOWARD SMITH, of Virginia, has stated there was no intent embodied in the Federal act to prohibit the States from legislating against sedition.

The second case to which I refer arose when the city of New York dismissed from employment a teacher who had refused to disclose whether he was a Communist when questioned by duly constituted authority. Here again the United States Supreme Court ruled against the power and authority of the local government contained in the charter of the city of New York.

USURPATION BY EXECUTIVE

Now let me refer briefly to some attempts at usurpation of the rights of the States by the executive branch of the Federal Government. Administrators in some Federal departments and agencies have issued directives having the effect of laws which have never been enacted by the Congress.

A specific illustration is that of the Civil Aeronautics Administration issuing a directive last year to withhold Federal funds from

facilities in the construction of airports where segregation of the races is practiced.

There is absolutely no basis in law for this administrative action, but by use of a directive or an edict the administrator effected a result just as though a law had been enacted.

Other attempts at Federal interference from the executive branch with the rights of the individual citizen is demonstrated by the Contracts Compliance Commission. This Commission has dictated that contractors working on Federal projects must employ persons of both the white and Negro races, whether the contractors wish to do so or not. The strength of the Commission lies in the power to withhold contracts, or threatening to do so, if a contractor fails to carry out the dictates of the Commission.

ATTEMPTED USURPATION BY CONGRESS

I can think of no better illustration of attempted usurpation of the rights of the States by the legislative branch of the Federal Government than what is going on here now. I believe that the Congress, by attempting to enact these so-called civil-rights bills, is invading the rights of the States.

NO DOUBT AS TO CONSTITUTION

Wherever a person lives in this country, whatever political faith he holds, whatever he believes in connection with any matter of interest, he has one firm basis for knowing his rights. Those rights are enumerated in the Constitution of the United States. I believe in that document. I believe that it means exactly what it says, no more and no less.

If American citizens cannot believe in the Constitution, and know that it means exactly what it says, no more and no less, then there is no assurance that our representative form of government will continue in this country.

I believe that people all over the country are beginning to realize that steps should be taken to preserve the constitutional guaranties which are being infringed upon in many ways.

I believe we should also take steps to regain for the States some of the powers previously lost in unwarranted assaults on the States by the Federal Government.

STATE OFFICIALS UNDERSTANDING

The administration of laws relating to civil rights is being carried out much more intelligently at the local levels of government than they could ever possibly be administered by edicts handed down from Washington. State officials and county officials know the people and know the problems of those people. Most officials of the Federal Government in Washington know much less about local problems than do the public officials in the States and in the counties.

If these so-called civil-rights bills should be approved, then we must anticipate that the Federal Government, having usurped the authority of local government, will try to send Federal detectives snooping throughout the land. Federal police could be sent into the home of any citizen charged with violating the civil-rights laws.

If there are constitutional proposals here which any of the States wish to enact, I have no objection to that. Every State has the right to enact any constitutional law which has not been specifically delegated to the Federal Government in the Constitution.

On the other hand, I am firmly opposed to the enactment by Congress of laws in fields where the Congress has no authority, or in fields where there is no necessity for action by the Congress.

From my observations, I have gained the strong feeling that most of the States are performing their police duties well. I believe that the individual States are looking after their own problems in the field of civil rights better than any enactment of this Congress could provide for, and better than any commission appointed by the Chief Executive could look after them.

Mr. KNOWLAND. Mr. President, will the Senator from South Carolina yield for a question, with the understanding that he will not lose his right to the floor, and the understanding that it will not be considered a second speech or jeopardize the Senator's right to the floor?

Mr. THURMOND. If unanimous consent is granted, under the conditions which the distinguished Senator has outlined, I will be pleased to yield.

The PRESIDING OFFICER. Is there objection to the request of the Senator from California? The Chair hears none, and it is so ordered.

Mr. KNOWLAND. Mr. President, I shall preface my question by this brief statement of fact, namely, since the House has adopted a sine die adjournment resolution, and there is no fixed period for adjournment, and the Senate can, and in my judgment will, continue in session as long as it is necessary to complete its business, I put these questions in all seriousness to the distinguished Senator from South Carolina:

First. What is the Senator's purpose by his interesting but prolonged remarks? Is it a matter of education of the Senate or of the country?

Second. Is it to establish a record of discussion on the floor of the Senate?

Third. Is it merely to delay a vote on the civil rights bill, which is the pending business?

Fourth. Is it to prevent a final vote on H. R. 6127, the so-called civil rights bill?

Fifth. Is it to make friends and to influence other Senators in the southern position?

Sixth. Is it to emphasize to the Senate the need for a change, beginning in January, of rule XXII?

There may be other reasons, but I should be very much interested—and I believe the Senate would be interested also—if the Senator from South Carolina would agree to indicate the purpose of his prolonged address.

Mr. THURMOND. I would merely say that my purpose in making the extended address is for educational purposes—to educate the Senate and the people of the country. There is no question in my mind that the so-called civil-rights bill violates the Constitution of the United States. I do not believe the Senator was in the Chamber when I spoke earlier and cited a decision pointing out that criminal contempt has been held to be a crime and that under the Constitution of the United States it is provided that a man charged with crime shall get a jury trial.

The so-called compromise bill provides that if a person is sentenced by a judge by being fined more than $300 or imprisoned for more than 45 days, he will get a jury trial. The Constitution does not say that. The Constitution provides that if he is charged with a crime, he shall get a jury trial.

I believe in the Constitution. I believe that the Constitution is clear. I hope the Senator will take the time one of these days—probably he will not have an opportunity soon—to read the address I have made in which I have gone into these matters and have tried to delineate them and point them out for the benefit of the American people, as well as for the benefit of the Senate.

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

Mr. THURMOND. I am confident that the pending bill is a dangerous bill in a number of ways. I have pointed out that it is necessary that every State in the Nation have laws to protect the right to vote. The Senator's own State of California has such laws. I started with the State of Alabama and read the laws for every State. Those laws were confirmed to be accurate by the Library of Congress. I read the State laws beginning with Alabama and ending with Wyoming. Every State in the Nation has laws to protect the right to vote.

I say there is no need for the pending bill. This is a matter that comes under the Constitution, and it should be left to the States. It is a State matter. It is not a Federal matter.

Furthermore, the Federal Government has invaded the field. It has already invaded the field. I believe it made a mistake when it did so.

I should like to invite the attention of the Senator—again I do not believe he was in the Chamber when I referred to it previously—section 594 of chapter 29 of title 18 of the United States Code. That section provides:

> Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

Mr. KNOWLAND. Mr. President, will the Senator yield again under the same conditions?

Mr. THURMOND. That is the Federal law today. If anyone is being denied his right to vote today he has recourse to that statute. If anyone is being denied the right to vote and complains about it, the Justice Department fails to do its duty if it fails to prosecute under that section of the Federal statute. Either that condition exists or there are no just complaints. The Committee on the Judiciary held hearings for months on the question, and it did not have before it one valid complaint. It had some fictitious complaints from a parish in Mississippi. It turned out that they asked a witness to return the next day, but he did not return, and it proved that the whole testimony was a fabrication, according to the chairman of the committee.

Therefore, there are State laws which protect the right to vote, and there is a Federal law which protects the right to vote. Under that act, if a man is tried, he would have a right to trial by jury. Under the so-called compromise, if he is tried, he would not have the right of trial by jury if the sentence were less

than $300 or if the imprisonment were for less than 45 days.

Ninety-nine percent of all the criminal contempt cases would fall within that sphere. I was a circuit court judge for 8 years and heard cases all over South Carolina. I cannot remember the case of even one man who was sentenced by me or by any other circuit court judge in South Carolina for contempt of court for longer than 45 days in jail.

Therefore, the effect of the so-called compromise is to deny to the citizens of South Carolina and of the United States the right to a jury trial, as is guaranteed in several places in the Constitution. That is the reason I have made this extended address. It is to call to the attention of the Senate and to the people of the Nation that the pending bill is a dangerous bill. In my opinion, it is purely a political bill.

Mr. KNOWLAND. Mr. President, will the Senator yield under the same conditions as heretofore stated?

Mr. THURMOND. I yield under the same conditions.

Mr. KNOWLAND. I can assure the Senator, whether we make that proviso in our remarks back and forth, the Senator will be fully protected in his rights to the floor.

Mr. THURMOND. I shall be pleased to yield to the Senator from California under those conditions.

Mr. KNOWLAND. I did listen to the earlier part of the Senator's address. I was in the Chamber at the time. I must confess that for several hours I did get some sleep and was able to freshen up and to change my clothes, and I am now back in the Chamber.

Mr. THURMOND. I notice that the Senator looks very fresh at about 6:45 in the morning.

Mr. KNOWLAND. Yes. I am glad to be here with the Senator. Of course, the question which obviously disturbed a majority of the two Houses of Congress was that the statutes which are now on the statute books were not effective in protecting those constitutional rights. The Senators who felt that way are just as sincere as the Senator from South Carolina. I know the Senator from South Carolina has a deep conviction and is one of the ablest Members of the Senate. However, I refer to the provisions of section 1 of the 15th amendment to the Constitution, which provides:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2 of the 15th amendment reads:

> The Congress shall have power to enforce this article by appropriate legislation.

Both sections point up the fundamental constitutional right of American citizens and clearly underscore the fact that Congress not only has the right, but the responsibility in this field.

The Senator may feel that in his State or perhaps in other States—and I have no doubt it is true in many areas of the South—there is no problem relative to the voting rights of American citizens.

But at least the predominant opinion in Congress indicates that there is also a strong feeling that in many areas—and this may not be related only to the South, for that matter—the full rights under the 15th amendment are not being effectively implemented. It was for that reason that the House, by a vote, I believe, of more than 2 to 1, and the Senate finally by a very substantial majority, passed the bill, which is now going through another legislative process. It finally came back to the Senate floor after the House had concurred and amended the Senate version, as the House had a right to do.

My only point is that obviously the Senate of the United States is going to stay in session and complete work on the proposed legislation. It may sit for the remainder of the week, and it may sit next month and, if necessary, the month after that. I wish to emphasize to the Senator from South Carolina that, so far as the recommendations of the minority leader might be followed—and I know of no difference of opinion so far as the majority is concerned, although I cannot speak for the majority, and I would not attempt to do so—there will be no sine die adjournment resolution adopted by the Senate which would permit Congress to adjourn the first session of the 85th Congress until we have completed the work on the pending legislation, which is the civil-rights bill, and completed the work on the proposed legislation dealing with the mutual aid appropriation bill. Therefore, there is no fixed hour and date of adjournment.

I was wondering, therefore, why the Senator was making his extended address, and that is the reason I asked the questions I asked of him. He said he was making the address for the purpose of an educational campaign, for the benefit of the country and the Senate. I was wondering whether he hoped to prevent passage of the bill or merely delay its passage, or whether he had some other reason in mind.

Mr. THURMOND. In answer to the distinguished Senator, I wish to say that I should be highly pleased if the bill did not pass. I should like to ask the Senator this question: Under the statute which I have just read—and that is not a State statute, but a Federal statute, which provides "whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote as he may choose," and so forth, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both—is there any deficiency in the statute? Is that not as clear as it can be? If anyone interferes with another's right to vote, or intimidates, or if he threatens or coerces, he shall be punished. Is that not what it says? If that is the case, why does the Senator believe we should have another statute on voting added to it? Is this statute deficient? The Senator says the present laws are defective, as I understand. The statute I have read is a criminal statute. It will punish a guilty person by fining him for as much as $1,000 and could send him to jail for a year. In what respect does the Senator believe the statute is defective?

Mr. KNOWLAND. I shall not at this hour get into a detailed legal argument, because I am not a lawyer, but a newspaperman; furthermore, I would not attempt to put myself up against the distinguished Senator from South Carolina, who has been a judge in his own State and has been for a long time a distinguished member of the bar. I have listened to the arguments on the floor of the Senate. I have read a number of the reports and the proceedings, and I have had some discussions with people who are familiar with the circumstances connected with the subject. I do know that those in the Department of Justice who have been concerned with this problem apparently feel that that statute is not effective so far as the constitutional rights of American citizens are concerned.

Secondly, I am not in a position to argue with the Senator relative to what the legal definition of coercion is. I do say to the Senator that I believe there are various forms of coercion, some of which might be very difficult to prove in a court of law, but which might still be equally effective in keeping people from exercising their voting rights.

The coercion might consist of economic pressure, or there might be some difficulty about finding work in a community or there might be the difficulty of a small merchant maintaining his business. It might be very difficult to trace such things to the fact that a person had tried to go to a voting place on voting day to cast his vote. Nevertheless, such coercion could be quite effective in keeping a person from exercising his right to the voting franchise.

It is also true that in the debate which has taken place on the floor of the Senate it was disclosed that in one of the parishes or voting districts in a Southern State which had been mentioned on the floor of the Senate, there had been the situation where certain facts were laid before a grand jury in that particular State, and the facts were very clear, but still no action was taken in that particular situation.

I will say to the Senator that it should be remembered that the bill has now been stripped practically to a voting-rights bill.

Furthermore, I certainly believe that the fundamental right of an American citizen in this day and age should be protected, because every citizen has the right to vote. If that right is assured to a citizen, in time he may help himself secure the other civil rights to which he is entitled and which are guaranteed to him by the 14th amendment. The bill before us, as I say, is primarily a voting-rights bill. Those who have had some responsibility in this field—and I think some knowledge of it also—feel that the procedure outlined in the bill would at least facilitate the exercise of the voting rights of American citizens in all sections of the country.

Mr. THURMOND. I might say to the distinguished Senator that he is one of the ablest Members of the Senate. Even though he is not a lawyer, he knows a

statute when he hears one read. The criminal statute I have read is just as plain as any criminal statute can be. I am in favor of having every qualified voter enjoy the right of franchise. I want to say that in my State every qualified voter has that privilege. No one—white, colored, or anyone else—is denied the right to vote in South Carolina. The statute I have read protects people from being coerced and intimidated and threatened in any way. If there is any violation of law now, a person who is discriminated against may go to the Department of Justice, and under the statute I have read a violator of that statute will be either sent to jail or fined or both. What the proposed compromise would do would be to take away that right of trial by jury.

Mr. KNOWLAND. Mr. President, will the Senator yield under the same conditions?

Mr. THURMOND. I yield under the same conditions.

Mr. KNOWLAND. I will say that both the original bill as passed by the two Houses and the final form now before us are not intended to deprive anyone of his vote, but to encourage the constitutional right of people to enjoy the right to vote. The fact of the matter is that quite a due process procedure is set up. If a person comes forward and alleges that he has been denied the right, there is a procedure set up by which he may go into Federal court, under his constitutional right, under the 15th amendment and the other constitutional rights he has, and make certain allegations. The judge must make certain findings. If he finds the facts are correct, he issues a court order, directed to what we in our State would call the registrar of voters, but what in other States might be the county clerk, or whatever else he might be, and says, in effect, "You are violating the constitutional rights of this man. He is being discriminated against under the laws of this State. Put him on the registration rolls."

If the local official complies with the law and complies with the Constitution, nobody is fined, and nobody goes to jail. It is only if the local official or the local individuals involved in the case ignore the order of the court and, in effect, say that "we will not comply with the order seeking to protect the constitutional rights of American citizens," that the judge may, under either civil contempt, which may be used in most cases, and may in most cases be effective, or under the criminal contempt provisions, impose the penalties.

So this bill is not seeking to punish people. To the contrary, it is seeking to gain for American citizens the very fundamental right to vote. If nobody is denied the right to vote in the State of the Senator from South Carolina, there will not be a single citizen in the State of South Carolina who will be involved in either a civil or criminal contempt. If nobody is being denied the right to vote in any other State, there will not be a single citizen, man or woman, who will be involved in either civil or criminal contempt under this bill. There will not be large numbers of persons who will be fined or jailed for 10 days or 30 days or 45 days, to force compliance with the constitutional rights of American citizens. That is going to be so only if the conditions which the Senator says prevail in his State do not prevail in other areas of the country and large numbers of American citizens are denied their constitutional rights. It seems to me it is all clear and simple. The Senator has nothing to fear in his own State or in any other State, because if nobody is being denied the right to vote, nobody can be punished by either civil or criminal contempt proceedings under the bill.

Mr. THURMOND. I should like to say, in reply to that statement, whether a single person in South Carolina would be affected by the bill or not would not change my opinion about the bill, because the bill as passed by the House affects American citizens everywhere. The bill the Senate passed delineated and made a distinction between civil contempt, the purpose of which is to bring about compliance with an order, and criminal contempt, the purpose of which is to punish for a crime.

A criminal contempt has been held, in a court decision which I cited earlier today, to be a crime. Criminal contempt is a crime. The bill as passed by the House provides for punishment for criminal contempt and provides that a judge can try the case, in his discretion. The defendant does not get a jury trial for a criminal contempt unless the punishment goes beyond 45 days or beyond a $300 fine. I am not concerned about the people of South Carolina violating the voting rights of citizens, because I do not think anybody in South Carolina is violating anyone's voting rights. I presume this bill is aimed chiefly at helping the Negroes, is it not, Senator?

Mr. KNOWLAND. No. The bill would be aimed at any American citizen, without regard to race, creed, or color, whose voting rights under the 15th amendment would be denied.

Mr. THURMOND. As a matter of fact, it is the Negro whom it is chiefly aimed to help. Is that not a fact?

Mr. KNOWLAND. I suppose most allegations of a denial of voting rights come from colored citizens of the United States, but I assume the same situation might apply to Indians, in some instances, or might apply to others who might be entitled, under the Constitution, to the right to vote; but it is not aimed at any one race or one section of the country. The Constitution, as the Senator well knows, and I think would not dispute, applies to all 48 States of the Union, and not merely to a part of the Union.

Mr. THURMOND. I am sure that is correct, but I refer to the practical purpose of the bill. I understood that was so admitted, and one reason why the right of trial by jury was attempted to be taken away was that southern juries would not convict in cases involving the right of Negroes to vote.

For the Senator's information, in my State I would like him to know that in the 1952 election President Eisenhower lacked just a few votes of carrying the State. The Negroes voted in heavy numbers. The Negro newspaper, the Lighthouse and Informer, of Columbia, S. C., published by and for Negroes, bragged about the fact that they were responsible for winning the State for Stevenson. It said that more than 80,000 of them had voted in that election, and that represented about one-fourth of the entire votes cast in that general election. The Negroes of our State comprise only 40 percent of the population. If they voted to the extent of almost one-fourth of all the votes cast in that election—and they probably voted more, because they admitted they cast that many—I think it is indicative that the Negroes are voting in large numbers. Of course, they are not so well qualified to vote as are the white people. I do not know of a Negro in South Carolina who is qualified and wants to vote who is denied that privilege. So Negroes are voting in my State.

Mr. KNOWLAND. I might say to the Senator I was in his State in 1952. I happened to travel with then General Eisenhower, who was a candidate for the presidency before he became President of the United States. I attended meetings with the President-to-be. The point I want to make perfectly clear is that I do not dispute the fact, as stated by the distinguished Senator, that a large number—perhaps a good majority—of the Negro citizens of this country or of his State may be registered Democrats. I think they may continue to vote for the Democratic ticket, so far as that is concerned. They may have been responsible, as the Senator says, for having carried South Carolina for Stevenson——

Mr. THURMOND. That is what they said.

Mr. KNOWLAND. Or, at least, that is what they said; but that would not change my viewpoint in the slightest, as a Republican, if they were entitled as American citizens to vote, even though they were responsible for the defeat of my party in that State. I might say that in the northern areas, the heavily populated areas, with large Negro populations, for the most part Negroes have voted the Democratic ticket, and generally for New Deal candidates, and it certainly is not politically advantageous to my party when they vote that way. That still would not change my viewpoint that, if they are American citizens and if under the Constitution they are entitled to the right of any other citizen to vote, which the Constitution clearly gives them, both the Senate and the House, as well as the executive branch of the Government and the local public officials and the national public officials, have the responsibility to see that they are not denied the right to vote and to exercise their constitutional rights, whether the citizens may be predominantly Democratic, predominantly Republican, or predominantly Independent.

That point is not at issue here. The issue is whether they are entitled, under the qualifications of the State laws, and under the Constitution of the United States, to vote. If they are, they should be assured that every public official who raises his hand to support both the State and National Constitution has the responsibility to see that citizens get the right to vote when they want to exercise it. In this country, we do not

have coerced voting, where citizens have to go to the polls. But if citizens want to do so, they should be allowed to do so, without any direct intimidation or without any of the more subtle, indirect intimidations or coercions which sometimes can be practiced, as the distinguished Senator knows.

Mr. THURMOND. I should like to ask the Senator if he has had evidence presented to him which has convinced him that there is a need for this bill to be passed, in spite of all the laws the States have to protect the right to vote, and in spite of section 594 of the United States criminal code which protects the right to vote. Has the Senator ever had evidence presented to him that convinced him it is necessary to pass the bill, in spite of the laws of the States and the Federal statutes?

Mr. KNOWLAND. I will say to the Senator if I did not feel that it was both necessary and desirable to pass the bill, I would not have supported it. I believe there have been sufficient facts presented to indicate that a bill of this type is both necessary and desirable.

I have never taken the position on the floor, or publicly or privately, in which I have made a blanket indictment and stated that southern juries would not convict, because I have the highest respect for the people of the South, for their responsibilities of citizenship, for their loyalty to this country, and for the fact that they have served in uniform side by side with citizens from other sections of the country in fighting off our enemies in the various struggles in which this Nation has been engaged. I have never suggested that there should be a blanket indictment of a whole people under any circumstances. I do not now say that the facts outlined by the Senator from South Carolina, with respect to his own State, are not correct. Of course, I do not know his State as well as does the Senator from South Carolina, but if he tells me that there are no cases where a person is deprived of his right to vote, where a Negro citizen, if he possesses precisely the same qualifications that would be expected of a white citizen——

Mr. THURMOND. None that I know about.

Mr. KNOWLAND. That he has exactly the same rights to register, exactly the same rights to vote, I take the Senator's word for it, because I have great respect for him. I will say, however, that in the facts presented by the Attorney General's office before the committee, relative to another State in the broad general area of the South—I might say the same thing might apply in an area of the North or the West, for that matter, because what we are seeking to protect is the rights of American citizens in all 48 States of the Union—it was shown that large numbers of persons who had been registered were purged from the registration rolls. The predominant number, if not all of the purgees, were members of the Negro race, with very few, if any, members of the white race. Purely on the law of averages, to a reasonable man, one would not have to be a lawyer to know that it does not seem to be a matter of chance. Then when they sought to re-register, according to the facts presented, the local registrar indicated, though there were several thousand of them, he could not register more than 50 a day. That meant those persons had to stand in line for long periods of time, which would naturally be a discouraging thing in trying to get back on the registration rolls.

There was used the apparently rather interesting and novel provision of verbal question. I doubt very much whether many, if any, Members of the Senate could have answered some of the questions which were asked. If a question was answered one way, that apparently was not the right answer. If the question was answered the other way, which any reasonable person might have done, that apparently was not the right answer. Perhaps the same position would have been taken by the local registrar if the citizen involved had been of any other race, but, again, to a reasonable person it seems that there was at least an effort made to discourage American citizens from exercising the right of franchise.

I again reiterate that, to the best of my knowledge and belief, that occurrence did not take place in the State of South Carolina.

The Senator has made a very fine statement of the rights the citizens of his State enjoy. I think all Americans will rejoice in that fact. I want to say there is nothing in the proposal before the Senate which will in the least change the power of the States to prescribe the qualifications of their voters. They have that right under our Federal system. I think, however, the States have the obligation not merely to give lip service to, but to follow both the letter and the spirit of the Constitution, and that whenever such qualifications are prescribed, whatever they may be, they should be applied impartially and equitably to every American citizen, regardless of his race, color, creed, or previous condition of servitude.

Those are the words of the Constitution. Those are the words that every citizen occupying a position as a registrar, a county clerk, or a local voting commissioner has a full obligation to comply with. Such persons should not apply one rule to one group of citizens and a different rule to a different group of citizens. If they will apply the laws with equity and with impartiality, then they have nothing to fear in the slightest in the way of either civil or criminal contempt under this bill, at least in my judgment.

Mr. THURMOND. I should like to ask the Senator from California one more question, and with that I will desist.

Although the Senator is not a lawyer, he is one of the best read men in the United States. I imagine he is an expert on the Constitution, also, because he is a very deep student.

I wonder how the Senator could agree to this compromise, which would deprive people in criminal contempt cases of the right to a trial by jury, when the Constitution is so clear on that point?

Mr. KNOWLAND. I will say to the Senator that I will leave the matter to the lawyers, to debate later the specific point which the Senator mentions. I, at least, have heard of no section of the country where there is a provision for a trial by jury in an equity proceeding where there is a contempt of the court.

Mr. THURMOND. I am speaking of criminal contempt.

Mr. KNOWLAND. I know, but I am speaking also of a contempt of the court in carrying out its order in an equity proceeding.

Mr. THURMOND. In reply to that I will say to the Senator I agree that in civil contempt cases under the present law the court has the right to use its power to bring about compliance with an order, in civil contempt cases. However, I am speaking of criminal contempt cases, which are provided for in the compromise bill. The bill provides for criminal contempt actions.

Criminal contempt is a crime. I have here a decision which sustains that point. Since criminal contempt is a crime, there is a right to a trial by jury.

The Constitution of the United States in article III, section 2, says this:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *.

The sixth amendment reads:

> In all criminal prosecutions—

That is what we are referring to. We refer to a criminal prosecution for criminal contempt. It is a prosecution by the judge, who is the prosecutor, the legislature, the judge and the jury.

The court has held that criminal contempt is a crime, and the Constitution makes reference to all criminal prosecutions. We refer here to a criminal prosecution.

The sixth amendment says:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,* * *.

And so forth.

In the seventh amendment to the Constitution there is also a reference to a jury trial. The amendment I have read is exactly to the point.

If the Senator had provided in the compromise bill that the judge could impose a sentence of imprisonment for 1 day—not 45 days, but even 1 day—or a fine of even $1 in a criminal-contempt case, he would be giving the judge the power to try a man without a jury in violation of the Constitution, even though the punishment would be negligible.

What I am opposed to is the fact that the compromise bill, the way it is written and the way it has come to the Senate, violates the Constitution of the United States. I am vitally concerned about that.

Mr. KNOWLAND. If the Senator will yield further, then I shall not interrupt him any more.

All I can say to the distinguished Senator from South Carolina is that the highest law officers of the Government of the United States are the Attorney General of the United States and representatives of the Department of Justice.

They, too, have sworn to uphold the Constitution of the United States. The most able lawyers in the Department of Justice have looked over the proposed legislation, as well. In their judgment, it is constitutional and it does not violate the Constitution of the United States.

The Senator is entitled, of course, to make the assertion that in his judgment the provision is not constitutional. Such arguments come up even before the Supreme Court of the United States, as the distinguished Senator knows, from time to time, as well as before other courts. Sometimes the judges can agree by a unanimous vote as to what they think is constitutional or what they think is unconstitutional. However, over the long period of our history there have been many notable cases relative to the constitutionality of some act of Congress or the constitutional rights of some individual as to which the Supreme Court of the United States, which is the highest judicial tribunal of the land, has divided on a 5-to-4 decision.

The Senator's assertion that the provision is not constitutional—I am sure the Senator would be the first to admit—does not make it unconstitutional. I quite admit that the assertion of any qualified lawyer on this side, who might make the assertion the provision was constitutional, would not, by that assertion, make it so. Nor would the opinion of the Attorney General make it so.

At least I do not want the record to show that merely by having the Senator make the assertion that in his judgment it is not constitutional, necessarily, ipso facto, that assertion makes a fact.

Mr. THURMOND. Of course, we remember also that the Attorney General in the original bill wanted to transfer these matters to the equity side of the court to deprive citizens of the right of jury trial. We have to keep that in mind.

Mr. KNOWLAND. If the distinguished Senator will yield further, I wish to thank him for his courtesy in yielding. I hope he has enjoyed our discussion as much as I have. I hope perhaps it has been a brief respite to him, under all the circumstances. I would stay to listen to the Senator, but I have a breakfast engagement with the President at the White House. I know under those circumstances the distinguished Senator will excuse me.

Mr. THURMOND. It is a pleasure to yield to the distinguished Senator, for whom I have such high admiration.

Mr. President, I continue to read my statement:

BILL OF RIGHTS GUARANTIES

Before taking up specific provisions of several of the bills pending before the committee, I should like to read for you two of the basic provisions in the Bill of Rights.

The ninth amendment to the Constitution provides:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

The 10th amendment to the Constitution provides:

"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."

Those last two amendments of the Bill of Rights make clear the intent of the Founding Fathers. Their intent was that all rights not specifically listed, and all powers not specifically delegated to the Federal Government, would be held inalienable by the States, and the people.

BILL OF RIGHTS UNALTERED

This basic concept of the Bill of Rights has never been constitutionally amended, no matter what the Federal courts have done, no matter what the executive branch of the Federal Government has done, and no matter what the Congress might have done or attempted to do in the past. The people and the States still retain all rights not specifically delegated to the Federal Government.

Let us also consider these proposals from a practical standpoint.

What could be accomplished by a Federal law embodying provisions which are already on the statute books of the States that cannot be accomplished by the State laws? I fail to see that any benefit could come from the enactment of Federal laws duplicating State statutes which guarantee the rights of citizens. Certainly the enactment of still other laws not approved by the States could result only in greater unrest than has been created by the recent decisions of the Federal courts.

MR. DOOLEY WAS RIGHT

The truth is very much as Mr. Dooley, the writer-philosopher, stated it many years ago, that the Supreme Court follows the election returns. If he were alive today, I believe Mr. Dooley would note also that the election returns follow the Supreme Court.

And now it looks as if some people are trying to follow both the Supreme Court and the election returns.

Having made these general comments, I would like to comment specifically on some of the pending proposals. First, on the proposal for the establishment of a Commission on Civil Rights.

COMMISSION UNNEEDED

There is absolutely no reason for the establishment of such a commission. The Congress and its committees can perform all of the investigative functions which would come within the sphere of constitutional authority.

I do not believe the members of any commission, however established, could represent the views of the people of this country as well as the Members of Congress can. I hope that the members of this committee and the Members of the Congress will not permit themselves to be persuaded that anyone else can look after the problems of the people any better, or as well, as the Congress can.

Furthermore, there is no justification for an investigation in this field.

I hope this committee will recommend against the establishment of such a commission.

Another bill would provide for an additional Assistant Attorney General to head a given by the Attorney General last year bepartment. I have searched the testimony given by the Attorney General last year before the committees of the Congress with regard to this proposal, and I have found no valid reason why an additional Assistant Attorney General is needed.

I can understand how an additional Assistant Attorney General might be needed if the Congress were to approve a Civil Rights Division and enact some of the other proposals in the so-called civil-rights bills. But they are proposals not dealing with criminal offenses—they deal with efforts of the Justice Department to enter into civil actions against citizens.

If the Justice Department is permitted to go into the various States to stir up and agitate persons to seek injunctions and to enter suits against their neighbors, then the Attorney General might need another assistant. However, the Justice Department should avoid civil litigation, instead of seeking to promote it.

I hope the members of this committee will recognize this proposal as one which could turn neighbor against neighbor, and will treat it as it deserves by voting against it.

WORSE THAN EX POST FACTO

Another proposal of the so-called civil-rights bills is closely related to the one I have just discussed. It would provide that—

"Whenever any persons have engaged or about to engage in any acts or practices which would give rise to a cause of action * * * the Attorney General may institute for the United States, or in the name of the United States but for the benefit of the real party in interest, a civil action or other proper proceeding or redress or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order."

Now that proposal is one which I would label as even more insidious than any ex post facto law which could possibly be imagined.

An ex post facto law would at least apply to some real act committed by a person which was not in violation of law at the time. The point is, however, in such instance the person would actually have committed the act.

This proposal would permit the Justice Department to secure an injunction from a Federal judge or to institute a civil suit on behalf of some person against a second person when the latter had committed no act at all. An injunction might be secured from a Federal judge charging a violation of the law without any evidence that a person even intended to do so.

How any person could support by oath a charge as to whether another person was about to engage in violating the law is beyond my understanding.

Many of the pioneers who settled this new continent came because they wanted to escape the tyranny of European despots. They wanted their families to live in a new land where everybody could be guaranteed the right to trial by jury, instead of the decrees of dictators.

Congress, as the directly elected representatives of the people, should be the last to consider depriving the people of jury trials. We should never consider it at all. But, if this proposal to strengthen the civil-rights statutes is approved, that would be its effect.

AGENTS COULD MEDDLE

Under this provision, the Attorney General could dispatch his agents throughout the land. They would be empowered to meddle with private business, police elections, intervene in private lawsuits, and breed litigation generally. They would keep our people in a constant state of apprehension and harassment. Liberty quickly perishes under such government, as we have seen it perish in foreign nations.

A further provision of that same proposal would permit the bypassing of State authorities in such cases. The Federal district courts would take over original jurisdiction, regardless of administrative remedies, and the right of appeal to the State courts.

STATE COURTS STRIPPED

This could be a step toward future elimination of the State courts altogether. I do not believe the Congress has, or should want, the power to strip our State courts of authority and vest the Federal courts with that authority.

Still another proposal among the so-called civil-rights bills would "provide a means of further securing and protecting the right to vote." I have had a search made of the laws of all 48 States and the right to vote is protected by law in every State.

SOUTH CAROLINA CONSTITUTION PROTECTS VOTER

In South Carolina, my own State, the constitution of 1895 provides in article III, section 5, that the general assembly shall provide by law for crimes against the election laws and, further, for right of appeal to the State supreme court for any person denied registration.

The South Carolina election statute spells out the right of appeal to the State supreme court. It also requires a special session of the court if no session is scheduled between the time of an appeal and the next election.

Article II, section 15 of South Carolina's constitution, provides that no power, civil or military, shall at any time prevent the free exercise of the right of suffrage in the State.

In pursuance of the constitutional provisions, the South Carolina General Assembly has passed laws to punish anyone who shall threaten, mistreat, or abuse any voter with a view to control or intimidate him in the free exercise of his right of suffrage. Anyone who violates any of the provisions in regard to general, special, or primary elections, is subject to a fine and/or imprisonment.

In this proposed Federal bill to "protect the right to vote," a person could be prosecuted or an injunction obtained against him based on surmise as to what he might be about to do. The bill says that the Attorney General may institute proceedings against a person who has engaged or "is about to engage in" any act or practice which would deprive any other person of any right or privilege concerned with voting.

UNCONSTITUTIONAL AMENDING

I believe the effect of enactment of such legislation as these proposals would be to alter our form of government, without following the procedures established by the Constitution.

I believe the effect of enacting these bills into law would be to take from the States power and authority guaranteed to them by the Constitution.

In recent years there have been more and more assaults by the Federal Government on the rights of the States, as the Federal Government has seized power held by the States. In many instances, I believe, this has been done without a constitutional basis.

The States have lost prestige. But more important, the States have lost a part of their sovereignty whenever the Federal Government has taken over additional responsibilities. That loss might seem unimportant at the time, but gradually it could become a major part of the sovereignty of the States.

Officials of the Federal Government, whether in the executive, legislative, or the judicial branch, should not forget to whom they owe their allegiance. Each of us owes his allegiance to the Constitution and to the people—not to any agency, department, or person. We have taken an oath to support and defend the Constitution.

We must take into account the facts as they really are, and not be panicked by the organized pressures which so often beset public officials.

STATES CREATED UNION

We must not lose sight of the fact that the States created the Federal Union; the Federal Government did not create the States.

All of the powers held by the Federal Government were delegated to it by the States in the Constitution. The Federal Government had no power, and should have no power, which was not granted by the States in the Constitution.

If this Congress approves the legislation embodied in the bills pending before the committee, it will be an unwarranted attempt to seize power not rightfully held by the Congress or by any branch of the Federal Government.

I hope this committee will consider these facts and recommend the disapproval of these bills.

Mr. President, that was the statement I made before the Judiciary Committee of the House of Representatives on February 26.

Mr. President, on August 6 I made my third address on the floor of the Senate in which I voiced my vigorous objections to a number of provisions contained in H. R. 6127, as amended by the Senate, which was the least obnoxious of all the many obnoxious forms of this bill.

I shall now repeat my several objections to this milder form of the bill as I stated them on August 6. These were my words at that time:

Mr. President, I am opposed to the creation of a Commission on Civil Rights as proposed in part I of H. R. 6127.

To begin with, there is absolutely no need or reason for the establishment of such a Commission. If there were any necessity for an investigation in the field of civil rights, such an investigation should be conducted by the States or by an appropriate committee of the Congress, acting within the jurisdiction of Congressional authority. It should not be done by a commission.

I also object to part I of H. R. 6127 because of the fact that it places duties upon the Commission and endows it with powers which no governmental commission should have.

In fact, Mr. President, the language of the bill proposing to establish this Commission is so broad and so general that it may encompass more evils than have yet been detected in it.

Under its duties and powers the Commission would be able to subpena citizens to appear before it to answer questions on many subjects outside the scope of elections and voting rights.

Section 104 (a) provides the Commission shall—

"(1) Investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based."

Mr. President, the bill, in part IV, contains an additional protection of the voting right of citizens above and beyond present State and Federal laws. Provision is made for enforcement of part IV, and there were already sufficient enforcement provisions to carry out the intent of the existing State and Federal laws. I do not see how a commission could enhance officers nor the powers of law enforcement officers nor the enforcement and punitive authority of the courts.

I can see no valid reason why a commission should be created, in addition to the legal enforcement procedures, unless the purpose is for the Commission to stir up litigation among our people.

This bill has been advertised, promoted, any ballyhooed as a right-to-vote bill. However, I want to cite two paragraphs which give broad authority for investigations other than alleged violations of a person's right to vote.

Section 104 (a) provides the Commission shall—

"(2) Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

Instead of limiting the power of the Commission, these two paragraphs provide it with carte blanche authority to probe into and meddle into every phase of the relations existing between individuals which the Commission and members of its staff could conjure up.

I want to call particular attention to a divergence in language between paragraphs 2 and 3. Paragraph 2 refers to a study of "legal developments constituting a denial of equal protection." Paragraph 3 says "appraise the laws and policies of the Federal Government with respect to equal protection."

The significant thing here is the omission of the specific intent of paragraph 2. Although the language of paragraph 2 is obscure and omits a governmental reference, it obviously must refer to State and local governments, else it would be redundant and have no meaning at all.

Also, as I pointed out, investigations conducted under paragraphs 2 and 3 could go far afield from the question of voting rights. The Commission could exert its efforts toward bringing about integration of the races in the schools, and elsewhere, under the authorization of these two paragraphs. Combining its authority to investigate on an unlimited scale and its authority to force witnesses to answer questions, the Commission would have a powerful weapon.

Mr. President, I do not believe the people of this country realize the virtually unlimited powers of inquiry which would be placed in the hands of this political Commission. While the Commission would have no power to implement its desires, I do not believe the people of this country want such a totalitarian type of persuasion imposed upon them.

Part I of H. R. 6127 purports to create a Civil Rights Commission. Actually, it would create a traveling investigation commission.

Section 103 (b) of part I also would place tremendous power within the grasp of the Attorney General with reference to members of the Commission "otherwise in the service of the Government." The clear implication is that whoever drafted this scheme to send traveling agents over the country intended to make use of certain members of the executive branch of the Federal Government. I don't believe it would be necessary to look further than the Justice Department to determine where Commission members already in Government service would be secured. By placing his employees on the Commission, the Attorney General would transform the traveling agents into an additional investigative arm of the Justice Department.

Mr. President, I next call attention to the potential abuse found in section 102 (g) under the innocuous title, "Rules of Procedure of the Commission." That section provides that "no evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than 1 year."

In an editorial of July 26, 1957, the Washington Post very correctly pointed out how this section could be used to imprison reporters and other citizens for disclosure of what a witness might voluntarily tell them. This editorial provides a penetrating and enlightening criticism of this section. Because of its pertinency and fine analysis, I shall read the last three paragraphs of the editorial which is entitled "Open Rights Hearings," which states:

"The bill contains an invitation to the Commission to operate behind closed doors.

It provides that 'if the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall * * * receive such evidence or testimony in executive session. * * *" Some closed sessions may be necessary to avoid unfair reflections upon individuals, but these should certainly be an exception to the general rule. In our opinion, this section ought to be rewritten in more positive vein to provide that sessions of the Commission should be open to the public, unless it should find that closed hearings were essential to avoid unfairness.

"The House also wrote into the bill a dangerous section providing for the fining or imprisonment for not more than 1 year of anyone who might 'release or use in public,' without the consent of the Commission, any testimony taken behind closed doors. If the Commission should choose to operate under cover, without any valid reason to do so, newspaper reporters and other citizens could be jailed for disclosure of what a witness might voluntarily tell them. This is a penalty that has been shunned even in matters affecting national security. Such a provision is an invitation to abuse and a serious menace to the right of the people to know about the activities of governmental agencies.

"It is well to remember that this would not be merely a study commission. In addition it would be under obligation to investigate allegations that persons were being deprived of their rights under the 14th and 15th amendments. It could subpena witnesses and documents and appeal to the courts for enforcement of such edicts. Its powers would be such that it should be held to scrupulous rules of fairness. To encourage the Commission to operate in secret, and then to penalize news mediums and citizens for disclosing what should have been public in the first place, would be the sort of mistake that Congress ought to avoid at the outset."

Mr. President, I think the points made in the editorial are clear and valid. Secrecy in the activities of such a Commission could only lead to a denial of the rights of an individual rather than to protection of his rights.

Another subject which must not be passed over is the subpena power of the Commission. Section 105 (f) provides that "Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission."

Mr. President, many of the committees and special committees of the Congress do not have this power. The Truman Commission on Civil Rights did not have it. The subpena is a punitive measure, generally reserved for penal process whereby powers are granted to force testimony which would not otherwise be available. If the proposed Commission were simply a factfinding Commission and nonpolitical, the extreme power to force testimony by the use of a subpena would not be needed.

Neither would the power contained in section 105 (g) which provides that Federal courts shall have the power, upon application by the Attorney General, to issue "an order requiring" a witness to answer a subpena of the Commission and "any failure to obey such order of the court may be punished by said court as a contempt thereof."

The power of subpena in the hands of a political commission and the additional power to enforce its subpenas by court order diverge from the authority of the traditional American factfinding commission.

I look with suspicion upon such a Commission so endowed with authority, and I object to its establishment.

Mr. President, I want to discuss another reason, briefly, why I would be opposed to the establishment of the Commission proposed in part 1 of H. R. 6127. Every appropriation bill which has come before the Senate this year has been reduced by the Senate below the budget request. The people of this country have called upon the Members of Congress to reduce the costs of government, not to increase them by creating new agencies or commissions.

The advocates of the Commission might argue that the cost of its operation would not be great, but nowhere in the records of the hearings have I found an estimate of what the total cost would be. If the Commission were to exist only for the 2 years provided in the bill, the compensation and per diem allowance of Commission members would amount to more than a quarter of a million dollars, not counting their travel allowances.

Since there is no limitation on the number of personnel which might be appointed by the Commission, there is no way to estimate the ultimate cost of personnel salaries and expenses. Since the Commission is designed to travel over the country at will, very heavy travel expenses undoubtedly would be incurred.

The taxpayers would never know how many of their tax dollars were wasted by virtue of the seemingly innocuous language in section 105 (e). Unknown, concealed costs are not, however, the only dangers lurking in that subsection. A serious departure from sound legislative procedure is also involved.

In the past, when creating an agency or commission, Congress retained control of its creation by the appropriation power. This is a wonderful check, Mr. President, against the abuse or misuse of Commission authority. Scrupulous care should be taken to preserve it.

However, section 105 (e) provides that "all Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties."

Thus the Civil Rights Commission could call on the other governmental agencies to perform many of its tasks. Congressional control over the Commission would be much less than if the Commission had to depend on its own appropriations and would not be permitted to use the resources of other agencies. Once the Commission is created, only another law can check its activity during the period of its existence.

Another thing that concerns me about this Commission is the fact that once a Government agency or commission is established, nothing else on earth so nearly approaches eternal existence as that Government agency or commission. Mr. President, I feel that the 2-year limitation placed upon the Commission in this bill would simply be a starting point, and the people of this country should realize that at this time.

With further reference to section 104 (a), I want to point out the use of the mandatory word shall. This word requires the Commission to investigate all sworn allegations submitted to the Commission of any citizen allegedly being deprived of his right to vote.

But the provision neglects to require that such allegations be submitted by parties in interest—not simply by some meddler who seeks to create trouble between other persons. This is another provision of this bill similar to section 131 (c) which would permit the Attorney General to make the United States a party to a case without the consent of the party actually involved.

Another objection to 104 (a) is that under this provision a person could make an allegation to the Commission against a person who was not even a citizen of the same State. Even so, under the mandatory language of section 104 (a), the Commission would be required to make an investigation of the charges.

Since the Commission is limited by section 102 (k) to subpenaing witnesses to hearings only within the State of residence of the witness, there would be no opportunity in such a situation for the accused to confront his accuser. Charges against a person should not be accepted by the Commission unless the accuser is a citizen of the same State as the person he is charging with a violation of the law.

Also, Mr. President, once the Commission has received the sworn allegation, there is no requirement that other testimony received relating to the allegation be taken under oath. Failure to make all persons giving testimony subject to perjury prosecutions in the event they testify to falsehoods would surely destroy the value of any such testimony received.

The Commission could and might adopt a rule to require sworn testimony; but I should not like to see the Senate leave that point to the discretion of the Commission because, in my judgment, the Congress should require that practice to be followed.

Mr. President, as I stated earlier, it is my view that an inquiry into the field of civil rights, or so-called civil rights, is entirely unnecessary at this time. The laws of the States and the Federal laws are being enforced effectively.

Should there come a time when information might be needed on this subject, the Congress should not delegate its authority to a commission. In such a delicate and sensitive area, the Congress should proceed with deliberation and care. The appropriate committees of the Congress itself should hold hearings limited to the jurisdiction of the Congress, and the Congress should make its own determination as to the need for legislation.

There is no present indication that any such study will be needed.

Part II of the bill still provides for the appointment of one additional Assistant Attorney General in the Justice Department. As I have stated in previous addresses, there is absolutely no need for an additional Attorney General to be appointed at a cost to the taxpayers of $20,000 per year.

Of course, that would merely be a small part of the total cost because a large staff of lawyers would also be employed.

The other provisions of the bill do not necessitate the establishment of a civil-rights division in the Justice Department, because there is no indication there would be any substantial increase in such cases with which the Department should be concerned.

As a matter of fact, even those who have advocated passage of H. R. 6127 have admitted time and again here in the Senate that there has been a steady decrease in the number of civil-rights cases throughout the country.

Since there has been a decrease in civil-rights cases, and since there is no indication that any increase should be expected, I can see absolutely no reason for the expansion of the present civil-rights section of the Justice Department into a Civil Rights Division with an additional Assistant Attorney General in charge.

Mr. President, in view of the fact that sufficient justification has not been presented for the appointment of an additional Assistant Attorney General, I hope the Senate will not approve such additional expenditures as would be required for this purpose. In my opinion, the Attorney General has failed entirely to show a need for an additional assistant.

Part III of the bill as amended has been thoroughly discussed and I shall not dwell on that at this time.

Part IV, which is the section dealing with what the advocates of the bill have said was the entire purpose of the bill, still has provisions which are objectionable to me. Section 131 (c) still contains language which, to me, borders on an effort at thought control instead of providing an unneeded additional

guaranty of the right to vote. Also, it gives the Attorney General undue authority. The section reads as follows:

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person."

As long ago as February 26, when I appeared before the special Judiciary Subcommittee of the House of Representatives to testify against pending civil-rights bills, I expressed my opposition to the language contained in the section I have just quoted. I do not believe it possible for the Attorney General, for any of his representatives, or for anybody else to determine what is in another person's mind and whether he is about to engage in some violation of the law.

If the Attorney General should attempt to ascertain what is going on in the minds of other persons, he will need soothsayers and prophets instead of an additional Attorney General.

I object to this language because I do not believe it possible for any witness to testify truthfully that he knows another person was about to violate the law, unless some overt action had been taken by the accused person.

Mr. President, an attempt to apply this provision against American citizens would be completely out of keeping with the guaranties of personal freedom contained in the Constitution and in the Bill of Rights.

I object also to the authority granted the Attorney General in section (c) to "institute for the United States, or in the name of the United States," a civil action or other court proceeding on behalf of a person without the consent of that person. Individuals have adequate legal remedies which they themselves may institute on their own behalf. It is not necessary to give the Attorney General this extreme power of absolute discretion to be exercised as he desires on behalf of some individual who may not wish to take court action or to have anybody else take such action on his behalf.

If one of the duties of the proposed additional Assistant Attorney General would be to seek out persons and insist upon entering the courts on their behalf, this provision, combined with part II, provides another objection to the appointment of an Assistant Attorney General.

The American system has never condoned the idea that a third party should stir up trouble between two other persons. Instead, the American system abhors troublemakers, especially when troublemaking takes the form of barratry. This form of troublemaking has been looked down upon much in the same way other lawyers look down upon their colleagues who chase ambulances.

The United States Government should not be placed in this position of disrepute, and certainly it should not be called upon to bear the expenses of such court proceedings.

Another particularly obnoxious provision is found in section 131 (d) which provides that—

"(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

No legitimate reason has been presented as to why administrative remedies and remedies provided in the courts of the States, should not be exhausted prior to Federal district courts taking jurisdiction in election-law violations.

This could be a step toward future elimination of the State courts altogether. I do not believe the Congress has, or should want, the power to strip our State courts of authority and to vest it in the Federal courts. Some of the advocates of H. R. 6127 have spoken out strongly on behalf of the Federal courts during the debate on the jury-trial amendment. I wish they were equally as vehement in their defense of our State courts.

There is no reason to permit an individual to bypass the administrative agencies of his own State and the courts of his own State in favor of a Federal court when the matter involved is principally a State matter. If a person should be dissatisfied with the results obtained in the State agency and courts, he could then appeal from the decision. But until he has exhausted established remedies, he should not be permitted to bypass them.

The laws of all the 48 States contain provisions protecting the right to vote. No additional protection is needed beyond existing State and Federal laws.

In my own State of South Carolina, the constitution of 1895 required the general assembly to provide by law for the punishment of crimes against the election laws. That has been done. The State constitution further required a provision to permit a person to appeal to the State supreme court if he should be denied registration. The election law spells out the right of appeal to the State supreme court, and requires that the court hold a special session if one is not scheduled between the time of an appeal and the next election.

South Carolina's constitution also provides that no power, civil or military, shall at any time prevent the free exercise of the right of suffrage in the State. In pursuance of this constitutional provision, the South Carolina General Assembly has enacted laws for the punishment of anyone who threatens, mistreats, or abuses any voter in an effort to control or intimidate him in the free exercise of his right of suffrage. These laws apply to all elections. Anyone who violates these laws is subject to a fine and/or imprisonment.

Mr. President, in view of the existing laws of the States and the existing Federal laws, I now contend, as I have contended since the so-called civil-rights bills were introduced, that any qualified voter in the United States is fully protected in his right of suffrage.

This bill, H. R. 6127, is unnecessary. It is an encroachment upon the rights of the States, and it infringes upon the rights of individuals when the Attorney General is empowered to take action on the behalf of any person without his consent.

I believe this bill should be rejected, because of the various unnecessary and unconstitutional provisions which I have discussed.

Part V of the bill, which was added to insure and provide for trial by jury in proceedings to punish criminal contempts, is an amendment which I approved and voted for, but I do not consider it as strong as desirable. In my opinion, the bill which the senior Senators from Mississippi and Virginia and I introduced in the Senate last March should be approved, to provide best for the right of trial by jury for every American citizen.

However, the addition of part V to the bill makes it much less objectionable than the bill would have been without the assurance of trial by jury in criminal-contempt proceedings contained in part V.

Mr. President, I want to reiterate my previous assertions that this bill is unnecessary, and in some respects unconstitutional.

H. R. 6127 in its original form carried the label of being a right-to-vote bill; but when we unwrapped the package here in the Senate and examined it carefully, as we have, we found the label was entirely misleading.

The so-called civil-rights bill should have been entitled "A bill to empower the Attorney General to deprive certain citizens of their right to trial by jury." Also, it should have been labeled as an implement intended to be used to force integration of the races in the public schools.

Happily, we examined the contents of the package, stripped off the old label, and advertised the deception so that every citizen could recognize the dangers wrapped in the package.

The amendments which have been enacted have reduced the power which was intended to be placed in the hands of the Attorney General. They have removed the authority for the use of military forces in cases of alleged civil-rights violations. They have made the proposed Commission answerable to Congress as well as to the President, and have provided for the members to be subject to confirmation by the Senate. They have better defined and narrowed the powers of Federal judges in contempt proceedings. All of these amendments have vastly ameliorated the original obnoxiousness of H. R. 6127. However, nothing could entirely remove the objectionable features of this packaged bill of goods, submitted to the American people under a deceptive label.

I shall vote against passage of H. R. 6127, because I believe that in so doing I shall be casting a vote for the preservation of our liberties, and for the preservation of constitutional government in this country.

Mr. President, that was the statement which I made on the floor of the Senate in which I voiced vigorous objection to a number of provisions contained in H. R. 6127 as amended by the Senate. Of course, the Senate bill was the least obnoxious of all the many obnoxious forms of the bill.

Mr. President, I now wish to discuss part IV of H. R. 6127 and the 15th amendment to the Constitution.

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

Part IV of the proposed civil-rights bill confers on the Attorney General the right to bring civil action and seek an injunction in a Federal district in the name of the United States if he believes any person is violating or about to violate either of two laws presently existing for the protection of voters.

Let us examine the two laws the Attorney General seeks to enforce by civil suit or injunction.

The first of these laws, presently appearing as section 2004 of the Revised Statutes of 1874—title 42, United States Code, section 1971—is actually section 1 of the old Enforcement Act of May 31, 1870—Sixteenth United States Statutes at Large, page 140. This bill, S. 810 and H. R. 1293, passed the respective Houses of Congress without debate on its merits under the rule on motion. This bill as it passed Congress contained in its second section a definite provision that civil damages to the aggrieved might be recovered through civil suit in the Federal courts. Furthermore, it provided for the obtaining of political office by civil suit through quo warrant proceedings in Federal courts.

On May 20, 1870, an attempt was made in the Senate to allow third parties to sue in behalf of the aggrieved party. This is the same proposal contained in the present bill whereby the Attorney General would be allowed to bring civil action and seek injunctions. Even this radical 41st Congress would not accept any such proposition providing double penalties. The proposition in the present bill would provide double penalties because present law contained in both title 18, Section 242—Deprivation of Rights Under Color of Law—and title 42, Section 1971—Race, Color, or Previous Condition Not To Affect Right to Vote—afford appropriate criminal and civil remedy.

To show how the Senate in 1870 rejected such an idea of double penalties, let us examine the colloquy in the Senate on the proposal to allow someone other than the aggrieved to bring civil suit—Congressional Globe, volume 93, 41st Congress, 2d session, 1870, pages 3563-3564:

Mr. WARNER. I understand I am in order in offering to amend the amendment.

The PRESIDING OFFICER. The amendment to the amendment is in order.

Mr. WARNER. I will repeat it, then, for the information of the Senate. I move to amend the Senate bill in section 2, line 15, by striking out the words "the person aggrieved thereby" and inserting "any person who shall sue for the same."

Mr. EDMUNDS. I hope that this amendment will not be agreed to. There are now two views taken of this branch of the bill as it stands. One is that there ought not to be any provision at all for the party aggrieved; that it ought all to be out; and another view is that taken by my friend from Alabama, that it does not go far enough; that we ought not to confine this redress to the person whose vote is refused. The committee considered both those views, and thought, in analogy to State legislation and to the simple proprieties of justice, that this middle ground was the true one.

If a voter is deprived of his right to vote by the misconduct of an official, it is a personal grievance to him, an actionable injury, for which all civilized laws give him redress in some form. It is true that in most States and countries no specific amount of damages is allowed, for the reason that it is thought safer, inasmuch as that might be a matter of speculation, to leave it under the circumstances of each case to be great or small, as a jury shall think it wise to make it. But in applying the 15th amendment, which is intended to secure the rights of a large class of the population of the United States, and to secure their rights in courts which may be supposed not to be altogether friendly, by juries who may be supposed not to be altogether friendly, in communities where the local officers are found to be those who deny the rights that the 15th amendment secures, we thought it wise not to leave it to an unfriendly jury to give only 1 penny damages, if a man under the 15th amendment was deprived of a right he had, but to fix the sum the party should be entitled to recover as his damages; and on the other hand, in a community where juries might be very favorable to the party aggrieved, we thought it right to impose upon juries a limit above which they ought not to go; so that they should not either give no damages at all nor excessive damages.

This branch of the section, therefore, is framed upon that theory. It is to give to the person aggrieved, as damages for the deprivation of his rights as a citizen, a private right of his own, a right to sue, which all laws give; it would not be necessary to put that into the statute—he would have the right of action; but to fix the amount for each specific wrong to him whch he should be entitled to recover. Then we provide in another part of the bill, and perhaps in the same section, just as we ought to do if we are to have any law at all, that the officer guilty of this wrong to the citizen is also guilty of an offense against the public, a criminal misdemeanor, for which he may be indicted and fined, of course within certain limits, in the discretion of the court. I submit to my friend from Alabama whether, on the whole, this middle ground, which is defensible both by philosophy and by analogy, is not the true one.

Mr. WARNER. I desire to make this bill as effective for the purpose intended as possible. The persons who will be aggrieved, particularly in our section of the country, will in the main be ignorant and timid persons, who will be afraid to sue. The fact that they may be afraid to go to the polls and vote is evidence that they will not perhaps have the courage and fearlessness to sue; but there may be some third party who would be willing to enforce the penalty. I think in the great majority of cases the person aggrieved would not avail himself of this provision.

Mr. EDMUNDS. Then, I suggest to my friend that he would not be entitled to any action at all under this section, because this is not a section to give every man $500 who is afraid to offer to do what he has a right to do; but it is to give him as damages the sum of $500 for a positive and specific denial to him of the exercise of a right that he attempts to exercise; otherwise, he would have no cause of action. You cannot give a right of action to anybody because he is intimidated. The intimidation part of the law must be purely criminal, and is found in another part of the bill.

Mr. WARNER. But my amendment would give a remedy by enabling any other person than the party aggrieved to enforce the penalty. The party aggrieved I think in most cases would fail to enforce it; but some other party might.

Mr. EDMUNDS. Some other party may in his name.

Mr. POOL. I desire to say a word in regard to the particular amendment now pending. This bill is for the purpose of enforcing the 15th amendment, which applies to colored voters, most of whom reside in the section of the country from which the Senator from Alabama and myself come. The great and most effectual means used to interfere with their exercise of the right secured to them by the 15th amendment is by intimidation, by violence. I think that the penalty which is named in this second section, to be enforced by the party aggrieved, would never be put into operation at all. The purpose of the bill is to protect those citizens against intimidation from voting.

I confess that there is something in the suggestion of the Senator from Vermont, that there is no intimidation in this particular section aimed at. But, sir, it is perfectly sure that the very same means of intimidation which prevents a colored citizen from voting will be resorted to to prevent him from bringing this penal action, and unless the section is amended as suggested by the Senator from Alabama, I do not believe that an action will ever be brought in those States, because it is much more difficult for one of those citizens to bring and maintain a criminal action than it is for him to perform the single act of voting.

Mr. EDMUNDS. Will my friend permit me to make a suggestion right there?

Mr. POOL. Certainly.

Mr. EDMUNDS. If you take out this penalty, as it is called, really liquidated damages, from the person who is aggrieved, whose right is denied, and who has suffered injury, and give it to anybody who will sue for it, it becomes a pure penalty. Then the question is, whether you can have a bill which contains double penalties; whether you are to punish, in the strict sense of punishment, a man twice for the same offense; because my friend will see that the section, in addition to giving these damages to the party aggrieved as damages, makes it a criminal misdemeanor, punishable on indictment and conviction by a fine of not less than $500 and imprisonment not less than a month nor more than a year. I suggest to my friend, who is a cultivated and educated lawyer, whether he would not in court find himself in great difficulty with a bill of double penalties, which were purely such.

Mr. POOL. I have never examined that question under the laws of the United States. I only know that is frequently done in my own State. We have statutes with double penalties, as referred to by the Senator, and we have never had any difficulty in that State with regard to them.

But I understood the committee to mean by this section that there was danger in the States where it is principally to apply of not being able to obtain a grand jury who will find a bill of indictment, and that in the event no bill of indictment could be found before a grand jury the party aggrieved, or, if amended as the Senator from Alabama suggests, any person in the community may still punish the offender by bringing a penal action. It seems I had mistaken the purpose of the committee entirely from what is said by the Senator from Vermont. I think, nevertheless, the amendment had better be made, unless there really be that legal objection which the Senator suggests as to double penalties, so that it could not, under the laws of the United States and the practice of the United States courts, be enforced. If that were so, it would be conclusive that the amendment ought not to be adopted. I did not understand the Senator as expressing the positive opinion that such could not be done.

Now, Mr. President, I shall discuss injunctions issuing from Federal district judges on the question of a person's qualification for voting.

The civil-rights bill in part IV confers on the district courts of the United States jurisdiction to issue injunctions in civil-rights actions and it is to be assumed that these injunctions will concern, among other supposed rights, the right to vote.

Actually appropriate remedy already exists where a person's civil rights are violated. Section 242 of title 18, United States Code, provides a penalty and damages may be recovered in a civil action. The West Virginia Jehovah's Witnesses case is a typical example of adequate remedy existing in such cases. In this case, the United States attorney was unable to get an indictment by the grand jury. He therefore proceeded to prosecute by information, as provided by rule 7 (a) of the Federal Rules of Criminal Procedure, and subsequently got a conviction. The information charged that two public officers, acting under color of law, had willfully deprived their victims of the Federal rights of free speech, freedom of religion, the right not to be deprived of liberty without due process of law, and the right to equal protection of the laws. The conviction was upheld by the United States court of appeals—*Catlette* v. *U. S.* ((1943) 132 F. 2d 902. Civil suits were brought by the Witnesses against their prosecutors—those who had deprived them of their rights—and a

settlement was made totaling $1,170 in damages which was paid.

How can the Congress vest jurisdiction in Federal courts to determine the qualifications of voters and allow Federal judges to issue injunctions in effect requiring that certain persons—the judge thinks are qualified—shall be registered and allowed to vote?

The qualifications of voters are fixed and enumerated in the constitution of each sovereign State. For purposes of determining who is entitled to vote in each State for United States Representatives and Senators, the Federal Constitution simply adopts such qualifications as the State has fixed for voting for members of that State's legislature.

The language of article I, section 2, clause 3 of the United States Constitution reads:

> The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Similarly, the 17th amendment adopts for the purpose of electing United States Senators such qualifications as the States have fixed:

> The Senate of the United States shall be composed of 2 Senators from each State, elected by the people thereof, for 6 years; and each Senator shall have 1 vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

In the fixing of qualifications of voters the States are limited only by the 15th amendment and the 19th amendment in that the right to vote may not be denied because of race or color or sex, respectively.

That the respective States determine who are entitled to vote has never been seriously controverted. The United States Supreme Court has repeatedly declared that the right to vote comes from the State. In declaring sections 3 and 4 of the old Enforcement Act of May 31, 1870, unconstitutional, the Supreme Court in 1875 said—*U. S.* v. *Reese* ((1875) 92 U. S. 214, 217, 218); also *Butts* v. *Merchants and Miners Transportation Co.* ((1913) 230 U. S. 126):

> The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination; now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by appropriate legislation.
>
> This leads us to inquire whether the act now under consideration is appropriate legislation for that purpose. The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment. The effect of article 1, section 4, of the Constitution, in respect to elections for Senators and Representatives, is not now under consideration. It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.

Thus, if the 15th amendment has not conferred the right to vote upon anyone, how can Congress give a Federal judge authority to confer that right by injunction?

The Attorney General knows that it is a settled principle of law that an injunction will not issue to prevent a crime. At the present time the laws governing enforcement of civil rights are criminal statutes and as such he seeks to have them reenacted as civil statutes so he can secure injunctions. An injunction is really a serious proposition.

Actually an injunction is a proceeding in equity and not of law and under this principle since all of the States have adequate procedure for determining the qualifications of voters in courts of law, injunctions cannot issue in such cases.

An injunction is actually the giving of validity to a judge's own individual opinion. The injunction had its origin during the reign of Henry VIII when Cardinal Wolsey augmented the authority of the Court of Chancery in exercising his equitable authority over everything that could be a matter of judicial inquiry. Both Wolsey and his successor, Sir Thomas More, were severely criticized by the English judiciary for issuing injunctions in equity and thereby substituting their individual opinions for the verdict of a jury in a common law court—the Law magazine, London, volume XXVII, 1870, pages 1–25.

Such great importance is attached to the issuance of an injunction that Lord Correnham in his judgment in *Brown* v. *Newall* ((1870), 2 M. and C. 558, 570), said:

> Now, that that ex parte injunction was an order which ought not to have been made, is not in dispute. It has been subsequently dissolved, and nothing is attempted (570) to be said in support of it at the bar; and it is impossible that it could have been sustained. The order was a departure from the known and established rule and practice of this court. Nothing is so difficult as to bring within any general rule every case in which a special injunction ought to be granted; but, when an action has regularly proceeded, and is on the very eve of trial, an ex parte injunction to stop it is an order such as I have not before seen. The vice chancellor appears to have stated that the order was made under some misapprehension of the facts; and indeed it is quite obvious that it must have been so, for the vice chancellor could not have made the order if the facts had been thoroughly understood. It is very probable that some facts were then supposed to exist which did not actually exist.

I am not entitled, however, to assume that the order was made upon any other grounds than those stated in the affidavit which was used upon the application for the injunction; and I am, therefore, to see whether, on that affidavit, the parties have suppressed or misrepresented facts in such a way as was calculated to induce the court to grant the injunction.

I am most unwilling to lay down any rule which should limit the power and discretion of the court as to the particular cases in which a special injunction should or should not be granted; but I have always felt—and since I have been upon the bench I have seen no reason to alter my opinion—that extreme danger attends the exercise of this part of the jurisdiction of the court, and that it is a jurisdiction which is to be exercised with extreme caution. It is absolutely necessary that the power should exist, because there are cases in which it is indispensable; but I believe that practically it does as much injustice as it promotes—571—justice; and it is, therefore, to be exercised with extreme caution. The court can have no ground upon which it can proceed, in granting an ex parte injunction, but a faithful statement of the case; and where the court has found a party misstating the case, either by misrepresentation or suppression, the court has always exercised its jurisdiction, for the purpose of repressing that practice; and I am desirous to abstain from putting, by anticipation, a limit to that power. The extent to which the court is to go in so doing is only to be determined by the case itself; but then it must appear, upon the affidavits, that there was such misrepresentation. Now the affidavit upon which the ex parte injunction was obtained certainly does not state all the facts; but the question is, whether there was any such suppression or misstatement as to lead the court to grant the injunction. I do not find on that affidavit that description of misrepresentation or suppression which, in my opinion, presented a case likely to procure a judgment on the application, but different from the case which really existed.

Thus we can easily see, even if we had the power, that it would be a dangerous experiment to allow Federal district judges to issue injunctions on simple ex parte affidavits as is proposed in the present bill. And it might be possible under this proposal to assign New York or Vermont Federal judges to a crowded injunction calendar in Virginia to determine who is qualified to vote in that State. Section 134 of title 26, United States Code, simply requires that a district judge reside in the district or one of the districts for which he is appointed and does not preclude his assignment to another district. In fact, Chief Justice Warren under section 292 of the Judicial Code—title 28, United States Code—may assign California judges to South Carolina:

> SEC. 292. District judges:
>
> (a) The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court

of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

(b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

(c) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises. (June 25, 1948, ch. 646, sec. 1, 62 Stat. 901.)

The Federal Enforcement Act of 1870 attempted to do just what this bill seeks to do, that is, take away from the States the control of their elections and place that control in the hands of federally appointed officials. If anyone has any doubts about the failure of the Enforcement Act or even its constitutionality he should read the various decisions of the United States Supreme Court declaring almost every section of the act unconstitutional. When Congress finally got around to repealing that act in 1893 here are some of the frauds cited in Congress as reasons for repeal. They included 19,000 fraudulent naturalization certificates being issued by a single judge in New York State. They included payment in fees from the United States Treasury to a single Federal supervisor of elections and commissioner of the Federal court the sum of $145,000. Interestingly enough, repeal was initiated by a New York Congressman. See CONGRESSIONAL RECORD, volume 25, pages 1959, 1808.

Mr. President, on Tuesday afternoon, August 27, I made a motion in the Senate to have H. R. 6127 in its so-called compromise form referred to the Senate Judiciary Committee. I pointed out that I believed it to be a dangerous procedure to allow bills to come over from the House of Representatives and be placed on the calendar of the Senate without being referred to the appropriate committee. However, my motion was voted down 66 to 18, so the bill is now before the Senate for consideration.

Since very few Members of the Senate were present at that time to hear my objections to the present version of H. R. 6127, I shall present my arguments again.

Mr. President, I was bitterly opposed to the passage of H. R. 6127 in the form which was approved by the Senate. I am even more bitterly opposed to the acceptance of this so-called compromise which has come back from the House of Representatives.

Later on I want to comment on various provisions of the entire bill, but at this time I am directing my comments at the specific provisions of the so-called compromise. In my view, it is no less than an attempt to compromise the United States Constitution itself.

In effect, it would be an illegal amendment to the Constitution because that would be the result insofar as the constitutional guaranty of trial by jury is concerned.

Article III, section 2, of the Constitution provides that—

The trial of all crimes, except in cases of impeachment, shall be by jury.

Again in the sixth amendment—in the Bill of Rights—it is provided that—

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

The fifth and seventh amendments to the Constitution provide additional guaranties of action by a jury under certain circumstances. The fifth amendment refers to the guaranty of indictment by a grand jury before a person shall be held to answer for a crime. The seventh amendment guarantees trial by jury in common-law cases.

These guaranties were not included in our Constitution without good and sufficient reasons. They were written into the Constitution because of the abuses against the rights of the people by the King of England. Even before the Constitution and the Bill of Rights were drafted, our forefathers wrote indelibly into a historic document their complaints against denial of the right of trial by jury.

That document was the Declaration of Independence.

After declaring that all men are endowed with certain unalienable rights, including life, liberty, and the pursuit of happiness, the signers of the Declaration pointed out that the King had a history of "repeated injuries and usurpations, all having in direct object to the establishment of an absolute tyranny over these States." Then they proceeded to the listing of a bill of particulars against the King.

He was charged with "depriving us in many cases of the benefits of trial by jury."

That is what the Declaration of Independence contained. The King was charged, among other things, with depriving the American people of the benefit of trial by jury.

That is the very thing I am fighting for—the right of trial by jury, which is contained in the Constitution, and embodied in it in quite a number of places. The compromise bill which comes from the House attempts to compromise the Constitution of the United States. The bill does not provide for a trial by jury unless the penalty is more than 45 days' imprisonment or more than a $300 fine. That is a compromise of the Constitution.

Mr. President, when our forefathers won their freedom from Great Britain, they did not forget that they had fought to secure a right of trial by jury. They wrote into the Constitution the provisions guaranteeing trial by jury. Still not satisfied, they wrote into the Bill of Rights 2 years later the 3 specific additional provisions for jury action.

When the original Constitution was written there was placed in it article III, section 2, which guarantees the right of trial by jury. Then the Bill of Rights was adopted, and that right was provided in three different places.

It is a well-known fact that there was general dissatisfaction with the Constitution when it was submitted to the States on September 28, 1787, because it did not contain a Bill of Rights.

A majority of the people of this country, under the leadership of George Mason, Thomas Jefferson, and others, were determined to have spelled out in the Constitution in the form of a Bill of Rights those guaranties of personal security which are embodied in the first 10 amendments.

It was 9 months after the Constitution was submitted to the States before the ninth State ratified the Constitution, thus making it effective.

Although by that time it was generally understood, and pledges had been made by the political leaders of the day, that a Bill of Rights would quickly be submitted to the people, 4 of the 13 States still were outside the Union.

Nineteen months after the Constitution was submitted to the States, George Washington was inaugurated on April 30, 1789, as our first President. Even then, however, North Carolina and Rhode Island remained outside the Union for several months, North Carolina ratifying on November 21, 1789, and Rhode Island on May 29, 1790.

The reluctance of all the States to enter the Union which they had helped to create clearly demonstrated how strong the people felt about the necessity of including a Bill of Rights in the Constitution. The Constitution might never have been ratified had it not been for the assurances given to the people by Hamilton, Madison, and other political leaders that a Bill of Rights would be drafted as soon as the Constitution was ratified. Leaders of that day carried out the mandate of the people, and the Bill of Rights with its guaranties of trial by jury was submitted to the States on September 25, 1789.

In 1941, the late John W. Davis, that great constitutional lawyer and onetime Democratic nominee for President, was asked to state what the Bill of Rights meant to him. "The Bill of Rights," he declared, "denies the power of any government—the one set up in 1789, or any other—or of any majority, no matter how large, to invade the native rights of a single citizen."

Mr. Davis continued his definition with the following:

There was a day when the absence of such rights in other countries could fill an American with incredulous pity. Yet today, over vast reaches of the earth, governments exist that have robbed their citizens by force or fraud of every one of the essential rights American citizens still enjoy. Usage blunts surprise, yet how can we regard without amazement and horror the depths to which the subjects of the totalitarian powers have fallen?

The lesson is plain for all to read. No men enjoy freedom who do not deserve it. No men deserve freedom who are unwilling to defend it. Americans can be free so long as they compel the governments they themselves have erected to govern strictly within the limits set by the Bill of Rights. They can be free so long, and no longer, as they call to account every governmental agent and officer

who trespasses on these rights to the smallest extent. They can be free only if they are ready to repel, by force of arms if need be, every assault upon their liberty, no matter whence it comes.

Mr. President, this bill is an assault upon our liberty. The United States is a constitutional government, and our Constitution cannot be suspended or abrogated to suit the whims of a radical and aggressive minority in any era.

The specific provisions in the Constitution and the Bill of Rights guaranteeing trial by jury have not been repealed. Neither have they been altered or amended by the constitutional methods provided for making changes in our basic law if the people deem it wise to make such changes.

Nevertheless, in spite of the prevailing constitutional guaranties of trial by jury, we are here presented with a proposal which would compromise the provisions of the Constitution—yes, in my opinion, amend the Constitution illegally.

This compromise provides that in cases of criminal contempt, under the provisions of this act, "the accused may be tried with or without a jury" at the discretion of the judge.

It further provides:

That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of $300 or imprisonment in excess of 45 days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury.

Mr. President, the first of the provisions I have just cited, giving discretion to a judge whether or not a jury trial is granted in a criminal case, is in direct conflict with the Constitution.

When our forefathers met in 1787 in Philadelphia they wrote in article III, section 2, of the Constitution that in all crimes except treason a man shall be entitled to a jury trial. In several places in the Bill of Rights they wrote it again, with special emphasis in the sixth amendment that a man is entitled to a jury trial. Yet the compromisers brought forth a compromise which attemps to compromise the Constitution of the United States. We cannot compromise the Constitution of the United States. The compromise would have been unconstitutional if it had provided that if a judge wanted to punish for criminal contempt he could sentence the defendant to serve 1 day or fine him $1. He has no right to fine him $1 or give him 1 day's punishment in prison without a jury trial, because the Constitution says that in a criminal case a man charged with crime is entitled to a jury trial.

I cited last night a decision which holds that criminal contempt is a crime. If criminal contempt is a crime, then a man charged with criminal contempt is entitled to a jury trial under the provisions of the Constitution of the United States, and this so-called compromise which has come to the Senate is an effort of the Senate and the House of Representatives to get together, but in the effort to get together and pass a political bill—and that is all it is—they have been willing to compromise the Constitution of the United States.

The Constitution does not provide for the exercise of any discretion in a criminal case as to whether the person accused shall have a jury trial. The Constitution says, "The trial of all crimes except in cases of impeachment shall be by jury."

The sixth amendment says, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

The Constitution does not say in some crimes. The Constitution says in all crimes. The Constitution does not say trial may be by jury. The Constitution says trial shall be by jury.

How, then, Mr. President, can we be presented with this compromise? How can we be asked to accept a proposal so clearly in conflict with and in violation of the Constitution?

The Constitution makes no exception to the trial by jury provision in criminal cases in the event contempt is involved.

If the Constitution had had an exception in it and read, "This shall not apply to criminal contempt or crimes of criminal contempt," then there would be some basis for the Congress to legislate. But it did not make such an exception. Let me repeat and let me emphasize. The Constitution says "The trial of all crimes shall be by jury"—not all crimes except those involving contempt, but all crimes.

What power has been granted to this Congress to agree to any such proposal when it is in such complete contradiction to the Constitution? There is no power except the power of the people of this Nation by which the Constitution can be amended. The power of the people cannot be infringed upon by any lesser authority.

As the directly elected representatives of the people, this Congress should be the last body to attempt to infringe upon the authority which is vested solely in the people.

We are here dealing with one of the basic legal rights and one of the most vital personal liberties guaranteed under our form of government. But the proposed compromise insists that the treasured right of trial by jury be transformed into a matter of discretion for a judge—for one person—to decide whether it shall be granted or withheld.

What right has a Federal judge to use his discretion and tell a man he can be tried by a jury? The Constitution says if a man is charged with a crime he is entitled to be tried by a jury if he wants to be tried by a jury. In the Constitution there is no exception of criminal contempt or any exception that gives a judge the power to try a man so charged rather than a jury.

We are dealing with the basic rights of the people of this Nation and we should be careful to protect those precious rights which have been handed down to us by our forefathers. This compromise attempts to make trial by jury a matter of degree, as stated in the second part of the provision which I quoted. We cannot make trial by jury a matter of degree. If the Constitution gives a man the right of trial by jury, he has that right and we cannot take it away from him. The Congress cannot take it away. Furthermore, this compromise pretends to let the judge try the case if he wants to do so, in his discretion. Then if he finds the defendant ought to be punished by a fine in excess of $300 or by imprisonment in excess of 45 days, the man is entitled to a trial by jury. Do you not know, Mr. President, that if a judge has already tried a man, and then the defendant asks for a jury trial, the judge's decision is bound to affect the jury in the case strongly, even if it were constitutional for that to be done, which it is not?

Under this proposal if a man were to receive a sentence of a fine of $300 or 45 days in prison he would be deprived of his right of trial by jury except at the discretion of the judge. On the other hand, if a dollar were added to the amount of money, or even 1 cent, and a day, or even an hour, to the length of punishment, that man would be granted a new trial with a jury deciding the facts.

Mr. President, this is not something which can be compromised. I realize that Congress may want to get away from Washington. We have had a long, hard session. I also realize that both national parties are playing to the minorities by means of the right-to-vote bill, when each State in the Nation has laws on its books to protect the right to vote, and section 594 of the Federal Code of Criminal Procedure protects the right to vote. Yet, as a political gesture, both parties are making this play to try to claim credit. Watch my prediction that in the elections of 1958 both parties will try to claim that they got the civil-rights bill through the Congress.

Why are we not more interested in preserving the Constitution? Are we going to violate the Constitution by passing a political civil-rights bill in order to give thunder and political fodder to politicians to enable them to garner votes? Which is more important, the Constitution of this country or the political parties vying for the votes of minorities?

I wish to see the right to vote exercised by every man who is qualified to vote and who wants to vote. If he is entitled to vote, I want to see him vote. But the true purpose of this bill is not to insure the right to vote, because we have statutes in every State, and we have statutes on the Federal Code of Criminal Procedure now already that punish people interfering with anybody trying to vote. If the statutes we now have on the books are not being enforced, what good will it do to put another statute on the books? If the Justice Department is claiming that there are any individuals who have been denied their right to vote, why does it not prosecute them under the present law, which is completely adequate? And if no people have been denied the right to vote, then why is it claimed that this bill is necessary?

The right of trial by jury is too dear a right to be measured in dollars and cents and in terms of days and hours. The right of trial by jury is guaranteed by the Constitution. It is the vital principle upon which our form of government

is based. Principle is not a matter of degree.

Perhaps the House and the Senate wanted to get together and they thought this was the only way they could do it, but I want to tell the American people when they did get together and brought forth this compromise they violated the Constitution of the United States. This proposed compromise is a true child of the parent bill. Like father, like son; a chip off the old block. Both are bad.

Under this proposal, if a man were to receive a sentence of a fine of $300 or 45 days imprisonment, he would be deprived of his right of trial by jury, except at the discretion of the judge. On the other hand, if a dollar were added to the amount of the fine—or even 1 cent—and if a day, or even an hour, were added to the length of imprisonment, that man would be granted a new trial, and a jury would decide the facts.

Mr. President, this is not something which can be compromised. The right of trial by jury is too dear a right to be measured in dollars and cents or in terms of days and hours. The right of trial by jury is guaranteed by the Constitution. It is a vital principle upon which our form of government is based. Principle is not a matter of degree.

The proposed compromise is a true child of the parent bill—like father, like son, or a chip off the old block. Both are bad. But the provisions of the compromise are even worse than the provisions of the bill which I opposed when it was passed by the Senate.

The inclusion by the Senate of part V, with its jury-trial provision, made the bill a vast improvement over the radical bill which was sent to us from the House of Representatives.

However, the present unconstitutional compromise now makes part V conform with the obnoxious provisions which were in the original bill. In the name of constitutional government, I hope a majority of the Senate will vote against this proposal.

The principal purpose of this bill which the House has returned to the Senate is political. Both parties fear the bloc voting of the pivotal States. Both parties want to be in position to claim credit for the passage of what is being called a civil-rights bill. Both parties hope to be able to capitalize on the passage of a bill such as this one in the congressional elections of 1958, and then to carry those gains into the presidential election of 1960.

Propaganda and pressure exerted upon the Congress and upon the American people explain how such a bill as this one came to be considered at all. Stewart Alsop, the newspaper columnist, only last week stated the simple facts of the case.

He said that behind the shifting, complex, often fascinating drama of the struggle over civil rights, there is one simple political reality—the Negro vote in the key industrial States in the North. That is, of course, in hard political terms, what the fight has been all about.

Those are the words of Stewart Alsop; and he is not a southerner, so far as I know.

To explain his point, he cited the situation prevailing in New York, Pennsylvania, and Illinois. Pointing out that the Negro vote can be absolutely decisive in these States, Mr. Alsop stated that it is almost inconceivable that any presidential candidate could lose those three States and win an election.

The following four paragraphs are quoted directly from Mr. Alsop's column:

In 1954, Averell Harriman was elected Governor of New York by less than 15,000 votes over Senator IRVING IVES. According to Harris' analysis, Harriman polled a whopping 79 percent of the Negro vote. Negro voters thus supplied Harriman with his margin of victory several times over. Two years later, the Democrats had dropped some 90,000 Negro votes to the Republicans—or about 6 times the number of votes IVES needed to defeat Harriman.

Or take another close race—the victory of Senator JOSEPH CLARK, of Pennsylvania, over the Republican incumbent, Senator James Duff, in 1956. Again, CLARK just squeaked in, with a plurality of less than 18,000 votes. CLARK, despite the Supreme Court, carried the Negro vote by a huge 76 percent margin, which was worth about 150,000 votes to him. Suppose the Negro vote had dropped off as sharply in Pennsylvania as it did in Illinois, where it nosedived from 75 percent in 1952 to 58 percent in 1956. Then Duff would be in the Senate by a comfortable majority, and CLARK would be practicing law.

Other examples could be cited, like that of Senator PAUL DOUGLAS, of Illinois, who owes about 60 percent of his 1954 plurality to the Negro vote. But the lesson is clear enough. If the Republicans can attract something approaching half the Negro vote in the Northern States, the Republican Party will then be the normal majority party in those States.

Read the role of big States in which the Negroes can be expected to poll 5 percent or more of the total vote—not only New York, Pennsylvania, and Illinois, but such States as Michigan, Ohio, New Jersey, California. It then becomes clear what is at stake in the civil-rights struggle—nothing less than the future balance of political power in the Nation.

But, Mr. President, are we going to compromise the Constitution, whether we lose an election or not? Which is more important—to win an election or to preserve the Constitution? It is about time that both parties began to consider the welfare of the country and to determine whether the Constitution is of more importance, or whether winning an election is of more importance.

Mr. President, the advocates of this proposed legislation may believe it fits their objective today; but I am convinced that if this bill is enacted into law, eventually it will be just as undesirable to its advocates as it is to me.

No explanation of the bill can alter the fact that it was, and is now, under the proposed compromise, a force bill. Its purpose is to put a weapon of force into the hands of the Attorney General and into the hands of Federal judges to exercise arbitrarily.

Just as the Attorney General can decide arbitrarily whether to prosecute a case, so now this compromise provides Federal judges with authority to exercise discretion in applying the law.

Under the provisions of the compromise, jury trial may be granted or withheld on any grounds whatsoever in the mind of a judge, so long as the sentence he metes does not exceed the maximum limit set for denying trial by jury.

The proponents of the bill claim it would strengthen the rights of individuals. In contrast to this claim, the bill actually would strengthen the bureaucratic power of the Attorney General and the arbitrary authority of Federal judges.

No new right is granted by this bill. No old right held by the people is better protected. The substance of the bill is to deprive the people of a right held under the Constitution.

When the bill was debated in the Senate, many authorities were quoted on the importance of trial by jury. At that time I quoted the great legal mind of 18th century England, Blackstone. Because of the authoritative place he holds in jurisprudence, I wish to quote him again at this time. This is what Blackstone had to say:

The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has been so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases. * * * It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of 12 of his neighbors and equals. A constitution, that I may venture to affirm has, under providence, secured the just liberties of this Nation for a long succession of ages. And therefore a celebrated French writer, who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.

That is what Blackstone, the leading legal light the world has known, had to say. I wish to repeat one of his sentences:

And therefore a celebrated French writer, who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.

Mr. President, a trial by jury is one of the bedrocks of this democracy. It is one of the bedrocks of this Nation. It is one of the bedrocks of this Government. When we talk to people in the street and to laymen generally about taking away their right of trial by jury, they cannot understand it, because they know that the Constitution provides that a man shall have a trial by jury when he is charged with the commission of a crime.

At another point, Blackstone further declared his faith in trial by jury in these words:

A competent number of sensible and upright jurymen, chosen by lot * * * will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the State will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by 12 indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This, there-

fore, preserves in the hands of the people that share which they ought to have in the administration of public justice.

Mr. President, the wisdom of Blackstone's words is undeniable. The liberty of every citizen must continue to be protected by the right of trial by jury. This is not a right which applies to one person and is denied another. The Constitution makes no exception in its guaranty of trial by jury to every citizen.

On May 9, 1957, Associate Justice Brennan of the United States Supreme Court delivered an address in Denver, Colo. In that address, Justice Brennan dealt with the subject of trial by jury, and made the following statement:

American tradition has given the right to trial by jury a special place in public esteem that causes Americans generally to speak out in wrath at any suggestion to deprive them of it. One has only to remember that it is still true in many States that so highly is the jury function prized, that judges are forbidden to comment on the evidence and even to instruct the jury except as the parties request instructions. The jury is a symbol to Americans that they are bosses of their Government. They pay the price, and willingly, of the imperfections, inefficiencies and, if you please, greater expense of jury trials because they put such store upon the jury system as a guaranty of their liberties.

Mr. President, that is a significant statement to me, coming from a member of the present Supreme Court. I will not predict what the Court might do when the constitutionality of the denial of trial by jury as embodied in this so-called compromise is presented to the Court.

However, I shall not be surprised if the Court declares the bill unconstitutional, because on June 10, 1957, in Reid against Covert, the so-called military wives case, the Supreme Court issued a strong opinion on behalf of trial by jury. In that case the Court said:

Trial by jury in a court of law and in accordance with traditional modes of procedure after an indictment by grand jury has served and remains one of our most vital barriers to governmental arbitrariness. These elemental procedural safeguards were embedded in our Constitution to secure their inviolateness and sanctity against the passing demands of expediency or convenience.

And further:

If * * * the Government can no longer satisfactorily operate within the bounds laid down by the Constitution, that instrument can be amended by the method which it prescribes. But we have no authority to read exceptions into it which are not there.

If the people of this Nation want Federal judges to have the power to punish persons for criminal contempt by sentences of either days, weeks, or months in jail, or by fines of dollars, they can amend the Constitution and provide for it. If the people of this country want Federal judges to have the discretion of determining whether a person shall have a jury trial or not, then they can amend the Constitution and so provide. There is no provision and no exception for either instance in the present Constitution.

That is certainly a clue to what might be expected from the Court when it is called upon to decide the constitutionality of part 5 of H. R. 6127 as it has been amended by this so-called compromise.

I think what the Supreme Court did in the Reid against Covert case might be a clue to what it might do, or what might be expected of the Court, when it is called upon to decide the constitutionality of part 5 of H. R. 6127 as it has been amended by this so-called compromise.

Many claims have been made that this is a bill to protect the individual's right to vote. The evidence proves that there are more than adequate laws in all of the States to protect the right to vote. I requested the Library of Congress to make a study of the laws of the States by which the right to vote is protected in each State. A summary of these laws was submitted to me, and I request that this summary be printed in the RECORD at the conclusion of my remarks.

As to my own State of South Carolina, I shall discuss at some length the constitutional and statutory safeguards protecting a citizen's right to vote.

The people of my State vote. I am in favor of qualified people voting. All the people of my State vote if they are qualified.

Whence comes this hue and cry? Those raising it have not presented the matter to the Judiciary Committee, so the chairman of that committee may hold hearings. They have held hearings for weeks and months on the subject, and the proponents of the bill have failed to present evidence to show that people do not have the right to vote.

It is inescapable, as I have said, that this is a political bill and not a bill to provide the right to vote. The people already have that privilege.

If any such incident as a refusal to permit a citizen to vote had occurred, justice would have been secured in the courts of South Carolina.

The Federal Government has no monopoly over the administration of justice. The people of the States are interested in justice just as are the officials of the Federal Government, but I shall return to that subject in a few minutes and go into the matter of the Federal statutes a little more fully.

We have Federal statutes to protect the right to vote, if the voters are not satisfied with the State statutes, and certainly the Federal statutes protect them.

I say that the Negro citizens in South Carolina are safeguarded in their rights; and the payment of a poll tax is not required.

Both white and Negro citizens exercise their franchise freely in South Carolina. Our requirements are not stringent. As I have said, South Carolina does not require the payment of a poll tax as a prerequisite to voting. Registration is necessary only once every 10 years.

When I was Governor of South Carolina, I recommended that the poll tax be repealed as a prerequisite to voting. The legislature acted promptly and submitted the matter to the people, and the people voted in favor of repeal of the poll tax as a prerequisite to voting. The legislature approved it, and we have no poll tax in my State as a prerequisite to voting.

Proof that Negroes vote in large numbers in South Carolina, if proof is desired, can be found in an article which was published following the general election in 1952 in the Lighthouse and Informer, a Columbia, S. C., Negro newspaper. In its issue of November 8, 1952, the Lighthouse and Informer discussed the results of the election and declared that "estimates placed the Negro votes at between 60,000 and 80,000 who actually voted."

This represents almost one-fourth of the votes cast in that election. I did not see an estimate of the Negro votes in the 1956 general election, but reports which came to me indicated there was another large turnout.

Mr. President, I shall now read the provisions of the South Carolina constitution which protect a citizen's right to vote:

SOUTH CAROLINA CONSTITUTION ELECTION PROVISIONS

Article 1, section 9, suffrage: The right of suffrage, as regulated in this constitution, shall be protected by law regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or improper conduct.

Article 1, section 10, elections free and open: All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this constitution shall have an equal right to elect officers and be elected to fill public office.

Article 2, section 5, appeal; crimes against election laws: Any person denied registration shall have the right to appeal to the court of common pleas, or any judge thereof, and thence to the supreme court, to determine his right to vote under the limitations imposed in this article, and on such appeal the hearing shall be de novo, and the general assembly shall provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws.

Article 2, section 8, registration provided; elections; board of registration; books of registration: The general assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of the same: *Provided*, At the first registration under this constitution, and until the 1st of January 1898, the registration shall be conducted by a board of three discreet persons in each county, to be appointed by the Governor, by and with the advice and consent of the senate. For the first registration to be provided for under this constitution, the registration books shall be kept open for at least 6 consecutive weeks; and thereafter from time to time at least 1 week in each month, up to 30 days next preceding the first election to be held under this constitution. The registration books shall be public records open to the inspection of any citizen at all times.

Article 2, section 15, right of suffrage free: No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.

In addition to these general provisions of the constitution protecting the right to vote, I shall now read specific statutory provisions contained in the South Carolina Code. I believe it is especially appropriate that I do so in view of the fact that it has been charged that South Carolina, as well as other States, has failed to protect the right of citizens to vote.

The charge is false. The right of every citizen to vote in South Carolina is protected, and I want the record to be clear; therefore, I cite the following provisions of law in South Carolina:

SOUTH CAROLINA CODE

TITLE 23

23–73. Appeal from denial of registration.

The boards of registration to be appointed under section 23–51 shall be the judges of the legal qualifications of all applicants for registration. Any person denied registration shall have the right of appeal from the decision of the board of registration denying him registration to the court of common pleas of the county or any judge thereof and thence to the supreme court.

23–74. Proceedings in court of common pleas.

Any person denied registration and desiring to appeal must within 10 days after written notice to him of the decision of the board of registration file with the board a written notice of his intention to appeal therefrom. Within 10 days after the filing of such notice of intention to appeal, the board of registration shall file with the clerk of the court of common pleas for the county the notice of intention to appeal and any papers in its possession relating to the case, together with a report of the case if it deem proper. The clerk of the court shall file the same and enter the case on a special docket to be known as Calendar No. 4. If the applicant desires the appeal to be heard by a judge at chambers he shall give every member of the board of registration 4 days' written notice of the time and place of the hearing. On such appeal the hearing shall be de novo.

23–75. Further appeal to supreme court.

From the decision of the court of common pleas or any judge thereof the applicant may further appeal to the supreme court by filing a written notice of his intention to appeal therefrom in the office of the clerk of the court of common pleas within 10 days after written notice to him of the filing of such decision and within such time serving a copy of such notice on every member of the board of registration. Thereupon the clerk of the court of common pleas shall certify all the papers in the case to the clerk of the supreme court within 10 days after the filing of such notice of intention to appeal. The clerk of the supreme court shall place the case on a special docket, and it shall come up for hearing upon the call thereof under such rules as the supreme court may make. If such appeal be filed with the clerk of the supreme court at a time that a session thereof will not be held between the date of filing and an election at which the applicant will be entitled to vote if registered the chief justice or, if he is unable to act or disqualified, the senior associate justice shall call an extra term of the court to hear and determine the case."

In other words, in our State if anybody has an appeal and it goes before the trial judge and he denies it, the supreme court will go into session in order to hear such a case so as to be sure that nobody is deprived of the right to vote:

23–100. Right to vote.

No elector shall vote in any polling precinct unless his name appears on the registration books for that precinct. But if the name of any registered elector does not appear or incorrectly appears on the registration books of his polling precinct he shall, nevertheless, be entitled to vote upon the production and presentation to the managers of election of such precinct, in addition to his registration certificate, of a certificate of the clerk of the court of common pleas of his county that his name is enrolled in the registration book or record of his county on file in such clerk's office or a certificate of the secretary of state that his name is enrolled in the registration book or record of his county on file in the office of the secretary of state.

23–349. Voter not to take more than 5 minutes in booth; talking in booth, etc.

No voter, while receiving, preparing and casting his ballot, shall occupy a booth or compartment for a longer time than 5 minutes. No voter shall be allowed to occupy a booth or compartment already occupied by another, nor to speak or converse with anyone, except as herein provided, while in the booth. After having voted, or declined or failed to vote within 5 minutes, the voter shall immediately withdraw from the voting place and shall not enter the polling place again during the election.

23–350. Unauthorized persons not allowed within guard rail; assistance.

No person other than a voter preparing his ballot shall be allowed within the guard rail, except as herein provided. A voter who is not required to sign the poll list himself by this title may appeal to the managers for assistance and the chairman of the managers shall appoint one of the managers and a bystander to be designated by the voter to assist him in preparing his ballot. After the voter's ballot has been prepared the bystander so appointed shall immediately leave the vicinity of the guard rail.

23–656. Procuring or offering to procure votes by threats.

At or before every election, general, special or primary, any person who shall, by threats or any other form of intimidation, procure or offer or promise to endeavor to procure another to vote for or against any particular candidate in such election shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 nor more than $500 or be imprisoned at hard labor for not less than 1 month nor more than 6 months, or both by such fine and such imprisonment, in the discretion of the court.

23–657. Threatening or abusing voters, etc.

If any person shall, at any of the elections, general, special or primary, in any city, town, ward or polling precinct, threaten, mistreat or abuse any voter with a view to control or intimidate him in the free exercise of his right of suffrage, such offender shall upon conviction thereof suffer fine and imprisonment, at the discretion of the court.

23–658. Selling or giving away liquor within 1 mile of voting precinct.

It shall be unlawful hereafter for any person to sell, barter, give away or treat any voter to any malt or intoxicating liquor within 1 mile of any voting precinct during any primary or other election day, under a penalty, upon conviction thereof, of not more than $100 nor more than 30 days' imprisonment with labor. All offenses against the provisions of this section shall be heard, tried and determined before the court of general sessions after indictment.

23–659. Allowing ballot to be seen, improper assistance, etc.

In any election, general, special, or primary, any voter who shall (a) except as provided by law, allow his ballot to be seen by any person, (b) take or remove or attempt to take or remove any ballot from the polling place before the close of the polls, (c) place any mark upon his ballot by which it may be identified, (d) take into the election booth any mechanical device to enable him to mark his ballot, or (e) remain longer than the specified time allowed by law in the booth or compartment after having been notified that his time has expired and requested by a manager to leave the compartment or booth and any person who shall (a) interfere with any voter who is inside of the polling place or is marking his ballot, (b) unduly influence or attempt to influence unduly any voter in the preparation of his ballot, (c) endeavor to induce any voter to show how he marks or has marked his ballot, or (d) aid or attempt to aid any voter by means of any mechanical device whatever in marking his ballot shall be fined not exceeding $100 or be imprisoned not exceeding 30 days.

23–667. Illegal conduct at elections generally.

Every person who shall vote at any general, special, or primary election who is not entitled to vote and every person who shall by force, intimidation, deception, fraud, bribery, or undue influence obtain, procure, or control the vote of any voter to be cast for any candidate or measure other than as intended or desired by such voter or who shall violate any of the provisions of this title in regard to general, special, or primary elections shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment in jail for not less than 3 months nor more than 12 months or both, in the discretion of the court.

Mr. President, the provisions of the South Carolina Constitution and the provisions of the South Carolina statutes, which I have just read, prove the absolute lack of necessity for additional protection of the right to vote in my State. Also, the summary of the laws of other States, which I have requested to be printed in the RECORD at the conclusion of my remarks, proves that there is no necessity for greater protection of the right to vote in any other State.

The claim that this is a right-to-vote bill is completely without foundation. If the advocates of this so-called civil-rights bill want to deny the right of trial by jury to American citizens, they should proclaim their objective and seek to remove the guaranty of trial by jury from the Constitution. They should follow constitutional methods. Then the people of this Nation would not be misled, as some have been, to think that H. R. 6127 would give birth to a right to vote for anybody—a right already held by those it purports to help.

Mr. President, I also object to part I of this bill which would create a Commission on Civil Rights. To begin with, there is absolutely no need or reason for the establishment of such a commission. If there were any necessity for an investigation in the field of civil rights, it should be conducted by the States, or by an appropriate committee of the Congress within the jurisdiction held by the Congress.

The Congress should not delegate its authority to a commission. In such a delicate and sensitive area, the Congress should proceed with great deliberation and care. There is no present indication that any such study will be needed in the foreseeable future.

The establishment of a Commission as proposed in this bill is most unwise.

Section 104 (a) of part I provides the Commission shall—

(2) Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

These two paragraphs provide the Commission with absolute authority to probe into and to meddle into every phase of the relations existing between individuals, limited only by the imagination of the Commission and its staff.

The Commission can go far afield from a survey on whether the right to vote is protected. Through the power granted in the paragraphs I have cited, the Commission could exert its efforts toward bringing about integration of the races in the schools and elsewhere. It would be armed with a powerful weapon when it combined its investigative power and its authority to force witnesses to answer questions.

I do not believe the people of this country realize the almost unlimited powers of inquiry which would be placed in the hands of this political Commission. I do not believe the people of this country want to have such a strong-arm method of persuasion imposed upon them. Section 105 (f) of part I provides that "subpenas for the attendance and testimony of witnesses or the protection of written or other matter may be issued in accordance with the rules of the Commission."

This is an unusual grant of authority. Many of the committees and special committees of the Congress do not have this power. The Truman Commission on Civil Rights did not have it. The subpena is a punitive measure, generally reserved for penal process whereby powers are granted to force testimony which would not otherwise be available. If the proposed Commission were simply a factfinding commission and nonpolitical, the extreme power to force testimony by the use of a subpena would not be needed. The power of subpena in the hands of a political commission and the additional power to enforce its subpenas by court order diverge from the authority usually held by traditional factfinding groups.

There are several grounds for serious objection to section 104 (a) of part I. This section permits complaints to be submitted to the Commission for investigation, but it does not require the person complaining to have a direct interest in the matter. This means, of course, that any meddler can inject himself into the relationship existing between other persons. It opens the door for fanatics to stir up trouble against innocent people.

This section opens the door wide for such organizations as the NAACP, the ADA, and others to make complaints to the Commission with little or no basis for doing so.

If an NAACP official in Washington made a complaint against a citizen of South Carolina, the South Carolina citizen would not have the opportunity of confronting his accuser unless the accuser appeared voluntarily.

Although part I requires sworn allegations to the Commission, there is no requirement that testimony taken by the Commission be taken under oath. Failure to make all witnesses subject to perjury prosecutions by placing them under oath would certainly make testimony of little value. The Commission might adopt a rule to require sworn testimony, but this should not be left to the discretion of the Commission. It should be written into law.

There are many other objections to part I which were pointed out during the debate before the Senate passed its version of the bill. I shall not go into them further at this time.

Part II of the bill provides for the appointment of an additional Assistant Attorney General in the Justice Department. Since the Justice Department already has a section to handle civil-rights cases, there is no reason to create this new position. The creation of a new division would require many additional attorneys and other employees in the Justice Department. The Department has not disclosed how many additional lawyers, clerks, and stenographers it would plan to employ.

A Civil Rights Division in the Justice Department is not needed because there is no indication that there will be any increase in the number of civil-rights cases which are now being handled by a section in the Department.

The Attorney General had a most difficult time trying to show that an additional Assistant Attorney General was needed, and he failed completely in his efforts to do so. As a matter of fact, even those who have advocated passage of H. R. 6127 have been forced to admit time after time that conditions relating to civil-rights matters have been steadily improving all over the country.

Since conditions have improved, and there is no indication that conditions will change unless the Attorney General and the Civil Rights Commission create trouble, there is absolutely no justification for the appointment of an additional Assistant Attorney General in charge of civil-rights matters in the Department of Justice.

Mr. President, permit me to digress in order to discuss certain matters pertaining to the Bill of Rights.

I have before me a book entitled "Our Bill of Rights: What It Means To Me—A National Symposium," edited by James Waterman, Wisconsin:

FOREWORD

Things of the spirit never die. They flame anew each time they are under fire. They are flaming high at this moment.

Bombs may blow the body to bits, but they bind the soul together.

This book is testimony to the spirit of man; to his personality; to his right to be decent.

From the beginning of time men have had to fight for this sort of life. The fight has never been easy, but it has always been won.

As long as men believe in freedom they will achieve it. The Dark Ages shall not return.

When freedom dies man lives on his knees. When freedom lives man walks erect.

The Bill of Rights is our prayer book and our promise of salvation. The cause of freedom is the cause of God. That is the dedication of this volume.

None of us is wise enough to say finally what one event is the greatest in our history. There are some that cry aloud for that description:

The Declaration of Independence; the Treaty of Paris, ending the Revolutionary War; the adoption of the Constitution; the pronouncement of the Monroe Doctrine; the Emancipation Proclamation; the end of the War Between the States; the war for freedom and democracy, begun in 1917—and still going on.

I have left to the last, although it belongs at the top, the formulation and adoption of the Bill of Rights—the first 10 amendments to the Constitution, adopted by the baby nation December 15, 1791.

In this group of principles are to be found the soul and spirit of the Constitution. With the Bill of Rights added, the Constitution becomes nearly a perfect thing. Without the bill, the seven articles of the original draft are largely given over to the protection of property.

Jefferson, shocked by the omissions in the Constitution, as promulgated in 1789, while he was United States Minister to France (another type of France than Vichy represents today), drafted the additions to our great charter. Thus we were given the four freedoms by which we grew strong in self-reliance, in courage, in independence, and in self-respect.

The amendments gave us free speech, free press, free worship, free assembly, and also the right to petition. They gave us full protection of the citizen against oppression; the right of trial by jury and, generally, the right of the individual against the state. Jefferson said himself, speaking in the prophetic tone that is true of great men:

"The Bill of Rights is what the people are entitled to against every government."

This publication is testimony to an immortal writing that will live with the Ten Commandments, the Sermon on the Mount, Magna Carta, and those other great fountains of faith by which men live.

Today we fight again for the ideals that democracy gives to us as rights. We shall never lose them; the whole world some day will achieve them.

To help all of us to realize the high privilege we have of living under the Bill of Rights, the thoughts contained herein were put in words by men and women who believe the fires of freedom must always burn brightly and sometimes fiercely. Now is one of those times.

HERBERT BAYARD SWOPE,
Chairman, Bill of Rights Sesquicentennial Committee.

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* * * * *

America is face to face with certain grim realities. It is apparent that the expense attached to the defense effort will run into an appalling sum. The sweeping readjustments that will eventually reach every family are becoming clearer by the day. The need for redirection of our whole economy in order to supply plants which manufacture implements of war with an abundance of raw materials is now painfully obvious.

Yes, the world that we know is being refashioned. But so be it, and although the disappearance of familiar patterns and habits of living brings a momentary shock,

there must be no regrets, no longing backward glances. Neither can we afford to hang our heads, wring our hands and insist that we cannot defend democracy without destroying it. After all, the only disaster that will overtake us is the disaster that comes from indecision and inaction.

I like to remind myself of the origin of the Bill of Rights. It came into being at a time of great distress and clearly represented the desires of the people who had paid a high price for their independence, and were determined to keep it. Since that time it has weathered an internal conflict, foreign wars, periods of economic depression. Even during these emergencies there has been no foreshortening of the scope of the Bill of Rights, nor has its fundamental character been altered. Invariably after these crises have passed each American has turned his face homeward and found, to his intense joy, his personal liberty inviolate. This augurs well for the future. Perhaps the destructive forces loose in the world will assume more awesome proportions than any yet seen; perhaps the dangers and hardships of the civilian population will be greater than ever before; but I cannot believe that these new developments will serve to swerve us from our course any more than the vicissitudes of the past.

Undoubtedly it will mean a vigilant citizenry constantly on guard. But we have that. Undoubtedly it will mean leadership of the highest quality, but we have that, too. In fact, I can think of no more impressive reiteration of belief in the Bill of Rights than that made by Franklin D. Roosevelt in his message to Congress last January:

"In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

"The first is freedom of speech and expression—everywhere in the world.

"The second is freedom of every person to worship God in his own way—everywhere in the world.

"The third is freedom from want. * * *

"The fourth is freedom from fear. * * *

"That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.

"This Nation has placed its destiny in the hands, heads, and hearts of its millions of free men and women, and its faith in freedom under the guidance of God. Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them. Our strength is our unity of purpose.

"To that high concept there can be no end save victory."

Mr. President, those were the words of the late President Franklin D. Roosevelt, in speaking of the Bill of Rights, which guarantees a jury trial to the people of the United States, but which the so-called compromise civil-rights bill would deprive the people of.

I read further:

We accept our liberty, as we do our health, pretty much as a matter of course, hardly giving it a thought until we begin to lose it. Then we become conscious of how much it means.

Experience throughout the long period of human history teaches that liberty must be won in every generation and can be held only by eternal vigilance. As foes of freedom the aggressors reappear with different weapons, but always with the same aim—to destroy the souls of freemen.

That religion and democracy are closely linked together is a truism proved amply in the history of our country. The American colonies were settled by men and women seeking a free life, as well as a home for freedom. Religion was written prominently into their agreements, covenants, pacts, and constitutions, but the early colonists made no provision for the the free exercise of religion. Those who had fled before the demands of conformity later determined by law that others must conform or get out of the colony. It was said of Governor Endicott of the Massachusetts Bay Colony, if he had found toleration in his dictionary, he would have cut the word out, just as he drew his sword and cut the red cross out of the English flag because it represented the ancient Catholic faith of England. This attitude, formulated into law and supported by stern preaching, led to the founding of Rhode Island by Roger Williams and his associates. They were the first ones to put into practice the principle of the independence of the individual conscience even beyond the grants of liberty by the State. Maryland was founded by a small company of Catholics seeking freedom of worship in 1634, only 14 years after the Protestant Pilgrims had landed at Plymouth.

Under Lord Baltimore's liberal rule there developed a large degree of freedom in religion, as well as a remarkable advance in democratic procedure. The people of Maryland not only took part in making their laws but were given power to originate laws. No other colony at the time enjoyed quite as much freedom, and in 1649 the assembly passed the Toleration Act which confirmed by law these liberties. Following this action, Maryland became the refuge not only for the oppressed Catholics from England, but Protestants from some of the other American colonies, Puritans from Virginia, Quakers, and others who found congenial homes in this colony.

It is true that the Toleration Act was not very broad in that it tolerated only those of the Christian religion, but it was a step forward on the road to liberty and marked a greater advance than anything even in England at the time. It remained for the colony at Providence, R. I., to advance the act of toleration by granting full religious freedom to Christians and Jews and even to those without any religious affiliation or belief. The act affirmed "that men of all religions should live unmolested so long as they behaved themselves."

The Bill of Rights provides for freedom of religion. Our Bill of Rights provides for many vital rights which we enjoy.

The study of the Constitution should be an essential part not only of the education of the American youth, but of all Americans, and especially those who have become naturalized citizens of this great Nation. While all of us cannot be trained in the technicalities of the law, we should have some idea of our fundamental institutions. We need to know their relationship to our daily life, the reasons for their existence, and the benefits we derive from them, as well as the importance to ourselves of their perpetuation. The Constitution is not self-perpetuating by any means; if it is to survive it will be because it has the support of the people—not passive, but active public support. This means making adequate sacrifice to maintain that which is of the greatest benefit to the greatest number.

The Constitution has its roots in the great and heroic past of the English-speaking race. Today, under that Constitution which was adopted through the blood and sweat of the pioneers of our country, the safeguard of personal liberty is ever present. Under our great Bill of Rights our governmental power is divided into three parts. The first is the power granted to the Central Government; the second that reserved to the States; and the third, and by far the most important, although at times the fact may not be generally recognized, the power reserved to the people under the many inhibitions upon both State and Federal legislation.

In the turmoil which now seems to have engulfed the entire world, the citizens of the United States should well remember particularly that it is the people, those who go to make up the great cross-section of this country, who must guard the ramparts from the ever-increasing dangers of nazism, fascism, and communism. Our Constitution is the final safeguard of every right that is enjoyed by any American citizen. So long as it is observed, those rights will be secure, but should it fall into disrespect or disrepute the way of orderly, organized government as we have known it for the past 150 years will be at an end.

When the Federal Constitution was on September 28, 1787, submitted by Congress to the legislatures of the several States for ratification, there was very strong opposition to its adoption in all the States. The Democrats, under the leadership of Thomas Jefferson, feared that the provisions of the instrument would unduly abridge States rights and result in a Government too highly centralized for their views. It was necessary for nine States to ratify the Constitution before it could take effect. It was not until June 21, 1788, that the ninth State, New Hampshire, gave its approval. The States which had not ratified up to that time were Virginia, New York, North Carolina and Rhode Island. Virginia and New York gave their assent in 1788. When President Washington was inaugurated on April 30, 1789, on the steps of the Federal Hall in New York, neither North Carolina nor Rhode Island had ratified and, therefore, were not States of the United States. These two reluctant States did, however, come into line. North Carolina ratified on November 21, 1789, and Rhode Island on May 29, 1790.

The Bill of Rights was a pacer in the democratic movement in America and as such is entitled to all the prestige of leadership. Yet it really took a century after its enactment for American women to procure the 19th amendment to the Federal Constitution which compelled reluctant States to grant them the basic right of the free—the right to vote. Non-Christian men and freethinkers of their sex more readily wrested from State legislatures the guaranty of their civil rights.

But even the original Bill of Rights would have been a dead letter if dauntless men and women, risking death, had not taught the public to listen without rioting to opinions which it abhorred.

That educational process enabled the letter of the law to live in practice, or application, for the American way of life. In celebrating the original Bill of Rights now, we should celebrate with it the courage and skill of the men and the women who made tolerance a fact as well as a principle of law. The open forum, so characteristic of American democracy, owes its inception and its continuation to persons of both sexes who insisted that law and practice were parts of the same thing.

That rights carry duties has become a third aspect of democratic evaluations, nurtured on free debates. It is increasingly understood in America that liberty could become license; that rights if viewed as extreme personal privileges could reduce society to anarchy. There is today, in connection with rights, the wide prevalence of the philosophy that rights are granted to individuals in order that they may develop their talents for competent voluntary cooperation in the thought and action essential to the strength of society, to general welfare, and to the very endurance of civil liberties themselves.

A history of civilization could be written around the derivation of the privileges that constitute our Bill of Rights. The emphasis would be not on rulers and governments but on the struggle mankind has waged for centuries to obtain recognition of the rights of individual men. These rights are guaranties necessary to any people who wish to live in the free atmosphere of liberty. They are the foundation of any government that exists by the free will of the governed and not by the military force of self-appointed rulers.

The history of our own Bill of Rights is fired with the determination of the American people to preserve their liberties as individuals living in a free state. It is significant that these first 10 amendments in our Constitution were drawn from earlier declarations of rights which a number of the Original Thirteen States had formulated for themselves before they joined the Union. They not only served as models for our Federal Constitution but became basic patterns for new democracies all over the world.

Today there is abroad in the world a monstrous force that would set the clock back and reestablish regimes that rank the state above the individual. Already in many lands fundamental rights have been destroyed; and the existence of our own is threatened. Such crises have occurred before in the history of man but never with such ruthless vehemence and on such a worldwide scale.

Mr. President, there are many objections to H. R. 6127, but the strongest objection is the failure to give a jury trial. I wish now to present to the Senate some information on the jury trial and I shall go into the historical development of the jury system. This information is coming from the History of the Jury System, by Maximus A. Lesser, instructor of political science, New York Evening High School. Some very important points are brought out here about the jury system which are pertinent to this debate.

HISTORICAL DEVELOPMENT OF THE JURY SYSTEM

(By Maximus A. Lesser)

CHAPTER I. GENERAL CHARACTERISTICS OF THE JURY

The subject we propose to investigate is the historical genesis and gradual development of an institution which, today is an inseparable element of English jurisprudence and an important factor in the administration of justice, wherever the English or common law, "* * * the State's collected will, o'er thrones and globes elate, sits empress, crowning good, repressing ill."

This purpose is not free from difficulties, for, while the nature and functions of the tribunal, as today existent, are sufficiently well comprehended, still the origin of that institution and the successive steps by which it was evolved are less clearly understood and subject to considerable misconception, as is evinced by the many and conflicting theories advanced in explanation thereof. It is the object of this treatise to reconcile, as far as may be, these various views, to give to each well sustained suggestion its proper weight and effect during the formative period, and to trace its influence in the production of the result. The method of treatment is, in general, chronological; for the English jury is so closely interwoven with the historical and political development of the English nation, that every component which contributed to the formation and completion of the latter had a concomitant effect upon the former; accordingly, the history and features of each foreign factor will be described in connection with that period of our history at which it first made itself felt. For to the jury may be truly applied, what Maine says of law, that it is a matter of growth, the result of the needs of the community in which it originated; and an institution—as another writer well observes—which "does not owe its existence to any positive law; it is not the creature of an act of Parliament establishing the form and defining the functions of the new tribunal. It arose * * * silently and gradually out of the usages of a state of society which has forever passed away." We will, in the first place, regard its general aspect and characteristics as beheld today, and then proceed to consider whether, and in what respects, it is resembled by institutions of early days. The body with which we have to deal—in the language of an able Scotch jurist—"is the institution by which disputed facts are to be decided for judicial purposes in the administration of civil or criminal justice, and which is in modern times familiar to us under the denomination of trial by jury. * * * The etymological derivation of the term is obviously from juro, to swear, whence we find this institution called in forensic Latin jurata, and the persons composing it jurati. * * * When the object is inquiry only, this tribunal is sometimes called an inquest or inquisition, as in the instance of a grand jury or coroner's inquest; but when facts are to be determined by it for judicial purposes, it is always styled a jury."

This board of inquiry, then, is composed of "a body of men taken from the community at large, summoned to find the truth of disputed facts. Their office is to decide upon the effect of evidence and thus inform the court truly upon the question at issue, in order that the latter may be enabled to pronounce a right judgment. But they are not the court itself nor do they form part of it; and have nothing to do with the sentence which follows the delivery of their verdict." While, concerning the third characteristic element of our jury, De Lolme wrote that they who have the power to discriminate between disputed facts and "to whom the law has thus exclusively delegated the prerogative of deciding that a punishment is to be inflicted—those men without whose declaration the executive and the judicial powers are both thus bound down to inaction, do not form among themselves a permanent body, who may have had time to study how their power can serve to promote their private views or interest; they are men selected at once from among the people, who perhaps never were before called to the exercise of such a function, nor foresee that they ever shall be called to it again."

In other words, the jury is the sole judge of the weight of evidence adduced and the arbiter of compensation for contracts broken or injuries sustained, and is composed of men selected by lot and "sworn to declare the facts of a case as they are delivered from the evidence placed before them"—its province being to determine the truth of facts or the amount of damages in civil, and the guilt or innocence of the accused in criminal, cases.

This province is confined by the following limitations:

(1) It is restricted to the consideration of matters proved by evidence at the trial;

(2) It is subject to the instructions of the judge, concerning the rules of law applicable;

(3) It is influenced by the directions of the judge, as to weight, value, and materiality of evidence;

(4) It is affected by the selection of the jurors from the locality of the action, whence they discharge their duties with a certain amount of independent local knowledge, whilom "counted on, and deemed essential to a just consideration of the case."

Two other qualifications may be added. After the rendition of a verdict in a civil case, it is still within the power of the trial judge to modify or even annul the same, in a proper case; for instance, "because the verdict is for excessive or insufficient damages, or otherwise contrary to the evidence or contrary to law."

Again, in a criminal case, a verdict of conviction, even when accompanied by a recommendation of mercy, does not control the sentence to be meted out by the presiding magistrate, who may impose the highest or lowest or any intermediate penalty prescribed by law as proper for the offense committed.

How, then, did this institution, whose features as currently administered have just been described, originate? What are the sources from whence it arose, and the forces by which it was developed? Did it spring forth, like Minerva from the brain of Jupiter, ready for action and fully equipped with forensic vesture and legal armament, or was its development the result of the gradual accretion of successive strata of growth? As stated above, various and conflicting theories are advanced to answer these queries.

"Many writers of authority," says Canon Stubbs, "have maintained that the entire jury system indigenous in England, some deriving it from Celtic tradition based on the principles of Roman law, and adopted by the Anglo-Saxons and Normans from the people they had conquered, others have regarded it as a product of that legal genius of the Anglo-Saxons of which Alfred is the mythic impersonation, or as derived by that nation from the customs of primitive Germany or from their intercourse with the Danes. Nor even, when it is admitted that the system of recognition was introduced from Normandy, have legal writers agreed as to the source from which the Normans themselves derived it. One scholar maintains that it was brought by the Norsemen from Scandinavia; another, that it was derived from the processes of the Canon Law; another, that it was developed on Gallic soil from Roman principles; another, that it came from Asia through the Crusades." An

American authority insists that it "is undoubtedly a development of English institutions and civilization." Again, it is suggested that it was borrowed by the Angles and Saxons from their Slavonic neighbors in northern Europe; it has been traced to the assises de Jerusalem of Godfrey de Bouillon; it is even claimed to be of divine origin; and, finally, a French scholar despairingly exclaims: "Son origine se perd dans la niut de temps."

According to Robertson, "the true answer is, that forms of trial resembling the jury system in various particulars are to be found in the primitive institutions of all [Aryan] nations. That which comes nearest in time and character to trial by jury is the system of recognition by sworn inquest, introduced into England by the Normans * * * the instrument which the lawyers in England ultimately shaped into trial by jury." The name "Recognition," Bracton tells us, is deduced from the fact that the participants "acknowledged" a disseisin or dispossession by their verdict, and the inquest itself was "directly derived from the Frank capitularies, into which it may have been adopted from the fiscal regulations of the Theodosian Code and thus own some distant relationship with the Roman jurisprudence." This is the system which, Lord Campbell writes, "in the fifth Norman reign had nearly superseded the simple juridical institutions of our Anglo-Saxon ancestors;" while an eminent American jurist, after observing that investigation has shown among Norman legal usages traces more closely resembling our form of jury trial than anything afforded by the system of the Anglo-Saxons, concludes:

"We regard it, therefore, as certain that all these influences contributed to establish this mode of trial in England, and to shape it as we know it to exist there. Indeed, it was not until all of them had had an opportunity of completing their work, that we find what we should now call a jury."

A due regard for the definiteness of legal phraseology calls for some comment on the meaning of "law and fact," terms so frequently employed in the course of this work. Law, in its widest sense, is a rule of action; in its technical sense, it is a general rule of human action, taking cognizance only of external acts, enforced by a determinate human authority paramount within a state. Whether the rule so enforced be moral or pernicious, is impertinent to the question. "The existence of law is one thing, its merit or demerit another." Again, "although human actions are the subject-matter about which law is conversant, they are not essential to its existence; for the rule is the same, whether its application is called forth or not. * * * The rule continues in abstraction and theory, until an act is done on which it can attach. * * * The maxim, ex facto oritur jus must be understood in this sense; and the duty of judicial tribunals, consequently, embraces the investigation of doubtful or disputed facts, as well as the application of the principles of jurisprudence to such as are ascertained."

Fact is a term most difficult to define—so much so that Mr. Justice Stephen (in the third edition of his Digest of the Law of Evidence) abandoned the attempt previously made. Webster's definition (ed. 1859) is: "Anything done, or that comes to pass; an act; a deed; an effect produced or achieved; an event." Negatively, a learned American jurist suggests that "nothing is a question of fact which is not a question of the existence, reality, truth of something." Anything which is the subject of testimony is "matter of fact," while "matter of law" is the general law of the land of which courts take judicial cognizance. Evidence is the means or method by which a fact under judicial examination may be proved or disproved. "Whether there be any evidence, is a question for the judge. Whether sufficient evidence, is for the jury."

In any event, it is clear that the formula of Coke, hereinabove quoted, "was never meant to be taken absolutely * * *. It relates to issues of fact, and not to the incidental questions that spring up before the parties are at issue. The jury has to do with only a limited class of questions of fact, namely, questions of ultimate fact." "In general, issues of fact, and only issues of fact, are to be tried by jury; when they are so tried, the jury and not the court are to find the facts, and the court and not the jury is to give the rule of law; the jury are not to refer the evidence to the judge and ask his judgment upon that, but are to find the facts which the evidence tends to establish, and may only ask the court for judgment upon these."

Mr. President, I shall next take up the history of the jury system of the Anglo-Saxons:

CHAPTER VI—THE SYSTEM OF THE ANGLO-SAXONS

As regards the manner of men who now directed the destinies of England—for under that name (derived from the Angles) the island is henceforth known—and who indelibly impressed their characteristics upon it, and concerning their status in the scale of civilization, a graphic description is afforded us by the same historian. They "were little removed from the original state of nature; the social confederacy among them was more martial than civil; they had chiefly in view the means of attack and defense against public enemies, not those of protection against their fellow citizens; their possessions were so slender and so equal that they were not exposed to great danger, and the natural bravery of the people made every man trust to himself and to his particular friends for his defense. * * * An insult upon any man was regarded by his relations and associates as a common injury; they were bound by honor, as well as by a sense of common interest, to revenge his death or any violence which he had suffered; they retaliated on the aggressor by like acts of violence; and if he were protected, as was natural and unusual, by his own clan, the quarrel was spread still wider and bred endless disorders in the nation."

Such, then, was the state of civilization which the Saxons enjoyed, and such the social and political structure which superseded the administration of the Romans. For almost four centuries the seven Anglo-Saxon kingdoms—true to the characteristics of their founders—present a history of uninterrupted warfare, bloodshed and internecine strife, though Christianity had meanwhile prevailed among them. Wessex, however, gradually acquired the hegemony, and in A. D. 827 its King Egbert succeeded in securing his acknowledgment as supreme head of the heptarchy, with which event the history of the English nation properly begins.

Concerning their civil and social condition at this period, after a sojourn of 400 years on English soil, it appears that "though they had been so long settled in the island [they] seem not as yet to have been much improved beyond their German ancestors, either in arts, civility, knowledge, humanity, justice, or obedience to the laws. * * * Bounty to the church atoned for every violence against society." It cannot be doubted that, under ordinary circumstances, nationalization would have paved the way to improvements in the administration of justice, which, under the primitive system and the constant wars of the Saxons, had sadly degenerated. For, since "their language was everywhere nearly the same, their customs, laws, institutions, civil and religious * * * a union also in government opened to them the agreeable prospect of future tranquility. * * * But these flattering views were soon overcast by the appearance of the Danes, who, during some centuries, kept the Anglo-Saxons in perpetual inquietude, committed the most barbarous ravages upon them, and at last reduced them to grievous servitude."

The first great landmark in the history of English law is the reign of King Alfred (871–901), who, after he had restored peace, and either settled the Danes in or expelled them from the country, turned his attention to the administration of justice, which had become a mere name. His political and juridical institutions are recorded by Hume, as follows: "That he might render the execution of justice strict and regular, he divided all England into counties; these counties he divided into hundreds, and the hundreds into tithings. Every householder was answerable for the behavior of his family * * *. Ten neighboring householders were formed into one corporation, who, under the name of a tithing, decennary, or fribourg, were answerable for each other's conduct, and over whom one person, called a tithingman, headbourg, or borsholder, was appointed to preside. Every man was punished as an outlaw who did not register himself in some tithing.

"By this institution, every man was obliged from his own interest to keep a watchful eye on the conduct of his neighbors; and was in a manner surety for the behavior of those who were placed under the division to which he belonged. Whence these decennaries received the name of frankpledges. The borsholder summoned together the whole decennary to assist him in deciding any lesser difference which occurred among the members. In appeals from the decennary, or in controversies arising between members of different decennaries, the case was brought before the hundred, which consisted of 10 decennaries or 100 families of freemen, and which was regularly assembled once in 4 weeks for the deciding of causes. (Leg. Edw. c. 2.)

"Their method of decision deserves to be noted, as being"—at least in our historian's opinion—"the origin of juries. * * * Twelve freeholders were chosen, who, having sworn (together with the hundred or presiding magistrate of that division) to administer impartial justice, proceeded to the examination of that cause which was submitted to their jurisdiction. And besides these monthly meetings of the hundred, there was an annual meeting appointed * * * for the inquiry into crimes, the correction of abuses, and other matters of public concern. If a further appeal were desired, or in controversies between members of different hundreds, the case was brought before the freeholders of the county (or shire) over whom the bishop together with the alderman presided. A final appeal lay to the King himself.

"Formerly the alderman possessed both the civil and military authority; but Alfred * * * appointed also a sheriff in each county, who enjoyed a coordinate authority with the former in his judicial (as distinguished from the military) function. His office also empowered him to guard the rights of the crown in the county, and to levy the fines imposed."

Such was the system established by Alfred, and adhered to by his successors as far as those turbulent times permitted. For its promotion and perpetuation, as well as for the guidance of the magistrates, on whom the duty to administer it was incumbent, the same king—according to our historical guide—"framed a body of laws which, though now lost, served long as the basis of English jurisprudence, and is generally deemed the origin of what is denominated the common law." While his judgment concerning the paternity of the system is, that "the similarity of these institutions to the customs of the ancient Germans, and to the Saxon laws during the heptarchy, pre-

vents us from regarding Alfred as the sole author of this plan of government, and leads us rather to think that he contented himself with reforming, extending, and executing the institutions which he found previously established."

Thus far Hume, whose profound historical researches, combined with his early legal training, certainly entitle his opinion to much weight. But the existence, among the Saxons, of any institution resembling the jury has been hotly contested, and the dispute whether it was known to the Anglo-Saxons or introduced as a result of the Norman conquest, may be thus summarized: Coke (in his Institutes) Spelman (Glossarium Archaiologicum) Blackstone (Com. III, ch. 23) Nicholson (preface to Wilkin's Anglo-Saxon Laws) and Turner (Hist. Anglo-Saxons, IV, book XI, ch. 9) ascribe it to Saxon paternity. On the other hand, Hickes (Dissert. Epist. p. 34) Reeves (Hist. Eng. Law, I, 22, 24) and Palgrave (Rise and Progress of Commonwealth, I, 243) claim with equal confidence that it was introduced by or at least derived from the Normans and was not of Anglo-Saxon origin.

So Judge Cooley (Am. Cycl. IX 722) approvingly observes that "so many of the attendant circumstances indicate that it was a Norman institution, bestowed upon his English subjects by a Norman king, that Sir Francis Palgrave has not hesitated to consider our jury trial as derived directly from Norman law"; and Mr. Macclachlan (Eng. Cycl. III, 24) remarks: "Without entering minutely into this controversy, it may be stated that the traces of the trial by jury, in the form in which it existed for several centuries after the conquest, are more distinctly discernible in the ancient customs of Normandy than in the few and scanty fragments of Anglo-Saxon law which have descended to our time."

The conclusion reached by Mr. Forsyth affords perhaps the fairest statement of the case, and may be advantageously quoted in this place: "It may be confidently asserted that trial by jury was unknown to our Anglo-Saxon ancestors; and the idea of its existence in their legal system has arisen from a want of attention to the radical distinction between the members or judges composing a court, and a body of men set apart from that court, but summoned to attend in order to determine conclusively the facts of the case in dispute. This is the principle on which is founded the intervention of a jury; and no trace whatever can be found of such an institution in Anglo-Saxon times.

"If it has existed," he continues, "it is utterly inconceivable that distinct mention of it should not frequently have occurred in the body of Anglo-Saxon laws and contemporary chronicles which we possess, extending from the time of Ethelbert (568–616) to the Norman Conquest (1066). Those who have fancied that they discover indications of its existence during that period, have been misled by false analogies and inattention to the distinguishing features of the jury trial which have been previously pointed out. While, however, we assert that it was unknown in Saxon times, it is nevertheless true that we can recognize the traces of a system which paved the way for its introduction, and rendered its adaptation at a later period [the reign of Henry II] neither unlikely nor abrupt. * * * Of the exact mode in which trials were conducted in these [ante-Norman] courts, we know little; but the Anglo-Saxon laws and contemporaneous annals make frequent mention of two classes of witnesses, who play a most important part in the judicial proceedings of the time." These are compurgators and official witnesses, who, together with other features of their system, will be more fully considered hereafter.

With the demise of King Alfred, his system gradually lost ground. "During the reign of eight kings who succeeded Alfred," wrote Gilmans, "the country suffered constant invasions from Denmark, which became so oppressive that in 991 the King, Ethelred II, agreed to pay the Danes 10,000 pounds, called danegelt, to buy immunity. This sum was raised by a tax on land, the first one recorded in English history." Eleven years later the same King planned and partly executed a general massacre of foreigners in the island (Danemort) which led to a fierce attack from the Danes, to the expulsion of the King, and to the establishment of Sweyn as ruler of England. His son Canute married Ethelred's widow, a sister of the Duke of Normandy, in order, as it were, to legitimize his title, to strengthen his alliances, and to make secure the succession of his line.

When Canute, the Dane, mounted the English throne (1014) it might be supposed that he would transplant to, and incorporate in the system of, England the Danish quasi-jury or Nævninger—an institution common, with modifications, to all the Scandinavian nations—which derived its appellation from the fact of being composed of a fixed number of men (usually 12) named by the inhabitants of each district; a majority of those so chosen was competent to render a decision (subject to the ratification of the bishop and 8 best men of the district) in civil suits; while in criminal cases the accuser was obliged to convince the Nævn by sworn evidence of the truth of his charge, before the accused would be subjected to a public trial—this institution thus combining the functions of grand and petit jury with the exercise of judicial powers.

Canute, however, who was a lineal descendant of Alfred, and desirous of emulating that monarch, adopted a policy of conciliation toward the English. He had his succession to the throne ratified by a general assembly (Witenagemot) and publicly consented to restore and observe the Saxon customs and laws. In 1030, he addressed a letter "To all the Nations of the English"—under which designation he also meant to include the Danes, Swedes, and Norwegians—in which he said: "Be it known to you all, that I have dedicated my life to God, to govern my kingdom with justice, and to observe the right in all things." That is, he refrained from making any essential innovations or alterations in the systems (political or judicial) to which his several dominions were accustomed, and in consequence Danish rule had no tangible formative effect on English jurisprudence.

The last of the Saxon line who ruled in England—chosen by the people when Sweyn's family became extinct—was Edward the Confessor (1042–66) whom Hume deems commendable for his attention to the administration of justice, and his compiling for that purpose a body of laws which he collected from the laws of Ethelbert, Ina, and Alfred. This compilation, though now lost (for the laws that pass under Edward's name were composed afterward) was long the object of affection to the English nation..

CHAPTER VII—FORMS OF TRIAL AND TRIBUNALS AMONG THE SAXONS

Having examined the social and political status of the Saxons in England, as evidenced by their history and environment, we may expect to find, on considering the judicial institutions, their personal characteristics reflected therein. Here, as there, we distinguish the same primitive system of administration, the same rudimentary ideas of right, the same regard for the efficacy of clerical absolution, the same adherence to old and meaningless forms, and the same reverence for the vis major.

The judicial system of the Anglo-Saxons depended for its administration on, and consisted of, four distinct factors or elements: these were, sectatores or suitors of court, the secta or suit of witnesses, official witnesses, and compurgators. These have been generally confounded or at least not clearly distinguished, and the misconception of their proper functions has given rise to many ingenious theories. In general it may be said that of all these functionaries the first class only performed judicial duties; the second and the third were species of witnesses; the fourth officiated (at least originally) in criminal cases only, while none of them were jurors. A delineation of the functions of each will be given, and a distinction attempted.

The name of sectatores is applied by Forsyth to the limited number of freemen "who attended the hundred, county and manorial courts, to try offenses and determine disputes there; * * * and the obligation to attend was in the nature of a tenure, for neglect of which they might be distrained to appear." For, in accordance with the customs of those days, "to do suit at a county or other inferior court was * * * one of the common tenures by which land was held, and the suitors, called sectatores, or * * * at a later period pares, were therefore bound to give their attendance." Anciently their number appears to have depended on chance or convenience; nor do they appear to have acted always under the sanction of an oath; for to Reeves "it seems that causes in the county and other courts were heard and determined by an indefinite number of persons called sectatores," of whom "the frequent mention," he continues, "is no proof of juries, properly so-called, being known to our Saxon ancestors." It would seem that this form of judicial tribunal was the modified outcome of a feature of the elaborate county system established by Alfred, and a result of the alterations necessitated and the encroachments caused by the incessant warfare prevalent after the death of that monarch, which must have greatly affected his system of government. The whole matter, however, is involved in much obscurity, and will be resumed, to some extent, in the chapter treating of the judicium parium.

Concerning the second of the four classes, Professor Robertson observes: "The trial per sectam * * * resembled in principle the system of compurgation. The plaintiff proved his case by vouching a certain number of witnesses (secta) who had seen the transaction in question, and the defendant rebutted the presumption thus created by vouching a larger number of witnesses on his own side." It was thus an application to civil suits of the principle, which governed the system of compurgation in relation to criminal causes. At a later period in Saxon history, however, it seems that compurgation was also extended to (and thus superseded the use of the secta in) * * * civil proceedings; or, at least, that the term "compurgation" was employed to designate both the criminal and the civil (i. e., the sectatory) method. Indeed, the very name of secta became an alternative term for sectatores—the judges above described—which led to the confounding of the one with the other, and bred endless confusion and mistake.

At a more advanced period of the Anglo-Saxon dominion, when the defects of their mode of evidence and system of trial became perceptible even to their untutored minds, an attempt was made to partially remedy these defects by the official appointment in each district of sworn witnesses, whose duty it was to attest therein all sales, endowment of a woman ad ostium ecclesiae, and the execution of charters. They were not subject to cross-examination, and their oath was decisive in case of dispute. Later, persons peculiarly qualified by circumstances

(though not preappointed), were similarly sworn to prove age, ownership of chattels, and the death of one in whose estate dower was claimed. Hence in the Year Books (16 Edw. II, 507, A. D. 1323) we read complaint that one "may name ses cosyns et ses auns, who by his procurement will decide against us."

The most important of the four elements, and that destined to play the largest part in the development of trial by jury, was compurgation. Under the Saxon system, in criminal cases the charge of the prosecutor or accuser sufficed to put the accused on his defense.

This defense was by means of the process of compurgation, which was in vogue among the various Teutonic nations (12 being the usual number) and rested on the maxim: "Nobilis homo ingenuus—cum duodecim ingenuis se purget." Compurgators may be defined as persons, who supported by their oaths the credibility of the party accused, pledging their belief in the latter's denial of the charge brought against him.

These were in no sense witnesses, for they might be wholly ignorant of the real facts in dispute; nor were they a jury, for no evidence was submitted to their consideration. They were merely friends of the party who summoned them; they knew his character, and by their united oaths they at once attested that character and their confidence in his truthfulness and the justice of his cause.

This mode of trial was brought into England by the Saxons, and Judge Cooley thus describes it: "Then the party accused—or, in later times, the party plaintiff or defendant—appeared with his friends, and they swore, he laying his hand on theirs and swearing with them, to the innocence of the accused, or to the claim or defense of the party. Little is certainly known either of the origin or of the extent, in point of time or of country, over which the trial by compurgators prevailed; but it must have had great influence over the subsequent forms of procedure. It fixed the number of the traverse (i. e., the petit or trial) jury at 12, that being the common number of compurgators * * * and this was a great improvement on the varying and sometimes very large number in Greece and Rome."

Where the compurgators coincided in a favorable declaration, there was a complete acquittal. But if the accused was unable to present a sufficient number of these purgers; or, "if the party had been before accused of larceny or perjury, or had otherwise been rendered infamous and was thought not worthy of credit—he was driven to make out his innocence by an appeal to heaven, in the trial by ordeal," which was practiced either by the boiling water or the red-hot iron; the former being supplied to the common people, while the latter was reserved for the nobility. The nature of this institution is so curious and interesting, and its peculiarities throw so much light on the character of that age, as to warrant a fuller consideration of this primitive predecessor and sometime competitor of our criminal jury.

If the accused was sentenced to undergo the ordeal by hot water, "he was to put his head into it or his whole arm, according to the degree of the offense: if it was by cold water, his thumbs were tied to his toes, and in this posture he was thrown into it. If he escaped unhurt by the boiling water (which might easily be contrived by the art of the priests), or if he sunk in the cold water, which would certainly happen, he was declared innocent. If he was hurt by the boiling water or swum in the cold, he was considered as guilty."

Mr. LONG. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator yield for a question?

Mr. THURMOND. I will yield for a question.

Mr. LONG. Will the Senator tell me the name of the case he is reading?

Mr. THURMOND. It is the History of the Jury Trial.

Mr. LONG. I thank the Senator.

Mr. THURMOND. This so-called amendment that came from the House does not provide for a jury trial unless the judge in his discretion sees fit to give one; or unless he imposes punishment of more than 45 days' imprisonment or a fine of more than $300.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I will yield for a question.

Mr. LONG. Is the Senator quoting at this point from a particular case, and, if so, will the Senator give us the name of the case?

Mr. THURMOND. I am not quoting from a case at this particular time. I am going back into the History of the Jury Trial.

Mr. LONG. I thank the Senator.

Mr. THURMOND. And to show how through the life of this Nation the jury trial has developed.

Mr. LONG. I thank the Senator.

Mr. THURMOND. And how our forefathers in writing the Constitution put into it by article III, section 2, under which a man charged with a crime is entitled to a trial by jury.

To remove any further doubt, when the Bill of Rights was written the same provision was made in several places. The sixth amendment of the Bill of Rights guarantees a man charged with a crime the right to a jury trial.

During the night, probably about 4 or 5 o'clock this morning, I did cite a case holding that criminal contempt is a crime. If criminal contempt is a crime, then a man who is being tried for criminal contempt is entitled to a jury trial under the Constitution.

Mr. LONG. Will the Senator yield for another question?

Mr. THURMOND. I yield.

Mr. LONG. Does the Senator know whether it has ever been held that criminal contempt is not a crime under the law of the Nation?

Mr. THURMOND. I do not know of any decision in the courts where criminal contempt has not been considered a crime, and I have had all the authorities and ran them down. Criminal contempt is a crime. We have a decision on that point. When a man is charged with criminal contempt, he is entitled to a trial by jury. However, under this proposal, the so-called compromise which came from the House, he will not get a jury trial unless the judge, out of the goodness of his heart, says "I think you are entitled to a jury trial, and I am going to give you one."

Mr. LONG. I thank the Senator.

Mr. THURMOND. Or unless the judge tries him first and finds him guilty and finds that he should be punished by more than 45 days' imprisonment or $300 fine, in which event he can give him a new trial. The judge tries him once, and then he will be tried again. I think there again the so-called compromise is unconstitutional because you cannot put a man in jeopardy two times. If he is tried once, he has been in jeopardy and he cannot be put in jeopardy again.

The whole thing is a concoction to get a compromise on something for civil rights. It is purely an endeavor to get some kind of compromise; but it violates the Constitution, and I hope the Senate and the Congress will not pass it. Even people who believe in civil rights and have fought for civil rights are of that opinion.

The distinguished Senator from Minnesota [Mr. HUMPHREY] has made many speeches on civil rights. I remember one he made in 1948 at the Democratic Convention in Philadelphia, which I did not like at all because I am a States righter and not a so-called civil righter. I believe in real civil rights, but not the kind of civil rights which are being alleged here.

I do not know how Senators who really believe in civil rights and who know the Constitution can vote for a bill which flatfootedly violates several provisions of the Constitution.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I yield.

Mr. LONG. Does the Senator know of any greater civil right any person possesses in any nation than the right to a trial by a jury of his peers and his neighbors when he is accused of a crime?

Mr. THURMOND. I cannot imagine any civil right I would rather possess were I charged with a crime. I do not know of any civil right that is more vital to the people of the United States than the right of trial by jury. I do not know of any civil right that one could envision that could be more important. The right of trial by jury is most important because a man may be tried for his life. If he is not tried for his life, he can be put in prison. He can have his liberty taken away from him.

It is only after trial by jury that a man in this Nation can have his liberty taken away from him. I do not want a judge to try me if I ever have to be tried. I want 12 of my peers, 12 of my fellow countrymen, as the Constitution provides.

Mr. LONG. Does the Senator yield further?

Mr. THURMOND. I yield.

Mr. LONG. Is not the right to trial by jury, in which a person accused of a crime to challenge any prejudiced person who might be on the jury venire one of the possible differences between the free system of government that exists in this Nation and other free nations as compared to the system of government that exists in Communist nations?

Mr. THURMOND. The Senator is eminently correct. The Senator has the vision to see and realize the importance of what jury trial means to the people of this Nation.

I quoted during the night Associate Justice Brennan of the Supreme Court. I do not think a man could have made a stronger address than he made on the jury-trial question. Justice Brennan made a powerful argument for a jury trial even in automobile-accident cases. Even where property is involved—not

liberty, not life, but property—he believed there should be protection to the citizen through jury trial. Under the so-called compromise civil-rights bill a judge can put a man in jail for 45 days, and some judges will do so if they have the opportunity. They will make it exactly 45 days if they want to punish a man.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I yield.

Mr. LONG. Under the facts stated in regard to the situation in Washington Parish, La., it was contended that more than 1,000 colored people were denied voting rights. I am not sure if that was correct or not. Perhaps those people should or should not be on the rolls. But assuming the charge was correct, it would be possible for a judge in that case to put a person in jail for 4,500 days without a jury trial, alleging that there were 1,000 different offenses.

Mr. THURMOND. I see no reason why he could not, if he tries the defendant on each separate offense, which I think he would have to do to sentence him for more than 45 days. If he tries the accused for one act of depriving a person of his right to vote, there would be only one act, and 45 days in my opinion would be the limit. But if a judge saw fit to try a man and sentence him to prison for 45 days, he could try him again on another charge with respect to a man who claims his rights were violated in connection with voting and the defendant could be given another 45 days. I do not think there is any limit to that. I think he could keep filing them.

Mr. LONG. Is it not conceivable following such a procedure a judge could put a man in jail for his natural lifetime without a jury trial? Suppose he alleges that the defendant prevented 2,000 people from registering. That would be 90,000 days he could put the man in jail without a jury trial.

Mr. THURMOND. While I think theoretically that is possible, I do not think actually it would be practicable. But it is theoretically possible to do that.

I wish to read the distinguished Senator what Associate Justice Brennan said:

> American tradition has given the right to trial by jury a special place in public esteem that causes Americans generally to speak out in wrath at any suggestion to deprive them of it.

What is the Congress doing here if they let a judge try a man for criminal contempt, which is a crime?

I quote Associate Justice Brennan further:

> One has only to remember that it is still true in many States that so highly is the jury function prized that judges are forbidden to comment on the evidence—

In my State they cannot comment on the evidence and I do not believe they can in the State of the Senator from Louisiana, can they? In a few cases I believe they can.

Mr. LONG. No; not in a criminal case.

Mr. THURMOND. I do not believe they can even instruct the jury except as the parties request instruction. In some States the judge cannot charge the jury at all except where the parties request him to instruct, so jealously is the right of trial by jury regarded, leaving to the 12 fellow countrymen, 12 peers of the defendant, the authority to decide the case.

I wish to quote further from Associate Justice Brennan:

> The jury is a symbol to Americans that they are bosses of their Government. They pay the price, and willingly, of the imperfections, inefficiencies, and, if you please, greater expense of jury trials because they put such store upon the jury system as a guaranty of their liberties.

Mr. LANGER. Will the Senator yield for a question?

Mr. THURMOND. I yield for a question to my distinguished colleague from North Dakota.

Mr. LANGER. I regret that because of my ill health, of which the Senator is aware, I was unable to be here.

Mr. THURMOND. I am sorry, too. I thought about the distinguished Senator a great deal and inquired about him.

Mr. LANGER. I am sure during the night sometime the distinguished Senator from South Carolina discussed how the jury system came into being; is that correct? The divine right of kings principle was set aside and the jury system installed in its place.

Mr. THURMOND. That is right. I am going now into the history of the jury system. That is the very thing I am discussing now.

Mr. LANGER. The distinguished Senator knows that in the State of South Carolina—and, I might say, it is true in some of the other States—the higher courts have set aside verdicts of guilty because of the presence of prejudiced jurors or jurors who did not tell the truth on their examination, when they were asked if they knew anything about the facts.

We have always been extremely jealous under the Constitution to see that every defendant receives a fair and honest trial. I know that there have been such cases in the State of South Carolina as the type to which I have referred.

Mr. THURMOND. Exactly. I was a trial judge for 8 years, and came into close contact with jurors. I know how jurors feel. I know how the people feel. The citizens of this country believe in the jury system. It is a part of their nature to believe in the jury system. Those who have talked with me do not like the fact that the bill provides for compromising the Constitution in order to get a compromise civil-rights bill. We should not compromise the Constitution. That is exactly what this so-called compromise bill does, on the jury-trial question.

Mr. LANGER. I am sure that when the distinguished Senator was a judge, if any efforts were made to influence a jury, either by telephone or letter, if the judge became aware of it, he promptly declared a mistrial.

Mr. THURMOND. The Senator is correct. Any judge would set aside a verdict if a juror were influenced.

Judges are human. Some people look upon a Federal judge as sacrosanct, so to speak—clothed with a robe, high, mighty, and arrogant. They are human, and they are subject to the errors of human nature, just as any other citizen is. They should not be entrusted with this great power, involving the liberty of our people, in violation of the Constitution.

Mr. LANGER. The distinguished Senator knows that once in a while there is a dishonest judge. Is not that true?

Mr. THURMOND. I presume it is. However, I have never heard of any in South Carolina.

Mr. LANGER. We had a very dishonest Federal judge in the State of North Dakota at one time. I had personal experience with him. Time and again during my service in the Senate I have charged that judge with being dishonest. He is still alive. I did not rely upon Congressional immunity. I have made that statement often. I have never been sued for it, and I know very well that I never will be.

Mr. THURMOND. I am sure that the distinguished Senator would not want such a judge to try him for criminal contempt, which is a crime. I am certain that the distinguished Senator from North Dakota would want a jury to try him. Is not that correct?

Mr. LANGER. That is certainly correct. I believe that in the State of South Carolina, or any other State, the people will insist not only on good, honest judges, but also on seeing to it that the jury system is kept unimpaired.

Mr. THURMOND. Some of the proponents of the bill think they are going to punish the South. However, the bill applies to every American. The bill will fly back in the faces of some of its proponents and their friends, and they will be surprised.

Mr. LANGER. I thank the distinguished Senator.

Mr. THURMOND. It is a pleasure to discuss this question with the distinguished Senator from North Dakota.

I was discussing the history of the jury system.

I continue to read from "History of the Jury System," in the chapter entitled "Trials and Tribunals Among the Saxons."

> It will be observed that it was the priests who had charge of administering these tests of innocence—termed judicia dei—and they doubtless reaped a rich harvest from the monopoly of this privilege, commensurate with the wealth and the guilt of the accused.

Mr. LANGER. Mr. President, will the Senator further yield?

Mr. THURMOND. I am pleased to yield for a question.

Mr. LANGER. In view of the fact that I mentioned a dishonest judge, I should like to give an illustration of how a dishonest judge operates.

In the first place, when it is desired to obtain a jury which is dishonest, a special assistant United States marshal will be appointed. The marshal will walk into a store, for example, and say, "Mr. Jones, I would like to have you take 100 subscriptions to a certain newspaper." The man behind the counter might say,

"Why should I take a hundred subscriptions?" The marshal may say, "We are fighting the Governor of the State."

If the man takes 100 subscriptions, and pays $100, or $1 apiece for a year, his name goes into the jury box; and if he does not subscribe, his name does not go into the jury box.

In the case to which I have reference, the slips which were put into the box were different. The names of those who were prejudiced against a defendant would be written on wide slips. The names of those who were not so prejudiced were written upon narrow slips. A clerk was conniving with the judge. I may say that later the clerk went to the penitentiary. He would feel around until he felt a broad slip, and withdraw that slip.

A Federal judge has a vast amount of power. A judge may say, "I am not going to allow any of the defense lawyers to examine any prospective jurors. Let them write out their questions and submit them to me, and I will ask the prospective jurors whether or not they are prejudiced, or what answers they have to the questions."

Two or three days might be consumed in the effort to get a fair jury; but because of the fact that the Federal judge will not allow the lawyers for the defendant to ask any questions, the judge will finally get a jury which has not been thoroughly examined from the viewpoint of the defendant.

That is not all. A dishonest judge, by the tone of his voice, can let the jury know what he himself thinks of the case. For example, the defendant may be giving testimony, and if the United States attorney interrupts him the Federal judge may say, "Well, let the defendant tell his story," with a sneer on his face, for the benefit of the jury.

When it comes to his instructions, he may, in a very low tone of voice, give the instructions he is required to give which are favorable to the defendant. Then he raises his voice and makes gestures which let the jury know that he does not believe the defendant to be innocent. He tries to impress the jury by his loud tone of voice and the things he says in his instructions, which tend to prejudice the jury.

I have seen it happen. I myself was a trial lawyer. I served at one time as attorney general of my State, and later as governor of the State.

As I have previously stated, a Federal judge has a vast amount of power. He can name special bailiffs if he decides that the number of bailiffs in the court is not sufficient. He can appoint half a dozen or a dozen more, and have them carry revolvers to impress the rank and file of the jurors with the great importance of the case.

A Federal judge can claim that his life is in danger, and he can have Federal troops escort him back and forth between the courthouse and the hotel. A Federal judge can have airplanes flying over the courthouse, to repel the mob, for the purpose of impressing the jury with the gravity of the case which is pending before it.

I have gone all through that experience. When I came to the Senate one of the charges brought against me was with respect to the four Federal cases in which I, as governor of the State, was tried.

A Federal judge who is dishonest, with all the power he has, need not be afraid of any governor, because he holds his position for life. During the history of the United States there have been only five impeachments of Federal judges.

I well remember a case which was brought before I became a Member of the Senate. Senator Josiah Bailey, a very distinguished Senator, said to me in connection with that case, "I voted 'not guilty' on all counts except the last one. I voted 'guilty' on the last one."

It was the fact that he voted "guilty" on that count which resulted in the impeachment of the judge.

We must take into consideration the money that is required, the lawyers who are required, and so forth. The Senate does not like to take up an impeachment case. Yet, that is the only remedy a poor man has in the matter of impeaching a dishonest Federal judge.

I am frankly delighted that the distinguished Senator from South Carolina has been going into the history of how the jury trial originated. There was a great battle to obtain the right of trial by jury on behalf of the people of England before they ever achieved their goal. One of the very first of the English juries was sent out by the judge time and time again and asked to bring in a verdict of guilty, and the jury refused to do so. They were out for many hours defying the judge. Finally, the judge said he would put them in jail.

One of the greatest calamities that could possibly occur in this country or in any other country would be to have the "divine right of kings" come back and the jury system made inoperative.

I wish to thank the distinguished Senator from South Carolina for bringing the matter to the attention of the Senate.

Mr. THURMOND. The able and distinguished Senator from North Dakota is to be commended for his statement.

Mr. President, it is not a question of civil rights. They have hooked to it an unconstitutional provision. It is now a question of whether we shall vote for a bill that violates the Constitution and takes away from citizens the right to a trial by jury.

I believe it was at Runnymede, in 1215, that there were wrenched from King John certain rights for the benefit of the people which were written into a paper known as the Magna Carta. One of the rights wrenched from King John and which the people had cherished so long and which had been denied them was the right of trial by jury.

Mr. President, our Declaration of Independence starts out by citing grievances, among which was the fact that in many instances the citizens of the Colonies had been tried without a jury. That was one of the grievances brought up and included in the Declaration of Independence.

When our Constitution was written our forefathers had heard their fathers speak of how in generations back the people had suffered persecution. That was why many of them came to these shores, to enjoy liberty and freedom. After studying the governments of the world at that time our forefathers finally decided on the tripartite system of government, with its three branches, executive, legislative, and judicial, which could check on each other.

They did not stop with that, Mr. President. The States organized their governments on the same basis, so that what we have is what is known as a compound Republic. We have a division of power between the States and the Federal Government. We have a division of power between the different branches on the national level and on the State level. Our forefathers, when they wrote the Constitution in Philadelphia in 1787, were determined that one thing that would be contained in it would be the right of trial by jury. It is found in article III, section 2, and it provides that the trial of all crimes except cases of impeachment shall be by jury. It does not make any other exceptions for civil rights or anything else. It provides that all crimes except that of impeachment shall be tried by jury and that the trial shall be held in the State in which the crime was committed.

Even after the Constitution was written, three distinguished men attending the Convention would not sign it. They were George Mason, of Virginia, who was the author of the Bill of Rights; John Randolph, of Virginia, another very prominent citizen; and Elbridge Gerry, of Massachusetts. They refused to sign the Constitution even after it was written.

Mr. JOHNSON of Texas. Mr. President, will the Senator from South Carolina yield?

Mr. THURMOND. I yield for a question.

Mr. JOHNSON of Texas. Mr. President, would the Senator from South Carolina be willing to yield to me for the purpose of submitting a unanimous-consent request to the Senate to the effect that when the Senator-elect from Wisconsin appears the telegram of the Governor of the State of Wisconsin may be read and the oath be administered by unanimous consent of the Senate, without my friend from South Carolina losing the floor thereby, and that his remarks thereafter shall not count as a second speech against him, and that this interruption be placed in another portion of the RECORD?

Mr. THURMOND. Mr. President, I yield under those conditions.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that when the Senator-elect from Wisconsin appears in the Chamber the clerk may read the telegram from the Governor of Wisconsin and that the Senate give its consent to the oath being administered to the Senator-elect.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Texas? The Chair thinks it also includes the provision that the Senator from South Carolina [Mr. THURMOND] shall not lose the floor.

Mr. JOHNSON of Texas. All the conditions enumerated, Mr. President.

Mr. KNOWLAND. Mr. President, reserving the right to object—and, of course, I shall not object—I should like to be associated with the unanimous-consent request made by the distinguished majority leader.

Mr. JOHNSON of Texas. Mr. President, I make the request on behalf of the minority leader and myself. I wish to make it abundantly clear that when the Senator-elect from Wisconsin appears consent will have already been given to his being sworn in after the telegrams have been read; and that the Senator from South Carolina will still retain the floor and will be protected in his right to the floor and in the fact that he has made only one speech on this subject. Also, Mr. President, I request that the interruption be placed in the RECORD at the conclusion of the remarks of the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the request is agreed to.

Mr. JOHNSON of Texas. I thank the Senator from South Carolina for yielding.

Mr. THURMOND. Mr. President, I was engaged in colloquy with the Senator from North Dakota [Mr. LANGER] at the time when we were interrupted. I should like to continue the colloquy with him.

Mr. President, I thank the distinguished Senator from North Dakota for his questions and for bringing out the points he did. What I started to say is that when the Constitution Convention was held in Philadelphia in 1787 for the purpose of writing a constitution, the deputies, as they were called then, were confronted with the very difficult proposition of how the States would have representation. The large States wanted representation in proportion to population; the small States wanted representation according to States, regardless of size. Of course, they reached a compromise, and we have the two bodies of Congress. The Senate has an equal number of Senators from each State, regardless of the size of the State, and the House of Representatives is based on population. That is only one of the many intricate problems which had to be fought and settled by the Convention. It was a very difficult task to bring about the adoption of the Constitution.

Mr. LANGER. Will the Senator yield for a question at this point?

Mr. THURMOND. I yield.

Mr. LANGER. The Senator from North Dakota as the distinguished Senator from South Carolina knows, is very much interested in the small States. The two Senators from North Dakota are very much interested in the small States. They have been battling and fighting for the rights of the small States. Today there are six States which never have had any Cabinet members. For example, take the State of Florida. It has now for 107 years been a member of this Union. Yet the State of Florida has never had a member of the Cabinet, although the city of New York under Franklin Roosevelt at one time had six from the State of New York.

Take the State of Nevada. Nevada had an Ambassador. The State of South Dakota has never had one. Montana never has had one. Idaho never has had one. The Senator from North Dakota finally succeeded in getting one for North Dakota, the first one after 62 years of statehood. It seems to me that the Senators from these States and from the States of smaller population a long time ago ought to have gotten together and said to the State Department, "We demand that citizens of the States of lesser population also have some appointments as ambassadors, or occasionally have a man appointed to the Cabinet of the President of the United States.

Mr. THURMOND. I thoroughly agree with the Senator, and what I said was by way of illustration.

Mr. LANGER. Yes.

Mr. THURMOND. The point I started to make was this: There were so many problems confronting the deputies in Philadelphia that they had a very hard time drafting a constitution and even after it was drafted, it would not have been ratified if they had not promised the leading political leaders of the day that there would be a Bill of Rights. That is the only way they were able to have the Constitution adopted; and even then, George Mason, of Virginia; John Hancock, of Massachusetts; Elbridge Gary, of Massachusetts, refused to sign it. They did not want to take for granted any question about the rights to which the people were entitled, and one of the precious rights in which they were most interested was the right of trial by jury. The right of trial by jury was not only written in article III, section 2 of the Constitution, but in several places in the Bill of Rights. The right of trial by jury has been handed down to us as part of our Government as a great heritage, and we do not want to run the risk of losing that precious right.

Mr. LANGER. Will the Senator yield for a question?

Mr. THURMOND. I yield.

Mr. LANGER. Is it not true at the present time in one foreign country after another, to whom we have been sending foreign aid and with whom we fought in World War II, later in the Korean war—one of the very things we are advocating in these countries are reforms which will provide trial by jury. Is that not correct?

Mr. THURMOND. I understand we have been advocating that other countries, in which we have been trying to help the people to set up democratic governments, accord the right of trial by jury. It is going to look a little inconsistent to those people to whom we have held out trial by jury as the ideal, when we pass a bill which proposes to take away trial by jury.

Some persons do not feel this is important; some of them say, "Well it is a compromise. The House held to a certain idea and the Senate another; and it is a matter of getting together as best they could."

But this is a vital question. There is nothing more important, no right more important than that of trial by jury.

Mr. LANGER. I assume the Senator means a fair trial, an honest trial.

Mr. THURMOND. Exactly.

Mr. LANGER. The experience the Senator has had as judge ably demonstrated that, did it not?

Mr. THURMOND. My experience has been that a jury will come nearer rendering a fair verdict than a judge will, because there are 12 men on the jury—and Mr. Justice Brennan concurs in this—who hear the evidence and reach a conclusion. It is a most important matter; yet here in this so-called civil rights bill——

Madam President, may we have order, please?

The PRESIDING OFFICER (Mrs. SMITH of Maine in the chair). The Senate will be in order.

The Senator will proceed.

Mr. THURMOND. The effect of the so-called civil-rights bill is to amend the Constitution. The Constitution says, in article III, section 2, that "the trial of all crimes, except cases of impeachment, shall be by jury," and then in the sixth amendment to the Constitution the statement is made again. It says, "In all"—it does not say in some—it does not say in all but civil rights; it makes no exception. It says:

> In all criminal prosecutions the accused shall enjoy the right to a speedy and a public trial, by an impartial jury of the State * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses.

And so forth. instead of that, this civil-rights bill now includes an amendment—which has been added by the House of Representatives—which gives the judge the power to make the decision, without a trial by jury, unless the fine exceeds a certain amount of money or unless the period of incarceration exceeds a certain number of days.

Mr. LANGER. Madam President, will the Senator from South Carolina yield further?

The PRESIDING OFFICER (Mrs. SMITH of Maine in the chair). Does the Senator from South Carolina yield further to the Senator from North Dakota?

Mr. THURMOND. I yield.

Mr. LANGER. Is it not true that one of the arguments used when the right of women's suffrage was asked for, was that women should have the right to sit on juries?

Mr. THURMOND. That is correct.

When I was Governor of South Carolina, I recommended that women be allowed to sit on the juries. I think it is very wholesome to have that allowed. Such a law has not yet been passed in South Carolina, but I think it will be; in my opinion, that time will come.

Mr. LANGER. We who live in North Dakota have had such a law for many years, and it works very satisfactorily.

Mr. THURMOND. I so understand.

In some States, women are allowed to serve on juries, if they wish, but they are not forced to do so. In other States, women must serve on juries, if called. In other States, women do not have to serve at all on juries.

Madam President, the bill of rights—and the right of trial by jury is the heart of the bill of rights—is the most

precious document of the American people.

Madam President, let me say to the distinguished Senator from North Dakota that when the Declaration of Independence was written, it included a very definite reference to trial by jury. I wish to read part of the Declaration of Independence, in order to remind the distinguished Senator from North Dakota of that fact.

Mr. LANGER. Madam President, I shall be very glad to have the Senator from South Carolina do so.

Mr. THURMOND. Madam President, I read now from the Declaration of Independence:

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such Government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

A little later in the Declaration of Independence, we find the following——

Mr. LANGER. Madam President, it is very interesting to hear the Declaration of Independence read.

Mr. THURMOND. It is, indeed.

I read further from the Declaration of Independence:

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies without the consent of our legislatures.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us in many cases, of the benefits of trial by jury.

That was one of the cardinal points which was set forth in the Declaration of Independence, namely, that the King of England had deprived the colonists "in many cases, of the benefits of trial by jury."

Mr. LANGER. I thank the distinguished Senator from South Carolina.

(At this point Mr. THURMOND in accordance with the previous unanimous-consent agreement, yielded to Mr. JOHNSON of Texas for the purpose of having the Senator-elect from Wisconsin take the oath of office. By agreement, the proceedings incident thereto appear in the RECORD at the conclusion of Mr. THURMOND'S speech.)

The VICE PRESIDENT. Pursuant to the order, the Chair recognizes the Senator from South Carolina.

The Senate will be in order.

Mr. THURMOND. Mr. President, a good many Senators were not here when I presented my views earlier during this debate, and I shall take a few minutes now to express a few points which I should like to have them hear.

Mr. President, I was bitterly opposed to the passage of H. R. 6127 in the form which was approved by the Senate. I am even more bitterly opposed to the acceptance of this so-called compromise which has come back from the House of Representatives.

Later on I want to comment on various provisions of the entire bill, but at this time I am directing my comments at the specific provisions of the so-called compromise. In my view, it is no less than an attempt to compromise the United States Constitution itself.

In effect, it would be an illegal amendment to the Constitution because that would be the result insofar as the constitutional guaranty of trial by jury is concerned.

Article III, section 2, of the Constitution provides that—

The trial of all crimes, except in cases of impeachment, shall be by jury.

Again in the sixth amendment—in the Bill of Rights—it is provided that—

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

The fifth and seventh amendments to the Constitution provide additional guaranties of action by a jury under certain circumstances. The fifth amendment refers to the guaranty of indictment by a grand jury before a person shall be held to answer for a crime. The seventh amendment guarantees trial by jury in common law cases.

As I have stated earlier today, I cited a decision during this debate to show that criminal contempt is a crime. Since criminal contempt is a crime, a man charged with criminal contempt is entitled to a jury trial. I know of no way, under the Constitution, by which a man charged with a crime can be denied a trial by jury.

Since the decision I have cited shows that criminal contempt is a crime, it simply follows that a man charged with criminal contempt is entitled to a trial by jury.

These guaranties to which I referred, in article III, section 2, of the Constitution and in the fifth and seventh amendments, were not included in our Constitution without good and sufficient reasons. They were written into the Constitution because of the abuses against the rights of the people by the King of England. Even before the Constitution and the Bill of Rights were drafted, our forefathers wrote indelibly into a historical document their complaints against the denial of the right to trial by jury. That document was the Declaration of Independence. I am going to read the section of the Declaration of Independence in which our forefathers with courage and stamina severed their relations with the mother country, Great Britain, and established their own government. A list of grievances against the King was set forth in that document and among those grievances there

was one pertaining to trial by jury. It reads as follows:

Depriving us in many cases of the benefits of trial by jury.

In other words, those who signed the Declaration of Independence gave as one of the reasons for declaring their independence and for cutting loose from the King the fact that they had been deprived in many cases of the benefits of trial by jury. Therefore we can see with that incentive in mind in writing the Declaration of Independence why there was such a strong urge in writing the Constitution to include in it a provision for trial by jury, and then later in writing the Bill of Rights, to provide a trial by jury without the exceptions which are contained in this so-called compromise that came from the House of Representatives.

Mr. President, when our forefathers won their freedom from Great Britain, they did not forget that they had fought to secure a right of trial by jury. They wrote into the Constitution the provisions guaranteeing trial by jury. Still not satisfied, they wrote into the Bill of Rights 2 years later the 3 specific additional provisions for jury action.

It is a well-known fact that there was general dissatisfaction with the Constitution when it was submitted to the States on September 28, 1787, because it did not contain a Bill of Rights. A majority of the people of this country, under the leadership of George Mason, Thomas Jefferson, and others, were determined to have spelled out in the Constitution in the form of a Bill of Rights those guaranties of personal security which are embodied in the first 10 amendments.

It was 9 months after the Constitution was submitted to the States before the ninth State ratified the Constitution, thus making it effective.

Although by that time it was generally understood, and pledges had been made by the political leaders of the day, that a Bill of Rights would quickly be submitted to the people, 4 of the 13 States still were outside the Union.

Nineteen months after the Constitution was submitted to the States, George Washington was inaugurated on April 30, 1789, as our first President. Even then, however, North Carolina and Rhode Island remained outside the Union for several months, North Carolina ratifying on November 21, 1789, and Rhode Island on May 29, 1790.

The reluctance of all the States to enter the Union which they had helped to create clearly demonstrated how strong the people felt about the necessity of including a Bill of Rights in the Constitution. The Constitution might never have been ratified had it not been for the assurances given to the people by Hamilton, Madison, and other political leaders that a Bill of Rights would be drafted as soon as the Constitution was ratified. Leaders of that day carried out the mandate of the people, and the Bill of Rights with its guaranties of trial by jury was submitted to the States on September 25, 1789.

In 1941, the late John W. Davis, that great constitutional lawyer and one-time Democratic nominee for President, was asked to state what the Bill of Rights meant to him.

The Bill of Rights, he declared—

denies the power of any Government—the one set up in 1789, or any other—or of any majority, no matter how large, to invade the native rights of a single citizen.

Mr. Davis continued his definition with the following:

There was a day when the absence of such rights in other countries could fill an American with incredulous pity. Yet today, over vast reaches of the earth, governments exist that have robbed their citizens by force or fraud of every one of the essential rights American citizens still enjoy. Usage blunts surprise, yet how can we regard without amazement and horror the depths to which the subjects of the totalitarian powers have fallen?

The lesson is plain for all to read. No men enjoy freedom who do not deserve it. No men deserve freedom who are unwilling to defend it. Americans can be free so long as they compel the governments they themselves have erected to govern strictly within the limits set by the Bill of Rights. They can be free so long, and no longer, as they call to account every governmental agent and officer who trespasses on these rights to the smallest extent. They can be free only if they are ready to repel, by force of arms if need be, every assault upon their liberty, no matter whence it comes.

Mr. President, this bill is an assault upon our liberty. The United States is a constitutional Government, and our Constitution cannot be suspended or abrogated to suit the whims of a radical and aggressive minority in any era.

The specific provisions in the Constitution and the Bill of Rights guaranteeing trial by jury have not been repealed. Neither have they been altered or amended by the constitutional methods provided for making changes in our basic laws if the people deem it wise to make such changes.

Nevertheless, in spite of the prevailing constitutional guaranties of trial by jury, we are here presented with a proposal which would compromise the provisions of the Constitution—yes; in my opinion, amend the Constitution illegally.

This compromise provides that in cases of criminal contempt, under the provisions of this act, "the accused may be tried with or without a jury" at the discretion of the judge.

It further provides:

That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of $300 or imprisonment in excess of 45 days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury.

Mr. President, the first of the provisions I have just cited, giving discretion to a judge whether or not a jury trial is granted in a criminal case, is in direct conflict with the Constitution.

The Constitution does not provide for the exercise of any discretion in a criminal case as to whether the person accused shall have a jury trial. The Constitution says "The trial of all crimes except in cases of impeachment shall be by jury."

The sixth amendment says:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

The Constitution does not say in some crimes. The Constitution says in all crimes. The Constitution does not say trial may be by jury. The Constitution says trial shall be by jury.

How, then, Mr. President, can we be presented with this compromise? How can we be asked to accept a proposal so clearly in conflict with and in violation of the Constitution?

The Constitution makes no exception to the trial by jury provision in criminal cases in the event contempt is involved. Let me repeat and let me emphasize. The Constitution says "the trial of all crimes shall be by jury"—not all crimes except those involving contempt, but all crimes.

What power has been granted to this Congress to agree to any such proposal when it is in such complete contradiction to the Constitution? There is no power except the power of the people of this Nation by which the Constitution can be amended. The power of the people cannot be infringed upon by any lesser authority.

As the directly elected representatives of the people, this Congress should be the last body to attempt to infringe upon the authority which is vested solely in the people.

We are here dealing with one of the basic legal rights and one of the most vital personal liberties guaranteed under our form of government. But the proposed compromise insists that the treasured right of trial by jury be transformed into a matter of discretion for a judge—for one person—to decide whether it shall be granted or withheld.

This compromise attempts to make trial by jury a matter of degree, as stated in the second part of the provision which I quoted.

Under this proposal, if a man were to receive a sentence of a fine of $300 or 45 days' imprisonment, he would be deprived of his right of trial by jury, except at the discretion of the judge. On the other hand, if a dollar were added to the amount of money, or even 1 cent, and a day, or even an hour, to the length of imprisonment, that man would be granted a new trial with a jury deciding the facts.

Mr. President, this is not something which can be compromised. In this day and time I wonder, sometimes, if there is not too much compromise. It does my heart good to see a man with strong convictions, a man who believes in something, a man who stands for something and who is not willing to compromise on everything when there is a vital principle at stake.

Mr. President, I realize that legislation to a large extent is compromise. That is perfectly legitimate when it does not involve the Constitution. But when it involves the Constitution, there should be no compromise. There should have been no compromise on this bill which comes back to the Senate from the House. There can be no compromise

with reference to the manner in which the bill was amended.

The right of trial by jury is too dear a right to be measured in dollars and cents or in terms of days and hours. The right of trial by jury is guaranteed by the Constitution. It is a vital principle upon which our form of Government is based. Principle is not a matter of degree.

This proposed compromise is a true child of the parent bill—like father, like son, or a chip off the old block. Both are bad. But the provisions of the compromise are even worse than the provisions of the bill which I opposed when it was approved by the Senate.

The enactment in the Senate of part V, with its jury-trial provision, was a vast improvement over the radical bill which was sent to us from the House of Representatives.

However, this unconstitutional compromise now makes part V conform with the obnoxious provisions which were in the original bill. In the name of constitutional government., I hope that a majority of this Senate will vote against this proposal.

The principal purpose of this bill which the House has returned to the Senate is political. Both parties fear the bloc voting of the pivotal States. Both parties want to be in position to claim credit for the passage of what is being called a civil-rights bill. Both parties hope to be able to capitalize on the passage of a bill such as this one in the Congressional elections of 1958, and then to carry those gains into the presidential election of 1960.

Propaganda and pressure exerted upon the Congress and upon the American people explain how such a bill as this one came to be considered at all. Stewart Alsop, the newspaper columnist, only last week stated the simple facts of the case.

He said that—

Behind the shifting, complex, often fascinating drama of the struggle over civil rights, there is one simple political reality—the Negro vote in the key industrial States in the North. That is, of course, in hard political terms, what the fight has been all about.

VISIT TO THE SENATE OF 12 MEMBERS OF THE ITALIAN CHAMBER OF DEPUTIES

Mr. AIKEN. Mr. President, will the Senator from South Carolina yield?

Mr. THURMOND. I will yield for a question.

Mr. AIKEN. Mr. President, I should like to ask the Senator if he will yield in order that I may introduce to the Senate 12 members of the Italian Chamber of Deputies.

Mr. THURMOND. Mr. President, I will yield under certain conditions, namely, that the Senator from Vermont gets unanimous consent of the Senate for me to yield to him, that I shall not lose my right to the floor, and that it shall not be counted as a second speech when I resume.

Mr. AIKEN. Mr. President, with that understanding I ask unanimous consent that the Senator from South Carolina may yield for the purpose stated.

The PRESIDING OFFICER (Mr. BUSH in the chair). Is there objection? The Chair hears none.

Mr. AIKEN. Mr. President, I wish to introduce to the Senate 12 members of a committee of the Italian Chamber of Deputies, corresponding to the Agricultural Committee, who are standing in the rear of the Chamber.

[Applause, Senators rising.]

Mr. AIKEN. Mr. President, I thank the Senator from South Carolina for yielding.

Mr. THURMOND. Mr. President, I should like to join the Senator from Vermont in extending a welcome to these distinguished guests of the United States Senate.

The PRESIDING OFFICER. The Senator from South Carolina may proceed.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed the bill (S. 1996) to approve the contract negotiated with the Casper-Alcova Irrigation District, to authorize its execution, to provide that the excess-land provisions of the Federal reclamation laws shall not apply to the lands of the Kendrick project, Wyoming, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

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

H. R. 109. An act to incorporate the Jewish War Veterans, U. S. A., National Memorial, Inc.;

H. R. 662. An act to provide for the establishment of a fish hatchery in the northwestern part of the State of Pennsylvania;

H. R. 1262. An act to authorize and direct the Administrator of Veterans' Affairs to accept certain land in Buncombe County, N. C., for cemetery purposes;

H. R. 6701. An act granting the consent and approval of Congress to the Tennessee River Basin Water Pollution Control Compact;

H. R. 6959. An act to authorize the Secretary of the Interior to cooperate with Federal and non-Federal agencies in the augmentation of natural food supplies for migratory waterfowl;

H. R. 7964. An act to remove the limitation on the use of certain real property heretofore conveyed to the city of Austin, Tex., by the United States;

H. R. 8424. An act to include certain service performed for Members of Congress as annuitable service under the Civil Service Retirement Act;

H. R. 8606. An act to amend the Civil Service Retirement Act with respect to annuities of survivors of employees who are elected as Members of Congress;

H. R. 8868. An act to remove the present $1,000 limitation which prevents the settlement of certain claims arising out of the crash of an aircraft belonging to the United States at Worcester, Mass., on July 18, 1957;

H. R. 8928. An act to amend the act of June 9, 1880, entitled "An act to grant to the corporate authorities of the city of Council Bluffs, in the State of Iowa, for public uses, a certain lake or bayou situated near said city";

H. R. 9240. An act to revise certain provisions of law relating to the advertisements of mail routes, and for other purposes; and

H. J. Res. 453. Joint resolution establishing that the 2d regular session of the 85th Congress convene at noon on Tuesday, January 7, 1958.

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 175) proposing a code of ethics for Government service, in which it requested the concurrence of the Senate.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were severally read twice by their titles, and referred, as indicated:

H. R. 662. An act to provide for the establishment of a fish hatchery in the northwestern part of the State of Pennsylvania; and

H. R. 6959. An act to authorize the Secretary of the Interior to cooperate with Federal and non-Federal agencies in the augmentation of natural food supplies for migratory waterfowl; to the Committee on Interstate and Foreign Commerce.

H. R. 1262. An act to authorize and direct the Administrator of Veterans' Affairs to accept certain land in Buncombe County, N. C., for cemetery purposes; to the Committee on Labor and Public Welfare.

H. R. 6701. An act granting the consent and approval of Congress to the Tennessee River Basin water pollution control compact; to the Committee on Public Works.

H. R. 7964. An act to remove the limitation on the use of certain real property heretofore conveyed to the city of Austin, Tex., by the United States; to the Committee on Government Operations.

H. R. 109. An act to incorporate the Jewish War Veterans, U. S. A., National Memorial, Inc; and

H. R. 8868. An act to remove the present $1,000 limitation which prevents the settlement of certain claims arising out of the crash of an aircraft belonging to the United States at Worcester, Mass., on July 18, 1957; to the Committee on the Judiciary.

H. R. 8424. An act to include certain service performed for Members of Congress as annuitable service under the Civil Service Retirement Act;

H. R. 8606. An act to amend the Civil Service Retirement Act with respect to annuities of survivors of employees who are elected as Members of Congress; and

H. R. 9240. An act to revise certain provisions of law relating to the advertisements of mail routes, and for other purposes; to the Committee on Post Office and Civil Service.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 175) was referred to the Committee on Post Office and Civil Service, as follows:

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following code of ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all

governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles ever conscious that public office is a public trust.

CIVIL RIGHTS ACT OF 1957

The Senate resumed the consideration of the amendments of the House of Representatives to the amendments numbered 7 and 15 to the bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Mr. THURMOND. Mr. President, to explain his point Mr. Alsop cited the situation prevailing in New York, Pennsylvania, and Illinois. Pointing out that the "Negro vote can be absolutely decisive in these States," Mr. Alsop stated that it is "almost inconceivable that any presidential candidate could lose those three States and win an election."

In other words, Mr. Alsop says that the whole civil-rights fight is purely political, and the effect of it is that both parties are vying to get the Negro vote in the doubtful States.

To explain his point he cited the situation prevailing in New York, Pennsylvania, and Illinois, pointing out that the Negro vote can be absolutely decisive in those States. Mr. Alsop stated that it is almost inconceivable that any Presidential candidate could lose those three States and win the election.

I shall not take any more further time to present the analysis he made, but he went into considerable detail.

Mr. President, the advocates of this proposed legislation may believe it fits their objective today, but I am convinced that if this bill is enacted into law eventually it will be just as undesirable to its advocates as it is to me.

No explanation of this bill can alter the fact that it was, and is now, under the proposed compromise, a force bill. Its purpose is to put a weapon of force into the hands of the Attorney General and into the hands of Federal judges to exercise arbitrarily. Just as the Attorney General can decide arbitrarily whether or not to prosecute a case, so now this compromise provides Federal judges with authority to exercise discretion in applying the law. Jury trial may be granted or withheld on any grounds whatsoever in the mind of a judge so long as he does not exceed the maximum limit prescribed for denying trial by jury.

The proponents of this bill claim it would strengthen the rights of individuals. In contrast to this claim the bill actually would strengthen the bureaucratic power of the Attorney General and the arbitrary authority of Federal judges. No new right is granted by this bill. No old right held by the people is better protected by it. The substance of the bill is to deprive the people of a right held under the Constitution.

When this bill was debated in the Senate, many authorities were quoted on the importance of trial by jury. At that time I quoted that great legal mind of the 18th century of England, Blackstone, because of the authoritative place he holds in jurisprudence.

I have also quoted heretofore and cited a case which holds that criminal contempt is a crime. That is a decision I have heretofore reviewed. I might refer to it again for the benefit of any who missed it because that is an important point. I do not believe that some of the lawyers in the Congress have realized that criminal contempt is a crime.

Bessett v. *W. B. Conkey Co.* (194 U. S. 324) says a contempt proceeding is criminal in its nature. *Ex parte Grossman* (267 U. S. 87) says a criminal contempt committed by disobedience of an injunction issued by the district court to abate a nuisance in pursuance of the prohibition law is an offense against the United States, and within the pardoning powers of the President under article II of the Constitution.

The Conkey case I just referred to, volume 194 United States Reports, page 324, defines civil and criminal contempt, pointing out that the latter, criminal contempt, is criminal and punitive in its nature, and the Government, the courts, and the people are interested in their prosecution.

If criminal contempt is a crime, as the United States Supreme Court decision holds it is, then under the Constitution of the United States a man charged with criminal contempt is entitled to a jury. There is no ifs, ands, and buts about it. There can be no exceptions.

Article III, section 2 of the Constitution provides:

> The trial of all crimes, except in cases of impeachment, shall be by jury.

Again in the sixth amendment in the Bill of Rights, it is provided:

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

Mr. President, when this bill was previously debated in the Senate, I cited Blackstone as an authority, and I may cite him again today, but I want to refer to a portion of this bill, to show how it violates the Constitution on the jury trial question.

Mr. LANGER. Will the Senator yield for a question?

Mr. THURMOND. I will be pleased to yield to my distinguished friend for a question.

Mr. LANGER. Could the Senator from South Carolina tell us how it happened that the Federal judges encroached upon the rights of defendants? How did they come to hold that contempt of court was not a crime?

Mr. THURMOND. There is a long story about contempt and how it arrived at where it is now.

I might say, in brief, and that is what my distinguished friend is interested in, that under the present law a man charged with criminal contempt gets a jury trial unless the Government is a party to the suit, and in labor disputes defendants get a jury trial even if the Government is a party to the suit.

Under this so-called compromise which the House sent to the Senate, that will not be the case unless a judge in his discretion sees fit to give the defendant a jury trial, or the judge tries him and decides he wants to punish him to a greater extent than a $300 fine or a 45 days' prison sentence, in which event he would then have a jury trial.

Mr. President, under the version of the bill which was passed by the House of Representatives, the Attorney General could substitute the government for a private party, and thereby could deprive an individual of a jury trial.

But the Senate amended the bill as passed by the House of Representatives; and the Senate sent the bill, as thus amended, back to the House of Representatives. The Senate, by means of one of its amendments, drew a distinction and delineated between civil contempt and criminal contempt. The amendment provided that if the purpose of the action the judge wished to obtain was compliance with his order, in the case of something to be done in the future, failure to comply with the order would constitute civil contempt; but if the purpose was to punish for something done in the past, failure to comply with the judge's order would constitute criminal contempt.

The Senate amended the bill, as I have stated, and returned the bill, as thus amended, to the House of Representatives. Then the House of Representatives added the amendment which I believe violates the Constitution.

Mr. LANGER. I thank the Senator from South Carolina.

Mr. THURMOND. It has been a pleasure, I assure the distinguished Senator from North Dakota.

Mr. President, because of the authoritative place that Blackstone holds in jurisprudence, I wish to quote him at this time. Every lawyer respects Mr. Blackstone. He said:

> The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law.

That is what Blackstone said about trial by jury—that it is "the glory of the English law."

Blackstone further said:

> And if it has been so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases. * * * It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of 12 of his neighbors and equals. A constitution, that I may venture to affirm has, under Providence, secured the just liberties of this Nation for a long succession of ages. And therefore a celebrated French writer, who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.

In other words, Rome, Sparta, and Carthage did not have trial by jury when their people lost their liberties.

At another point, Blackstone further declared his faith in trial by jury in these words:

> A competent number of sensible and upright jurymen; chosen by lot * * * will be found the best investigators of truth and the surest guardians of public justice. For the most powerful individual in the State will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by 12 indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This, therefore, preserves in the hands of the people that share which they ought to have in the administration of public justice.

Mr. President, that is what Mr. Blackstone said. No brighter legal mind ever shone in the brilliant galaxy of Anglo-Saxon jurisprudence.

Mr. President, the wisdom of Blackstone's words is undeniable. The liberty of every citizen must continue to be protected by the right of trial by jury. This is not a right which applies to one person and is denied to another. The Constitution makes no exception in its guaranty of trial by jury to every citizen.

On May 9, 1957, Associate Justice Brennan, of the United States Supreme Court, delivered an address in Denver, Colo. In that address, Justice Brennan dealt with the subject of trial by jury, and he made the following statement:

> American tradition has given the right to trial by jury a special place in public esteem that causes Americans generally to speak out in wrath at any suggestion to deprive them of it. * * * One has only to remember that it is still true in many States that so highly is the jury function prized, that judges are forbidden to comment on the evidence and even to instruct the jury except as the parties request instructions.

Mr. President, in my State the judge charges the jury as to the law, but he cannot comment on the facts. In some States a judge is not even permitted to charge the jury, unless the parties to the suit request it.

I read further from the address by Associate Justice Brennan, of the United States Supreme Court:

> The jury is a symbol to Americans that they are bosses of their Government. They pay the price, and willingly, of the imperfections, inefficiencies and, if you please, greater expense of jury trials because they put such store upon the jury system as a guaranty of their liberties.

Mr. President, those are the words of Associate Justice Brennan, in speaking about jury trials. I do not know how he could have stated the matter in much stronger terms.

Mr. President, that statement by Associate Justice Brennan is most significant, to me, in that it comes from a member of the present Supreme Court of the United States. I shall not predict what the Court may do when the question of the constitutionality of the denial of trial by jury, as embodied in the so-called compromise, is presented to the Court. However, I shall not be surprised if the Court declares the bill to be unconstitutional, because on June 10, 1957, in the case of Reid against Covert, the so-called military wives case, the Supreme Court issued a strong opinion on behalf of trial by jury. In that case the Court said—and this is the Supreme Court of the United States speaking:

> Trial by jury in a court of law and in accordance with traditional modes of procedure after an indictment by grand jury has served and remains one of our most vital barriers to governmental arbitrariness.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for a question?

The PRESIDING OFFICER (Mr. KENNEDY in the chair). Does the Senator from South Carolina yield to the Senator from North Dakota?

Mr. THURMOND. I yield.

Mr. LANGER. If the Congress can say to the people of the United States that a Federal judge has absolute power to forbid a jury trial if the sentence is not more than 45 days in jail or a fine of not more than $300, and if such a law is held constitutional, what would there be to stop a future Congress from changing the amounts to 10 times those—in other words, let us say, to 450 days in jail and a fine of $3,000, or even more?

As I see it, the distinguished Senator from South Carolina is fighting for a principle.

Mr. THURMOND. Exactly. The principle—not the exact amount of the punishment or the exact amount of the fine—is the important consideration in this case.

Mr. LANGER. In other words, the Senator from South Carolina is chiefly concerned with the principle, rather than with the exact amount of the punishment—whether it be 45 days in jail or a fine of $300, or whether it be more than that; is that correct?

Mr. THURMOND. Exactly.

Mr. LANGER. Certainly it is a fact that the Congress should not give to any Federal judge the power to levy fines of $300 or to imprison for 45 days, without a jury trial.

Mr. THURMOND. The Senator is eminently correct. The Congress does not have power to do it if it wants to.

Mr. LANGER. In my opinion, you certainly quoted excellent authority to sustain that view.

Mr. THURMOND. I thank the Senator very much.

These elemental procedural safeguards were embedded in our Constitution to secure their inviolateness and sanctity against the passing demands of expediency or convenience.

And further:

> If * * * the Government can no longer satisfactorily operate within the bounds laid down by the Constitution, that instrument can be amended by the method which it prescribes. But we have no authority to read exceptions into it which are not there.

If the Constitution provided that a Federal judge could give to a defendant a jury trial if he wanted to do so, or to refuse it if he wanted to do that, then there would be authority for what the House sent to the Senate. If the Constitution provided that in cases of criminal contempt defendants would be excepted from the jury trial, the House would have been legally justified in passing what they did. But there is no exception to the right of jury trial in the Constitution or in the Bill of Rights.

The Constitution will first have to be amended in order that this so-called compromise bill, which has passed the House and is before the Senate, can be upheld.

I cannot say what the Supreme Court will do, no one can say, but I do not see how they could make any other holding in view of the Constitution and the Bill of Rights. That is certainly what may be expected from the Court, in view of the statement I just quoted from Justice Brennan, when it is called upon to decide the constitutionality of part V of H. R. 6127 as it has been amended by this so-called compromise.

Many claims have been made that this is a bill to protect the individual's right to vote. The evidence proves that there are more than adequate laws in all the States to protect the right to vote. I requested the Library of Congress to make a study of the laws of the States by which the right to vote is protected in each State, and I spoke on them during the night, starting with Alabama, and covered every State, including Wyoming.

I cited the law and the section of the code, including North Dakota and all the States. They all have laws to protect the right to vote. In a few minutes, I am going to cite a Federal section to show that there is a Federal law already on the subject; so, if a Federal law were desired on the subject, we already have one.

I think it is a matter that ought to be left to the States, but if people disagree about that, and if it is within the jurisdiction of the Federal Government, we already have a statute on the subject. But this bill is a violation of the Constitution on the right to a jury trial question, regardless.

Mr. LANGER. Will the Senator yield for a question?

Mr. THURMOND. I yield.

Mr. LANGER. Would the Senator be kind enough to read the statutes in South Carolina and Mississippi, if he has them?

Mr. THURMOND. Many claims have been made that this is a bill to protect the individual's right to vote. The evidence proves that there are more than adequate laws in all the States to protect the right to vote. As to my own State of South Carolina, I shall discuss at some

length the constitutional and statutory safeguards protecting a citizen's right to vote. I shall discuss them in a few minutes.

I do not know of a single case having arisen in South Carolina in which a potential voter has charged that he has been deprived of his right to vote. Had such an instance occurred, justice would have been secured in the courts of South Carolina. The Federal Government has no monopoly over the administration of justice.

Both white and Negro citizens exercise their franchise freely in South Carolina. Our requirements are not stringent. South Carolina does not require the payment of a poll tax as a prerequisite to voting.

When I was Governor of South Carolina, on May 1, 1947, I recommended to the State legislature that it repeal the poll tax as a prerequisite to voting.

The legislature took favorable action and submitted the question to a vote of the people at the next general election, which was in November 1948.

The people voted favorably on the amendment, and then in January 1949, or early in 1949, the legislature ratified the action of the people. Our poll tax was eliminated as a prerequisite to voting. So we have no poll tax in my State as a prerequisite to voting. We have a school tax, but no one has to pay to vote. Moreover, registration is necessary only once every 10 years.

Proof that Negroes vote in large numbers in South Carolina—if proof is desired—can be found in an article which was published following the general election in 1952 in the Lighthouse and Informer, a Columbia (S. C.) Negro newspaper. In its issue of November 8, 1952, the Lighthouse and Informer discussed the results of the election and declared that: "Estimates placed the Negro votes at between 60,000 and 80,000 who actually voted."

This represents almost one-fourth of the votes cast in that election. I did not see an estimate of the Negro votes in the 1956 general election, but reports which came to me indicated there was another large turnout.

Mr. President, I shall now read the provisions of the South Carolina Constitution which protect a citizen's right to vote:

SOUTH CAROLINA CONSTITUTION ELECTION PROVISIONS

ARTICLE 1, SECTION 9. SUFFRAGE

The right of suffrage, as regulated in this constitution, shall be protected by law regulating elections and prohibiting under adequate penalties, all undue influences from power, bribery, tumult, or improper conduct.

ARTICLE 1, SECTION 10. ELECTIONS FREE AND OPEN

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this constitution shall have an equal right to elect officers and be elected to fill public office.

ARTICLE 2, SECTION 5. APPEAL; CRIMES AGAINST ELECTION LAWS

Any person denied registration shall have the right to appeal to the court of common pleas, or any judge thereof, and thence to the supreme court, to determine his right to vote under the limitations imposed in this article, and on such appeal the hearing shall be de novo, and the general assembly shall provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws.

ARTICLE 2, SECTION 8. REGISTRATION PROVIDED; ELECTIONS; BOARD OF REGISTRATION; BOOKS OF REGISTRATION

The general assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of the same: *Provided*, At the first registration under this constitution, and until the first of January 1898, the registration shall be conducted by a board of three discreet persons in each county, to be appointed by the Governor, by and with the advice and consent of the senate. For the first registration to be provided for under this constitution, the registration books shall be kept open for at least 6 consecutive weeks; and thereafter from time to time at least 1 week in each month, up to 30 days next preceding the first election to be held under this constitution. The registration books shall be public records open to the inspection of any citizen at all times.

ARTICLE 2, SECTION 15. RIGHT OF SUFFRAGE FREE

No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.

In addition to these general provisions of the constitution protecting the right to vote, I shall now read specific statutory provisions contained in the South Carolina Code. I believe it is especially appropriate that I do so in view of the fact that it has been charged that South Carolina, as well as other States, has failed to protect the right of citizens to vote.

The charge is false. The right of every citizen to vote in South Carolina is protected, and I want the RECORD to be clear; therefore, I cite the following provisions of law in South Carolina:

SOUTH CAROLINA CODE—TITLE 23

23–73. APPEAL FROM DENIAL OF REGISTRATION

The boards of registration to be appointed under section 23–51 shall be the judges of the legal qualifications of all applicants for registration. Any person denied registration shall have the right of appeal from the decision of the board of registration denying him registration to the court of common pleas of the county or any judge thereof and thence to the supreme court.

23–74. PROCEEDINGS IN COURT OF COMMON PLEAS

Any person denied registration and desiring to appeal must, within 10 days after written notice to him of the decision of the board of registration, file with the board a written notice of his intention to appeal therefrom. Within 10 days after the filing of such notice of intention to appeal, the board of registration shall file with the clerk of the court of common pleas for the county the notice of intention to appeal and any papers in its possession relating to the case, together with a report of the case if it deem proper. The clerk of the court shall file the same and enter the case on a special docket to be known as Calendar No. 4. If the applicant desires the appeal to be heard by a judge at chambers he shall give every member of the board of registration 4 days' written notice of the time and place of the hearing. On such appeal the hearing shall be de novo.

23–75. FURTHER APPEAL TO SUPREME COURT

From the decision of the court of common pleas, or any judge thereof, the applicant may further appeal to the supreme court by filing a written notice of his intention to appeal therefrom in the office of the clerk of the court of common pleas within 10 days after written notice to him of the filing of such decision and within such time serving a copy of such notice on every member of the board of registration. Thereupon the clerk of the court of common pleas shall certify all the papers in the case to the clerk of the supreme court within 10 days after the filing of such notice of intention to appeal. The clerk of the supreme court shall place the case on a special docket, and it shall come up for hearing upon the call thereof under such rules as the supreme court may make.

I do not know of any other State which gives this protection.

If such appeal be filed with the clerk of the supreme court at a time that a session thereof will not be held between the date of filing and an election at which the applicant will be entitled to vote if registered the chief justice or, if he is unable to act or disqualified, the senior associate justice shall call an extra term of the court to hear and determine the case.

The supreme court will be called together to hear one man's case on appeal. What more can we do than that? We have, first, the board of registration; next the court of common pleas, and then the supreme court. The supreme court will hold an extra session, if necessary, to hear the appeal, and even if there is only one man who feels that he has been disenfranchised, or disqualified, for any reason, to receive a registration certificate.

23–100. RIGHT TO VOTE

No elector shall vote in any polling precinct unless his name appears on the registration books for that precinct. But if the name of any registered elector does not appear or incorrectly appears on the registration books of his polling precinct he shall, nevertheless, be entitled to vote upon the production and presentation to the managers of election of such precinct, in addition to his registration certificate, of a certificate of the clerk of the court of common pleas of his county that his name is enrolled in the registration book or record of his county on file in such clerk's office or a certificate of the secretary of state that his name is enrolled in the registration book or record of his county on file in the office of the secretary of state.

In other words, if he loses his certificate, or has any trouble with the board—the books are filed there—if his name is on the book, the clerk will give him a certificate. If it is not there, he can even go to the secretary of state at Columbia, if there is any local prejudice or other trouble. He can go to the State capital, and obtain a certificate from the secretary of state. That is the protection we give. We have some others.

23–349. VOTER NOT TO TAKE MORE THAN 5 MINUTES IN BOOTH; TALKING IN BOOTH, ETC.

No voter, while receiving, preparing, and casting his ballot, shall occupy a booth or compartment for a longer time than 5 minutes. No voter shall be allowed to occupy a booth or compartment already occupied by another, nor to speak or converse with anyone, except as herein provided, while in the booth. After having voted, or declined or failed to vote within 5 minutes, the voter shall immediately withdraw from the voting place and shall not enter the polling place again during the election.

23–350. UNAUTHORIZED PERSONS NOT ALLOWED WITHIN GUARDRAIL; ASSISTANCE

No person other than a voter preparing his ballot shall be allowed within the guardrail, except as herein provided. A voter who is not required to sign the poll list himself by this title may appeal to the managers for assistance and the chairman of the managers shall appoint one of the managers and a bystander to be designated by the voter to assist him in preparing his ballot.

Mr. LANGER. Mr. President, will the Senator yield for a question?

Mr. THURMOND. I am glad to yield.

Mr. LANGER. A little while ago the distinguished Senator said that he had before him the election laws of all 48 States.

Mr. THURMOND. That is true.

Mr. LANGER. Are not the laws of South Carolina more liberal than those of other States?

Mr. THURMOND. I think they are more liberal with respect to voting. I think we have gone further than have most of the other States. We repealed the poll-tax requirement. We have given every opportunity to everyone to vote. I do not know of anyone in my State today who is denied the right to vote if he wishes to vote.

Our requirements are not too severe. The only requirement is that the voter must be able to read or write the Constitution. The Constitution was used in order to have reference to some document. Anyone who can read and write can read the Constitution as well as he can read anything else. Or if he cannot do that, he must own $300 worth of property. If he meets either requirement, he can vote.

Mr. LANGER. The Senator stated that there was a Federal law in this connection.

Mr. THURMOND. Yes.

Mr. LANGER. May we have the Federal statute read?

Mr. THURMOND. Mr. President, the Senator from North Dakota has just asked me about the Federal law on the books with regard to voting. I should like to have the Senator from North Dakota and other Senators hear this. I ask the distinguished Senator from South Dakota [Mr. CASE] and other Senators to listen to the statute I am about to read. Last night I made the point that every State in the Union has laws on this subject. Of course, if the Senator from South Dakota has already made up his mind, I do not wish to take his time. Will he give me his attention for just a moment?

Mr. CASE of South Dakota. The Senator from South Dakota is listening.

Mr. THURMOND. I do not wish to take the Senator's time if his mind is made up. But if his mind is open, I want him to hear this.

I made the statement last night that every State in the Nation has statutes to protect the right to vote. I called upon the Library of Congress to compile those statutes, and I read them into the RECORD. They will be found in my speech. Starting with Alabama and going through Wyoming, every State has laws protecting the right to vote.

But some people say that we need Federal laws. I do not believe many people know that we have Federal statutes on the subject. For some reason or other they must have overlooked them. I wish to read the Federal law at this time to show that there is a Federal law on the statute books. It is designated as section 594 of chapter 29, title 18, of Criminal Code and Criminal Procedure. It reads as follows:

594. INTIMIDATION OF VOTERS

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the Office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. (June 25, 1948, ch. 645, sec. 1, 62 Stat. 720.)

If anyone intimidates, threatens, or coerces another with respect to voting, or with respect to how he wishes to vote, or for the purpose of interfering with his right to vote, or to vote for whomever he chooses, there is a Federal statute under which a Federal judge can send him to jail for 1 year, or fine him $1,000. There is already a Federal statute on the subject. So why pass the bill coming from the House, or any other bill to provide the right to vote?

The statute which I have just read is a criminal statute. It enables the Federal Government, if it wishes to protect the right to vote, to protect any man's right to vote, because it can put a man in jail for as long as 1 year, or fine him $1,000 if he interferes with the right of anyone to vote.

The only difference is that this is a criminal statute, and if a man were prosecuted under this statute he would get a jury trial. If we believe in the Constitution and in jury trials, we want to preserve that right anyway. The Constitution is clear on the question of jury trials. Article III, section 2, is specific on it. The Bill of Rights contains several references to it. The sixth amendment, in the Bill of Rights, is directly to the point.

I have before me a decision—I do not know whether the Senator heard it or not—which upholds the contention that criminal contempt is a crime. If criminal contempt is a crime, then a man is entitled to a trial by jury under the Constitution of the United States if he is charged with criminal contempt.

If there have been complaints to the Federal Government in any State of the Nation about people not being allowed to vote, why has not the Justice Department taken action under the statute to which I have just referred, and put offenders behind bars or fined them if they interfered with the right of other people to vote?

The Federal Government has the power to do it. It is not necessary for it to have more power. The accused should have a jury trial. This is a free country. The mere fact that a jury returns a verdict which one of the parties may not like is no excuse for abolishing the jury trial.

Either the Federal Government is not doing its duty in protecting people who have complained to it that they could not vote for one reason or another, or that voting has been interfered with for one reason or another, and has not given the proper protection to those people who complained to it, or there have been no complaints.

If there have been any complaints, it was the duty of the Department of Justice to take action, and they could take action under the statute I have cited. There is no use beating about the bush and saying there is a duty to pass a right to vote bill. There is such a law on the statute books. Every State in the Union has such a law. The United States Code contains a provision protecting the right to vote. Let the Attorney General enforce this statute I have cited. If he has received any complaint from South Carolina about any man not voting, or has received a complaint from any other State, it is his duty to take action under the statute, and see that the one who interferes is punished. He can be put in jail for a year or fined $1,000.

Mr. President, I am merely desiring to call this to the attention of Senators who are in the Chamber at this time, because so many of them do not seem to understand that we now have a Federal law on the books, section 594, which provides for the protection of voting rights. I do not know how it could be made any stronger.

The Senator from North Dakota was asking about the South Carolina statute. I read from the statutes:

After the voter's ballot has been prepared the bystander so appointed shall immediately leave the vicinity of the guard rail.

23–656. PROCURING OR OFFERING TO PROCURE VOTES BY THREAT

At or before every election, general, special, or primary, any person who shall, by threats or any other form of intimidation, procure or offer or promise to endeavor to procure another to vote for or against any particular candidate in such election shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 nor more than $500 or be imprisoned at hard labor for not less than 1 month nor more than 6 months, or both by such fine and such imprisonment, in the discretion of the court.

23–567. THREATENING OR ABUSING VOTERS, ETC.

If any person shall, at any of the elections, general, special, or primary, in any city, town, ward, or polling precinct, threaten, mistreat, or abuse any voter with a view to control or intimidate him in the free exercise of his right of suffrage, such offender shall, upon conviction thereof, suffer fine and imprisonment, at the discretion of the court.

23–658. SELLING OR GIVING AWAY LIQUOR WITHIN 1 MILE OF VOTING PRECINCT

It shall be unlawful hereafter for any person to sell, barter, give away, or treat any voter to any malt or intoxicating liquor within 1 mile of any voting precinct during any primary or other election day, under a a penalty, upon conviction thereof, of not more than $100 nor more than 30 days imprisonment with labor. All offenses against the provisions of this section shall be heard, tried, and determined before the court of general sessions after indictment.

23–659. ALLOWING BALLOT TO BE SEEN, IMPROPER ASSISTANCE, ETC.

In any election, general, special, or primary, any voter who shall (a) except as provided by law, allow his ballot to be seen by any person, (b) take or remove or attempt to take or remove any ballot from the polling place before the close of the polls, (c) place any mark upon his ballot by which it may be identified, (d) take into the election booth any mechanical device to enable him to mark his ballot or (e) remain longer than the specified time allowed by law in the booth or compartment after having been notified that his time has expired and requested by a manager to leave the compartment or booth and any person who shall (a) interfere with any voter who is inside of the polling place or is marking his ballot, (b) unduly influence or attempt to influence unduly any voter in the preparation of his ballot, (c) endeavor to induce any voter to show how he marks or has marked his ballot or (d) aid or attempt to aid any voter by means of any mechanical device whatever in marking his ballot shall be fined not exceeding $100 or be imprisoned not exceeding 30 days.

23–667. ILLEGAL CONDUCT AT ELECTIONS GENERALLY

Every person who shall vote at any general, special, or primary election who is not entitled to vote and every person who shall by force, intimidation, deception, fraud, bribery or undue influence obtain, procure, or control the vote of any voter to be cast for any candidate or measure other than as intended or desired by such voter or who shall violate any of the provisions of this title in regard to general, special, or primary elections shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment in jail for not less than 3 months nor more than 12 months or both, in the discretion of the court.

Mr. President, I believe what I have read covers the constitutional provisions and the statutory provisions. Does not the Senator from North Dakota think those provisions add to the protection of voters?

Mr. LANGER. Will the Senator be kind enough to repeat the Federal statute?

The PRESIDING OFFICER (Mr. HOLLAND in the chair). Does the Senator from South Carolina yield to the Senator from North Dakota?

Mr. THURMOND. I yield for a question.

Mr. LANGER. I am particularly interested in where the Federal statute states that one can be both fined and imprisoned.

Mr. THURMOND. It says "or both."

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

But such person can get a jury trial, though. In other words, that is just another crime. It is like when a man is charged with murder or any other crime.

He will have a jury trial. If he is found guilty, then the judge can sentence him to $1,000 or 1 year in prison, or both. That is a strong statute.

Mr. LANGER. I want to thank the distinguished Senator for bringing that to the attention of the Senator from North Dakota.

Mr. THURMOND. The Senator is entirely welcome.

I think it is a statute that a good many people may have overlooked. There has been so much talk about the right to vote and people not having the right to vote protected until I thought the Senate and the people of the Nation ought to know that not only every State has laws protecting the right to vote, but the Federal Government also has on the statute books a statute protecting the right to vote. As I stated, that is section 594, of chapter 29, title 18, Criminal Code and Criminal Procedure.

Mr. President, the provisions of the South Carolina constitution and the provisions of the South Carolina statutes, which I have just read, prove the absolute lack of necessity for additional protection of the right to vote in my State.

Mr. LANGER. Mr. President, will the Senator yield further?

The PRESIDING OFFICER. Will the Senator yield to the Senator from North Dakota?

Mr. THURMOND. I will be glad to yield to my distinguished friend.

Mr. LANGER. For a question?

Mr. THURMOND. For a question.

Mr. LANGER. Have there been any decisions by the South Carolina Supreme Court on any of the statutes which the distinguished Senator has read?

Mr. THURMOND. I do not recall offhand that any cases have gone to the supreme court. In our State everybody registers and votes who wants to, and I guess that is probably the reason there have been no cases taken to the supreme court.

Mr. LANGER. I thank the Senator.

Mr. THURMOND. The Senator is welcome.

Mr. President, also, the summary of the laws of other States, which I have requested to be printed in the RECORD at the conclusion of my remarks, prove there is no necessity for greater protection of the right to vote in any other State.

The claim that this is a right to vote bill is completely without foundation. If the advocates of this so-called civil-rights bill want to deny the right of trial by jury to American citizens, they should proclaim their objective and seek to remove the guaranty of trial by jury from the Constitution. They should follow constitutional methods. Then the people of this Nation would not be misled, as some have been, to think that H. R. 6127 would give birth to a right to vote for anybody—a right already held by those it purports to help.

Mr. President, I also object to part I of this bill which would create a Commission on Civil Rights. To begin with, there is absolutely no need or reason for the establishment of such a commission. If there were any necessity for an investigation in the field of civil rights, it should be conducted by the States, or by an appropriate committee of the Congress within the jurisdiction held by the Congress.

The Congress should not delegate its authority to a commission. In such a delicate and sensitive area, the Congress should proceed with great deliberation and care. There is no present indication that any such study will be needed in the foreseeable future.

The establishment of a commission as proposed in this bill is most unwise.

Section 104 (a) of part I provides the Commission shall—

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

These two paragraphs provide the Commission with absolute authority to probe into and to meddle into every phase of the relations existing between individuals, limited only by the imagination of the Commission and its staff.

The Commission can go far afield from a survey on whether the right to vote is protected. Through the power granted in the paragraphs I have cited, the Commission could exert its efforts toward bringing about integration of the races in the schools and elsewhere. It would be armed with a powerful weapon when it combined its investigative power and its authority to force witnesses to answer questions.

I do not believe the people of this country realize the almost unlimited powers of inquiry which would be placed in the hands of this political Commission. I do not believe the people of this country want to have such a strong-arm method of persuasion imposed upon them. Section 105 (f) of part I provides that "subpenas for the attendance and testimony of witnesses or the protection of written or other matter may be issued in accordance with the rules of the Commission."

This is an unsual grant of authority. Many of the committees and special committees of the Congress do not have this power. The Truman Commission on Civil Rights did not have it. The subpena is a punitive measure, generally reserved for penal process whereby powers are granted to force testimony which would not otherwise be available. If the proposed Commission were simply a factfinding commission and nonpolitical, the extreme power to force testimony by the use of a subpena would not be needed. The power of subpena in the hands of a political commission and the additional power to enforce its subpenas by court order diverge from the authority usually held by traditional factfinding groups.

There are several grounds for serious objection to section 104 (a) of part I. This section permits complaints to be submitted to the Commission for investigation, but it does not require the person complaining to have a direct interest in the matter. Mr. LANGER, I should like to have the Senator hear this. This means, of course, that any meddler

can inject himself into the relationship existing between other persons. It opens the door for fanatics to stir up trouble against innocent people, to involve neighbor against neighbor. This section opens the door wide for such organizations as the NAACP, the ADA, and others, to make complaints to the Commission with little or no basis for doing so. If an NAACP official in Washington made a complaint against a citizen of South Carolina, the South Carolina citizen would not have the opportunity of confronting his accuser unless the accuser appeared voluntarily.

Although part I requires sworn allegations to the Commission, there is no requirement that testimony taken by the Commission be taken under oath. Failure to make all witnesses subject to perjury prosecutions by placing them under oath would certainly make the testimony of little value. The Commission might adopt a rule to require sworn testimony, but this should not be left to the discretion of the Commission. It should be written into law.

There are many other objections to part I which were pointed out during the debate, before the Senate passed its version of the bill. I shall not go into them further at this time.

Part II of the bill provides for the appointment of an additional Assistant Attorney General in the Justice Department. Since the Justice Department already has a section to handle civil-rights cases, there is no reason to create this new position. The creation of a new division would require many additional attorneys and other employees in the Justice Department. The Department has not disclosed how many additional lawyers, clerks, and stenographers it would plan to employ.

A civil-rights division in the Justice Department is not needed, because there is no indication that there will be any increase in the number of civil-rights cases which are now being handled by a section in the Department.

The Attorney General had a most difficult time trying to show that an additional Assistant Attorney General was needed; in fact, he failed completely in his efforts to do so. As a matter of fact, even those who have advocated passage of H. R. 6127 have been forced to admit time after time that conditions relating to civil-rights matters have been steadily improving all over the country. Since conditions have improved and since there is no indication that conditions will change—unless the Attorney General and the Civil-Rights Commission create trouble—there is absolutely no justification for the appointment of an additional Assistant Attorney General in charge of a Civil Rights Division of the Justice Department.

Part III of the bill, as originally written—which was completely obnoxious—was removed. I have several times stated my views on part IV. I object to its grant of dictatorial power to the Attorney General. The Congress should never agree to place such authority in the hands of any one official of the Government.

Another particularly obnoxious provision is found in section 131 (d) which reads as follows:

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield to me?

The PRESIDING OFFICER (Mr. HOLLAND in the chair). Does the Senator from South Carolina yield to the Senator from North Dakota?

Mr. THURMOND. I shall be glad to yield for a question.

Mr. LANGER. As I understand, in the case of the existing section 594, during all these years the Attorney General of the United States has had the power to enforce that section, and he has had the assistance of the United States attorneys in every State of the Union, and they have had the help of their assistants; is that correct?

Mr. THURMOND. That is correct.

Mr. LANGER. In some of the States there are eastern districts, northern districts, southern districts, and western districts—for instance, as in the case of New York; is that correct?

Mr. THURMOND. That also is correct.

Mr. LANGER. And each of those districts has United States attorneys and assistant United States attorneys and United States marshals; is that correct?

Mr. THURMOND. That is correct.

Mr. LANGER. So all the necessary machinery for the enforcement of section 594, to protect the voting right of any citizen of the United States who may have had his voting right denied, has been in existence all during this period of time; is that correct?

Mr. THURMOND. That is correct.

Mr. LANGER. Can the distinguished Senator from South Carolina name a single case in which the Attorney General of the United States has tried to enforce any of these statutes?

Mr. THURMOND. In reply to the question of the distinguished Senator, I will say that I do not know about the situation in other States; but as for the situation in my own State, I have not heard of such a case. However, I can see why that would be; I can understand why probably there would not be any such cases in South Carolina. That is because anyone in South Carolina who wishes to register to vote, has no trouble doing so. But I have not heard that any cases of this sort have been brought in other States. Such cases may have been brought in other States, but I have not heard of any.

Mr. LANGER. Will the Senator from South Carolina yield further?

Mr. THURMOND. I shall be pleased to yield for a question.

Mr. LANGER. I wish to ask what additional power the Attorney General will have, if a new Assistant Attorney General is appointed, inasmuch as the Attorney General already has the help of other Assistant Attorneys General and the help of United States attorneys, whose appointments have to be approved by the Senate; they cannot be appointed until the Congress has consented to the appointments.

Mr. THURMOND. In reply to the question asked by the Senator from North Dakota, I would say that I see no need for an additional Assistant Attorney General—who, if appointed, would receive a large salary. I see no need for the appointment of an additional Assistant Attorney General, because the Department of Justice already has a civil-rights section; and there has been no evidence of any need for a big division, similar to the one now proposed to be created. I think the establishment of such a division would simply mean the payment of more salaries and a larger Federal payroll and more taxes on the backs of the American people.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield for a question.

Mr. LANGER. In other words, there has never been a time when, under present law, the Department of Justice could not have presented a case of that sort before a grand jury, if the Department had wished to do so; is that correct?

Mr. THURMOND. Exactly. If there had been any complaint in either North Dakota or South Carolina, let us say, to the effect that someone had not been able to vote, although he was eligible to vote, all the Department of Justice would have had to do would have been to have the United States attorneys in those States look into the matter and take whatever action would have been appropriate under the circumstances.

Mr. LANGER. I thank the Senator from South Carolina.

Mr. THURMOND. I thank the Senator from North Dakota for his questions.

Mr. President, a moment ago I read the provisions of section 131 (d). It simply means that the district courts can, under that provision, bypass the State procedures, the administrative remedies under the State laws, and can take action, and thus can cause much tension, embarrassment, and trouble, although it is not necessary to do so. If anyone cannot obtain justice through the administrative remedies of his State, then of course he will be able to go to the district attorneys, and they can prosecute under the Federal statute I have just read. But the use of the existing remedies under the State laws should first be required—which is the usual procedure one would follow.

No legitimate reason has been presented as to why administrative remedies and remedies provided in the courts of the States should not be exhausted prior to having Federal district courts take jurisdiction in cases of election-law violations.

In other words, I believe in letting the States run their business, if they will. A Federal statute already is in existence; and if there is need to use it, it can be used. But why not let the States handle the matter of voting and the other mat-

ters which are reserved to them under the Constitution? Let the States handle them. Then, if the States fail to do so or if they fall down in the performance of their duty, section 594 is in existence, and it can be used as a hammer with which they can be clubbed to death, if need be.

The present proposal could be a step toward future elimination of the State courts altogether. I do not believe the Congress has, or should want, the power to strip our State courts of authority, and to vest it in the Federal courts. Some of the advocates of H. R. 6127 spoke strongly on behalf of the Federal courts, during the debate on the jury-trial amendment. I wish they were equally as vehement in their defense of our State courts.

There is no reason to permit an individual to bypass the administrative agencies of his own State and the courts of his own State in favor of a Federal court when the matter involved is principally a State matter. If a person should be dissatisfied with the results obtained in the State agency and courts, he could then appeal from the decision. But until he has exhausted established remedies, he should not be permitted to bypass them. That is the point I made just a few minutes ago.

I shall not go into further details with reference to the provisions of this part of the bill, but I am just as strongly opposed to it as I was when it was first introduced. I shall continue to oppose such grants of power to the Attorney General or to any other official.

Mr. President, I based my opposition to H. R. 6127 throughout its consideration in the Senate on three principal points. I am convinced the bill is unconstitutional in several respects which I have cited. I know that it is unnecessary because the right to vote is fully protected in every State and under the laws of the United States where applicable.

Finally, I know that the enactment of such legislation is extremely unwise.

It is unwise because the sure result of passing this bill would be to destroy a great deal of the good feeling existing between the white and the Negro races, not only in the South but in every community where a substantial number of Negroes live. Nothing would be gained, but much would be lost.

The Civil Rights Commission, by using its powers to attempt to force integration of the races, is bound to create suspicion and tension between the races to an even greater degree than the suspicion and tension which was created by the 1954 Supreme Court decision in the school segregation cases.

Unbiased persons who are familiar with the segregation problem, and who observed the detrimental result of the Supreme Court decision, know that a traveling investigation commission and a meddling Attorney General could bring about chaos in racial relations.

The chaos would not be confined to the South because the provisions of this bill will apply to every citizen in every State. However, the Attorney General, in exercising the discretion granted him, along with the extraordinary powers also granted him, must be expected to confine his investigations and his court actions to the States of the South.

The South has often been derided and condemned on charges of sectionalism, but if the advocates of this legislation believe they will create greater unity instead of greater division in this country by the enactment of this bill, they are entirely mistaken.

George Washington in his Farewell Address used his strongest language against those who would divide our country and urged a unity of spirit. He said:

> In contemplating the causes which may disturb our Union, it occurs, as a matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations—northern and southern, Atlantic, and western—whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection.

H. R. 6127 is a blueprint for suspicion, confusion, and disunity.

The laws of the Nation are dependent upon the customs and traditions of the people. Unless law is based upon the will of the people, it will not meet with acceptance.

Government in this country derives no power except the power coming from the people. Laws which are not based on the Constitution, which is the basic statement of the will of the people, cannot be justified on any ground.

Mr. President, when there is so much evidence that this bill is unconstitutional, unnecessary, and unwise, it should never be approved. Force may subjugate the human body, but force by itself can never change the human mind. Laws, like leaders, must be of the people, by the people, and for the people.

H. R. 6127 fails to measure up by any standard. It should be rejected. I appeal to every Member of this body who believes in constitutional government and the sovereignty of the people to vote against this bill.

Mr. President, this bill, as I have stated before, has been widely called a right-to-vote bill. That is a completely misleading term. The bill, as I have stated, in my opinion, is unnecessary because we have laws in every State to protect the right to vote. We have laws by the Federal Government to protect the right to vote. In the sections I have cited, a man can be punished severely for any interference with the right to vote.

(At this point Mr. THURMOND yielded to Mr. JOHNSON of Texas and other Senators, who requested the transaction of certain business, all of which appears in the RECORD following Mr. THURMOND'S speech.)

Mr. THURMOND. Mr. President, we have the finest Nation in the world. We have the finest Government in the world. In 1787 our forefathers met in Philadelphia and wrote a document called the Constitution. It was simply a compact between the States. Our forefathers came to this country to get away from tyranny. They had been punished many times without juries. They had been denied the right to worship as they pleased. They have been denied the right of freedom of speech. They had been denied the right of assemblage. They had been denied the right to petition the government, and they had been denied many other rights which we take as a commonplace in this country. They came here to enjoy the benefits of the Government they would establish to provide them those rights. After the States operating as colonies for a while felt the need of a central government for purposes of national defense, for purposes of commerce, for purposes of postal service, trade, and other reasons, they decided to form a union. They met in Philadelphia in 1787, and with deputies from all the 13 States attending that conferential meeting, all except Rhode Island—at that time Rhode Island was in the hands of radicals and ignored the whole proceeding—all with the exception of that one State, had deputies at the Constitutional Convention.

They wrote a document to delegate certain of their powers—there were States before there was a Federal union, of course—to the Federal Government for the purpose of forming a union and a central government which could do certain things for the States better than they themselves could do them.

At that convention there was a very difficult situation. The delegates had to start from scratch, so to speak, to write the basic law for a new nation. Much discussion and debate occurred there, but after working together for several months in Philadelphia they finally arrived at a document, or a compact, which was signed by the representatives of the States, delegating certain powers to the Central Government.

Three of the delegates attending the convention were not pleased, and did not sign it. I believe I stated this morning who they were. They were George Mason, of Virginia; John Randolph, of Virginia; and Elbridge Gerry, of Massachusetts. The other delegates signed their names, except one, who left, but had his friend sign it.

The document was then presented to the States for ratification. Within due time ratification was had, but there was considerable opposition at the convention, and when the question of ratification arose, the main objection which was raised was that there was not spelled out in the Constitution a bill of rights. Some of the most powerful leaders in the States opposed ratification for that reason. Those who did not sign in Philadelphia opposed it chiefly, I understand, for that reason.

The Bill of Rights is a document which we cherish. The Bill of Rights is the finest civil-rights bill in the world. The Bill of Rights is a genuine civil-rights bill. That document provides us with the fundamental civil rights which we enjoy in this country today.

One of the bases of the Bill of Rights—and I like to call it the heart of the Bill of Rights—is the right of trial by jury. In the Bill of Rights, the sixth amendment is a trial-by-jury amendment. It provides specifically that any person charged with a crime shall be tried by a jury. I have previously brought out today that criminal contempt is a crime, and therefore, since it is a crime, a person charged with criminal contempt is entitled to a trial by jury.

The bill which passed the House is a compromise, as most legislation is. Some people may have felt that that was the best the House and Senate could do, because the conferees got together and reconciled the differences between the two Houses. Ordinarily that principle would be sound in connection with legislation, but it is not sound here, because the effect of the so-called compromise would be to violate the Constitution of the United States.

If the so-called compromise had provided that a judge, in his discretion, could try a man for criminal contempt, I would have opposed it just as much if no punishment whatever were involved, because the Constitution says that a man is entitled to a trial by jury when he is prosecuted for a crime. There is no discretion in the Constitution. There is no proviso in the Constitution. There is no exception in the Constitution. The Constitution is perfectly clear on that point.

If the punishment provided in the bill in the House had called for 1 day's imprisonment, or a fine of $1, I would be just as bitterly opposed to it. The Constitution of the United States provides that if a man is charged with a crime he is entitled to a jury trial. Under the decision which I have cited here twice today, I believe, holding that criminal contempt is a crime, it is clear that a man charged with criminal contempt is entitled to a jury trial.

I do not believe that the compromise amendment is valid. I do not think it is constitutional. The amendment of the distinguished Senator from Wyoming [Mr. O'MAHONEY] delineated and defined civil contempt and criminal contempt, and provided that civil contempt proceedings were for the purpose of bringing about compliance, in which case the order would be issued prior to the act, and that criminal contempt proceedings were to punish, in which case the order would be issued after the act. If the House had accepted it, the American people would be guaranteed trial by jury in the event of a charge of criminal contempt, which is a crime.

Mr. O'MAHONEY. Mr. President, will the Senator yield to me for a question?

Mr. THURMOND. I yield for a question.

Mr. O'MAHONEY. I wish to ask the Senator if I understood him correctly to say that in his opinion the so-called jury-trial provision of the bill which has been returned to us by the House is invalid and unconstitutional?

Mr. THURMOND. That is my opinion.

Mr. O'MAHONEY. I wish to say to the Senator from South Carolina that I completely agree with that opinion. It is impossible to govern the right of trial by jury by the discretion of the judge, according to the penalty he conceives he intends to inflict.

I should like to ask the Senator another question.

The PRESIDING OFFICER. Does the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield to the distinguished Senator.

Mr. O'MAHONEY. I ask the distinguished Senator from South Carolina if he agrees with me that the question of jury trial should be reexamined as soon as conveniently possible, and that I would be doing a wise thing if, when the new session of Congress assembles, I should introduce a repetition of the general jury-trial amendment, firm in the belief that the advocates of civil rights, upon examination of the pretended amendment which has come to us from the House, will discover that they have bought a pigeon instead of a swallow.

Mr. THURMOND. In reply to the Senator's question, I will say that I agree with him that the bill should be reexamined; but I think the reexamination should take place before Congress passes the bill, and not wait until next January.

Mr. O'MAHONEY. If the Senator will permit me to make this comment—will the Senator yield?

Mr. THURMOND. I will yield for a question.

Mr. O'MAHONEY. I shall frame it in the form of a question. Does not the Senator agree that we are all weary and worn down; that most of us are almost as tired as is the Senator himself; and that perhaps when we return in January in the full vigor of our bodies and minds we shall be able to do a better job than we can do at this session of the Congress? I am going to introduce a jury-trial amendment in the next session in the firm belief that this jury-trial amendment accomplishes nothing; that it does not at all help the advocates of civil rights.

Mr. THURMOND. In reply to the Senator's question I will say that I have been on my feet for the past 17 hours, and I still feel pretty good. But I agree that it has been a long, tough session. But even though it has been a long, tough session I do not think we ought to quit now and pass a bill that the Senator and I both feel is unconstitutional. I think we should refer it to the committee, which I tried to do the other night but was unsuccessful in my attempt. But I think this bill should not be passed at this session. I believe the Senator would prefer that it not be passed; but if it is passed, of course I should be delighted to have the Senator offer an amendment to correct the unconstitutional portion of it when we return in January. But I really do not see why we should have to pass an unconstitutional piece of legislation if we can avoid it.

Mr. O'MAHONEY. Mr. President, will the Senator from South Carolina yield for another question?

Mr. THURMOND. I yield for another question.

Mr. O'MAHONEY. This question is a little different from the one I asked before. I am wondering if the Senator from South Carolina would cooperate with me in enabling me to pass a bill which does not involve any constitutional question. The Senate passed the bill without any opposition at all, and the House has returned it to the Senate with an amendment. I should like to move that the House amendment be concurred in by the Senate, and thus get the bill disposed of.

Mr. THURMOND. If the Senator will ask unanimous consent for me to yield to him on condition that I can retain the floor, and, further, that I shall not be charged with a second speech when I resume the discussion of the present subject——

The PRESIDING OFFICER. Does the Senator from Wyoming ask unanimous consent based on those conditions?

Mr. O'MAHONEY. I do, Mr. President.

Mr. THURMOND. Mr. President, I should like to ask the Senator from Wyoming this question: This is not a civil-rights bill, as I understand, is it?

Mr. O'MAHONEY. No; it is not.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wyoming? The Chair hears none.

APPROVAL OF CONTRACT WITH THE CASPER-ALCOVA IRRIGATION DISTRICT, WYOMING

The PRESIDING OFFICER (Mr. HOLLAND in the chair) laid before the Senate the amendments of the House of Representatives to the bill (S. 1996) to approve the contract negotiated with the Casper-Alcova Irrigation District, to authorize its execution, to provide that the excess-land provisions of the Federal reclamation laws shall not apply to the lands of the Kendrick project, Wyoming, and for other purposes, which were, on page 1, line 3, after "That" insert, "subject to the provisions of section 2 of this act,"; on page 2, line 5, strike out all after "SEC. 2." down through and including "landowners." in line 12, and insert:

> The limitations on acreage and restrictions on delivery of water to excess lands under the Federal reclamation laws shall apply to the lands of the Kendrick project, Wyoming, except that 480 irrigable acres shall, in this instance, be substituted for 160 irrigable acres.

And to amend the title so as to read: "An act to approve the contract negotiated with the Casper-Alcova Irrigation District, to authorize its execution, and for other purposes."

Mr. O'MAHONEY. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Wyoming.

The motion was agreed to.

Mr. O'MAHONEY. I thank the Senator from South Carolina.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its

reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

S. 281. An act for the relief of Jaffa Kam;
S. 684. An act for the relief of Ilse Striegan Bacon;
S. 880. An act for the relief of Necmettin Cengiz;
S. 882. An act for the relief of Pauline Ethel Angus;
S. 1456. An act for the relief of Refugio Guerrero-Monje;
S. 1467. An act for the relief of Itsumi Kasahara;
S. 1635. An act for the relief of Maria Talioura Boisot;
S. 1835. An act for the relief of Maria Domenica Ricci;
S. 1921. An act for the relief of Maria Goldet;
S. 2028. An act for the relief of Sherwood Lloyd Pierce;
S. 2041. An act for the relief of Sala Weissbard; and
S. 2204. An act for the relief of Margaret E. Culloty.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the Vice President:

S. 1645. An act to authorize the Secretary of the Interior to grant easements in certain lands to the city of Las Vegas, Nev., for road widening purposes;
S. 2080. An act relating to the computation of income for the purpose of payment of death benefits to parents or pension for non-service-connected disability or death in certain cases;
S. 2500. An act to make uniform the termination date for the use of official franks by former Members of Congress, and for other purposes; and
S. J. Res. 18. Joint resolution to authorize and request the President to issue a proclamation in connection with the centennial of the birth of Theodore Roosevelt.

CIVIL RIGHTS ACT OF 1957

The Senate resumed the consideration of the amendments of the House of Representatives to the amendments numbered 7 and 15 to the bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

The PRESIDING OFFICER. The Senator from South Carolina may proceed.

Mr. THURMOND. Mr. President, I was speaking a few moments ago about the States and the Federal Government. I should like to remind the people of this country that we had States before we had a union, and that the only power the Federal Government had and the only power the Union had was the power delegated by the States in Philadelphia in 1787 and in the amendments to the Constitution since that time. All other powers which have not been delegated to the Federal Government are reserved to the States or to the people.

I think the bill which is under consideration is unconstitutional. I think it is invalid. I think we are doing a useless thing. The proponents of the bill who feel that they are helping people, in my judgment, are going to find that there is just a lot of lost motion involved, because I do not believe the Supreme Court will hold this bill constitutional. I do not see how it could hold it constitutional. This compromise bill which came from the House leaves it entirely up to a Federal judge to say whether or not he is going to give a man a jury trial. That is not what our forefathers wrote into the Constitution. This bill provides that a judge shall decide whether he will grant a jury trial. Suppose he decides he will not grant a jury trial and then tries the defendant. Suppose he decides that the man ought to be imprisoned for more than 45 days or should pay a fine of more than $300. Then the case must be tried all over again.

That is another reason why I think the bill is unconstitutional. When we once try a man we put him in double jeopardy by trying him again.

So I think we are doing a useless thing here to pass a bill to provide that a judge can try a man and then, if he imposes above a certain sentence, the man can ask for a jury trial and then a jury can try the man. He would be tried twice. That is not only unconstitutional, it is also unfair, because if a judge tries the man himself and fines him more than $300 or sentence him to be imprisoned more than 45 days, then there is a trial de novo, as they call it.

But the judge's finding of guilt is bound to influence the jury when the jury tries him a second time. It is my opinion that the man can plead double jeopardy. The distinguished Presiding Officer was a distinguished judge in Texas. Any lawyer knows that we cannot try a man more than once for the same offense. The bill coming from the House would allow the man to be tried twice.

Mr. President, I want the American people to know what they are getting in this bill. They are getting a bill under which a judge can try a man and a jury can then try the same man. It is unconstitutional, in my opinion. Furthermore, I think it is extremely unfair, because the judge has already expressed his opinion, and if he is the judge who tries the case a second time he would be bound to show his feelings during the trial. Even if he did not show his feelings during the trial, in my opinion, his feelings would enter into the sentence after the trial.

Mr. President, there are many things in this bill. I am not against civil rights, and I am not against voting. As I have said, the finest civil rights are those in the Bill of Rights. I am for genuine civil rights, not this so-called political civil rights.

Both national parties that are pushing civil rights bills, this right to vote and other bills, are not doing it because they love the Negro. The southern white man does more for the Negro than any other man in any part of the country. This bill is motivated purely by politics. It is a political bill.

We might as well face the facts as they are. Both parties are trying to play to get the Negro vote, and, in some States, if the Negroes vote as a bloc, which they snould not do, they are herded to the polls like sheep and voted. If they vote as individual citizens, which they should, this would not occur. But for some reason, both parties think that they are going to vote as a bloc. I do not know how a few leaders do it, or just how it is done. But it is unfortunate, and it is unfair to the Negro, because it takes him out of the category of an individual. It takes away his dignity. It takes away his sanctity as an individual, in which he can take pride in himself, his accomplishments and his race and not be led around like a bull with a ring in his nose. But that is the feeling of both parties in this country. They think they can vote the Negroes in a bloc, and they are making this play on these civil rights bills, so-called. They are not civil rights bills. They are so-called civil rights bills. The politicians are pushing these so-called civil rights bills to make a play and try to get the vote of the Negroes in certain doubtful States.

I have some good friends who are Negroes. I have helped many of them. I have represented them in lawsuits. I have loaned them money. I value the friendship of many Negroes, and I hate to see them treated like they are being treated. I hope that their real leaders, their genuine leaders, who are sincerely interested in them, will wake up some day and inform the members of their race just what is going on.

Mr. President, there is no need in the world to pass this bill. In the wee hours last night, when most Senators were sleeping, I was here talking, and after I had the Library of Congress, Legislative Section, prepare for me, and I put into the RECORD at that time, statutes which provide voting rights in all the States of the Nation.

The CONGRESSIONAL RECORD of last night contains those statutes of all the States from Alabama to Wyoming. In every one of the States of the Nation there are statutes that protect the right to vote. There is not a single one of the 48 States that does not have statutes to protect the right to vote.

Why does the Federal Government have to have this bill passed? Is it not practically an insult to the States?

It is.

"We need it. The States will not enforce their laws?" If that be the case, all the Government has to do is to enforce the Federal statute I referred to today. Title 18, section 594, is the number of that Federal statute, which provides punishment for anyone who intimidates, coerces, or threatens any person for interfering with any other person in voting. That statute is as clear as a crystal. It provides for a fine of $1,000, or punishment of 1 year in prison, for anyone who interferes with the right of another citizen to vote. So, if there is anybody in this country today who is prevented from voting, all he has to do is to report it to the district attorney in his State, of if he prefers, to write the Justice Department. He can take that course, and action can be taken under that statute which is already on the books.

Why put another statute on the books? Why put another statute which the Supreme Court will very probably hold to

be unconstitutional? I do not know what the Supreme Court will hold. I do not like to take any chances with the Supreme Court.

At any rate, the Constitution of the United States is clear, the wording is simple. Any seventh-grade child can read article III, section 2, of the Constitution of the United States and see that any citizen charged with a crime is entitled to a jury trial. He can also read the sixth amendment to the Constitution, one of the amendments in the Bill of Rights, and see that any man charged with a crime is entitled to a jury trial.

It is very difficult to understand why the Congress, which is supposed to be composed of the brightest intellects in the country, or some of the brightest intellects, would pass a bill of this kind.

Yet, if the Congress passes such a bill, this so-called compromise bill on voting rights, it will certainly amaze me if the Supreme Court does not hold it to be unconstitutional. I shall be badly disappointed if the Congress passes it.

Of course, under the pressure of different organizations, leftwing organizations, ADA and NAACP, both parties are dancing like jitterbugs on the civil-rights question, because they want to carry the doubtful States where the Negroes, although only a small percentage, if they vote in a block, can swing a State.

I think it will be a great pity if the Congress passes this bill. I hate to see it pass such an unnecessary bill.

It seems to me that every Representative in Congress and every Senator is practically insulting his home State if he votes for this bill. He is practically saying to the governor of his State and the legislators of his State, "Although you have bills to protect voting rights, we have no confidence in you and although we have one Federal law, we are going to pass another Federal law, and ram it down your throats whether or not you want it." I think it is almost an insult to the States.

I suggest that they write the governors of their States and see how many of them want this bill passed. I am wondering how many Senators in this body and how many House Members have checked with the governors to find out if they want this unconstitutional monstrosity passed by the Congress.

I do not believe 10 percent of the governors of the Nation would say, "We are weaklings, and we want you to pass a strong civil-rights bill because we do not have the courage to do it. We do not have the courage to protect our people."

As a matter of fact, Mr. President, the States already have laws on that subject, and I have read them into the RECORD. The voting-rights statutes of the States have been read into the CONGRESSIONAL RECORD, in the case of every State of the Union. Those who read the CONGRESSIONAL RECORD will find them set forth there.

Mr. President, if any Senator, on either side of the aisle, can state why it is necessary to enact another Federal law to protect the right to vote, I should like to have him do so, provided I am able to yield for that purpose without losing the floor and without having the remarks I make after yielding for that purpose counted as a second speech by me. I challenge any Senator on either side of the aisle to answer this question: Why is another Federal law needed in order to protect the right to vote, when there is already on the statute books section 594, which reads in part as follows:

> Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose.

In other words, one who intimidates, threatens, or coerces a voter, or even attempts to intimidate, threaten, or coerce him, may, under the provisions of this statute, be prosecuted. He may be prosecuted, not only if his purpose is to interfere with the right of such other person to vote, but also if his purpose is to interfere as to the person for whom such other person may wish to vote.

Mr. President, are there teeth in this statute? There certainly are. This statute provides that anyone who intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any other person, or attempts to interfere with his voting for whomever he wishes to vote for, can be prosecuted in a Federal court and can be fined $1,000 or sentenced to a prison term of 1 year. Do not those provisions constitute teeth and strength in the existing law? Of course they do.

If there is in the United States, today, any person who is having any trouble in exercising his voting right, again I say that all he has to do is contact the Department of Justice or the district attorney in his home State, and action can be taken under this Federal law to punish any person who interferes with his right to vote.

Inasmuch as section 594 is an existing Federal statute on that subject, why is it necessary to enact another Federal statute dealing with the right to vote? It would be absolutely useless, unnecessary, and futile to enact another Federal statute on that subject; it would be a great mistake to do so, especially in view of the fact that such a statute would be unconstitutional.

Mr. President, please understand that I do not even concede that the Federal Government has a right to enter this field. Instead, I believe that these matters should be handled by the respective States. However, the Federal Government is already in this field—under the provisions of section 594, by means of which a person can be fined as much as $1,000 or put in jail for as long as one year, if he tries to interfere with the right of someone else to vote.

Since the Federal Government already is in this field, why should another Federal law on the same subject be enacted?

Mr. President, every day that passes, the Federal Government, here in Washington, D. C., is whittling away the rights of the States. It hurts me to see the Federal Government invade fields which are reserved to the States. I deeply regret that a bigger and more powerful Federal Government is being built up in Washington, D. C. This Central Government has become tremendously top-heavy. I should like to see the States have more power.

Since World War II, the Communists have taken over approximately 17 countries. In doing so, they did not invade by means of troops using bayonets and tanks; those countries were not taken over in that way by the Communists. Instead, the Communists proceeded by way of infiltration. Poland was taken over by the Communists with the aid of some of the Poles. Czechoslovakia was taken over by the Communists with the aid of some of the Czechs. China was taken over by the Communists with the aid of some of the Chinese. The Communists have been able to infiltrate into the central governments; they have been able to worm their way into the police systems, and then into the election systems. Then, before one could realize it, the countries were taken over by the Communists.

Mr. President, why have the Communists been able to take over those countries? Since the end of World War II, they have been able to take over 17 countries, with populations totaling between 600 million and 800 million. The Communists have been able to do that because each of those countries has had a strong central government; and when the Communists obtained control of that central government, they were able to take over control of the entire country.

Mr. President, the more we in the United States build up power in a strong central government, the more risk we run from the standpoint of subversive activities and infiltration. If the people of the United States have the vision to keep the 48 States strong—each with its own election laws and its own police system—there will be no way by means of which the United States can be taken over by subversion. But if more and more power is given to our Central Government, after a while the States will be nothing but territories, and will not have any power.

Mr. President, the so-called civil-rights bill which the Congress is about to pass would simply take power away from the States and would give it to the Federal Government.

A Senator might say, "I should vote for the bill because it will help me in the elections." Mr. President, Senators had better begin to think more about the welfare and safety of their country, and less about the elections.

Mr. President, I am convinced that we must protect the States. The Constitution now protects them; but the Supreme Court and the Congress and the executive branch of the Government have been taking steps—by handing down decisions, passing laws, and issuing regulations and edicts—which violate the rights of the States and take away from the States the power they have.

Mr. President, this development cannot continue to occur, if our country is to be safe. I am disturbed for the safety of my country.

I am a brigadier general in the Army Reserve and if our country becomes engaged in an armed conflict, I am ready to serve. But we must keep our country stronger, or we shall find it engaged in conflict.

One of the ways to weaken it is to weaken the States, as we are doing today, and to keep taking away the powers of the States and building up a powerful Central Government in Washington. It is the greatest mistake in the world. It was not contemplated when our Constitution was written.

Our forefathers decided they would delegate a few powers to the Federal Government, and they spelled them out in the Constitution. All one has to do is to get the Constitution and read it. It spells out just what powers the Congress has, what powers the Federal Government has, but all other powers are reserved to the States and to the people thereof. At the rate we are going now, we will not have any States after a while. The Federal Government will have all the power.

Mr. President, some time ago I read a book by a man by the name of James Jackson Kilpatrick, of Richmond, Va., printed by the Henry Regner Co., of Chicago, entitled "The Sovereign States."

I wish every American could read this book. I am going to read some excerpts from it today. I should like to have Senators listen to some of the passages in this book. This man is a great writer, a true patriot, and a great American.

First, I am going to read a passage by John C. Calhoun, one of the five alltime great Senators, recently selected to have his portrait placed in the Senate reception room. John C. Calhoun, I think, is one of the greatest men this country has produced. I nominated him to be selected to have his portrait placed here, and I am proud the committee selected it. He was a man who had keen vision and a proper conception of the Constitution.

There is one page in the beginning of the book by him that I want to read; it is very short.

This is what he says:

FOREWORD

The great and leading principle is, that the General Government emanated from the people of the several States, forming distinct political communities, and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community; that the Constitution of the United States is, in fact, a compact, to which each State is a party, in the character already described; and that the several States, or parties, have a right to judge of its infractions; and in case of a deliberate, palpable, and dangerous exercise of power not delegated, they have the right, in the last resort, to use the language of the Virginia resolutions, "to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them."

This right of interposition, thus solemnly asserted by the State of Virginia, be it called what it may—State right, veto, nullification, or by any other name—I conceive to be the fundamental principle of our system, resting on facts historically as certain as our revolution itself, and deductions as simple and demonstrative as that of any political or moral truth whatever; and I firmly believe that on its recognition depend the stability and safety of our political institutions.

JOHN C. CALHOUN.

FORT HILL, *July 26, 1831.*

This was John C. Calhoun.

He wrote that at Fort Hill, and if any Senators want to know where it is, it is at Simpson College. In fact, his home was at the college.

Mr. President, my statement was that Fort Hill is at Simpson College in South Carolina. Of course, that is the greatest college in the United States.

This book on the sovereign State was written, as I have said, by James J. Kilpatrick. First, I want to take up his introduction, and then I want to present some excerpts from the book:

INTRODUCTION

Among the more melancholy aspects of the genteel world we live in is a slow decline in the enjoyment that men once found in the combat of ideas, free and unrestrained. Competition of any sort, indeed, seems to be regarded these days, in our schools and elsewhere, as somehow not in very good taste. Under the curious doctrines of the Fair Trade Act, vigorous salesmanship is unfair, and retailers are enjoined against discommoding their fellows. Mr. Stevenson's criticism of the administration's foreign policy, during the last presidential campaign, was not that the policies were so very wrong: they were not bipartisan. With a few robust exceptions, our writers paint in pastels; our political scholars write a sort of ruffled-sleeve, harpsichord prose. We duel with soft pillows, or with buttoned foils; our ideas have lace on them; we are importuned to steer, with moderation, down the middle of the road.

These chamber music proprieties I acknowledge, simply to say, now, that the essay which follows should not be misunderstood. May it please the court, this is not a work of history; it is a work of advocacy. The intention is not primarily to inform, but to exhort. The aim is not to be objective; it is to be partisan.

I plead the cause of States rights.

My thesis is that our Union is a Union of States; that the meaning of this Union has been obscured, that its inherent value has been debased and all but lost.

I hold this truth to be self-evident: That government is least evil when it is closest to the people. I submit that when effective control of government moves away from the people, it becomes a greater evil, a greater restraint upon liberty.

My object is not to prove that the powers and functions of government have grown steadily more centralized, more remote from the people, for that proposition requires no proof; it requires only that one open one's eyes. Rather, my intention is to plead that the process of consolidation first be halted, then reversed, toward the end that our Federal Government may be strictly limited to its constitutional functions and the States may again be encouraged to look after their own affairs, for good or ill.

A long time ago, the geometric mind of Edmund Pendleton offered a theorem. The State and Federal Governments, he said, must follow the path of parallel lines. Others have conceived the relationship in terms of spheres, separate but touching. The idea, when all this began, was that neither authority would encroach upon the other; and in the beginning, it was more feared that the States would usurp Federal powers than the other way around.

Now the rights and powers of the States are being obliterated. The encroachments of the Federal Government have widened its road to a highway and narrowed the road of the States to a footpath. Having deceptively added a dimension to the Federal line, the broad constructionsts declare their faithful adherence to the plans of the original draftsmen. Soon, a geometry unknown to Pendleton can proclaim the apparent miracle of parallels that meet this side of infinity.

I do not know that the sovereign powers of the States may be regained at all. Justice Salmon P. Chase once remarked, with great satisfaction, that State sovereignty died at Appomattox. But I do most earnestly believe that an effort must be made to regain these powers. The alternative is for American Government to grow steadily more centralized, steadily more remote from the people, steadily more monolithic and despotic.

Only the States themselves can make the effort; which is to say, only the people of the States. Only if the citizens of Virginia, as Virginians; or of Texas, as Texans; or of Iowa, as Iowans, insist upon a strict obedience to the spirit of the 10th amendment, can the Federal juggernaut be slowed. Only if the people evidence a determination once more to do for themselves can the essential vitality of a responsible and resourceful society be restored.

I do not despair. So long as the I-beams and rafters of the Constitution remain undisturbed, the ravages of Federal encroachment may be repaired. A latent yearning for personal liberty, an inherited resentment against the authoritarian state, a drowsing spirit of independence—these may yet be awakened.

But again, the States, as States, will have to do it.

It will not be easy. In many influential quarters, it will not be popular. It is a sweet narcotic that centralists sell.

Yet there is high example to be found in what the States have done before to preserve their identity. They have not always been spineless. In times past they have resisted, now successfully, now unsuccessfully; but even in their failures, something has been gained merely in the assertion of State convictions.

My purpose here is first to examine the bases of State sovereignty; then to follow the State and Federal relationship from its beginnings under the Articles of Confederation through its refinement in the Constitution; next to review some of the comment on the role the States were expected to play. The place of the States scarcely had been fixed, it will be submitted, before advocates of consolidation began to whittle it down—first in the Chisholm case, which led to the 11th amendment, and more memorably in the Alien and Sedition Acts, which led to the "Doctrine of '98" and the Kentucky and Virginia resolutions of that year. It is proposed to follow this doctrine of the States' "right to interpose," in its various forms and applications down through the years, with particular emphasis upon the dangers of judicial encroachment and the need for State resistance against it. Finally, I have in mind to marshal some of the evidence which supports the case for the South in its immediate conflict with Federal authority, and to review other recent events that seem to me usurpations of the States' reserved powers.

So much, then for the plan of this book. The political heirs of Alexander Hamilton and John Marshall will not care much for it.

J. J. K.

RICHMOND, VA., *September 1956.*

That was the introduction to the book The Sovereign States, by James J. Kilpatrick. James J. Kilpatrick is one of the greatest editors in the Nation today. I will read certain excerpts from the book, beginning on page 3. First I will read a quotation opposite page 3:

The States within the limitations of their powers not granted, or, in the language of the 10th amendment, "reserved," are as independent of the General Government as the General Government, within its sphere, is

independent of the States. (Justice Samuel Nelson, *Collector* v. *Day* (1871).)

Mr. Kilpatrick has done a fine job and rendered a great service to this country in writing this book:

"The true distinction," said Mr. Pendleton, with some irritation, "is that the two governments are established for different purposes, and act on different objects."

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. THURMOND. I am pleased to here yield to the distinguished Senator from Louisiana, for a question.

Mr. LONG. Did I correctly understand the Senator to make the statement that, according to the preface or introduction to the book, the book would be displeasing to those who agreed with Alexander Hamilton, who was one of the authors of the Federalist Papers, the forerunner of the American Constitution?

Mr. THURMOND. That is correct. The editor said that the political heirs of Alexander Hamilton and John Marshall would not care much for the book.

Alexander Hamilton was a great American, but his philosophy was different from that of Thomas Jefferson. They were both great Americans, but Alexander Hamilton believed more in the theory of a strong Central Government, with the power residing in Washington. Thomas Jefferson's idea was that the power should remain with the States, and that only so much power should be given to the Federal Government as was necessary to perform its functions as delineated in the Constitution.

The Senator has probably read many books about Hamilton. In one of such books his philosophy is described in this way:

Speaking of education, Alexander Hamilton's thought was to select some of the brightest young men and educate them, to make them leaders. Thomas Jefferson's philosophy was to give all an opportunity, and let the leaders rise where they would.

So, when Kilpatrick wrote this statement I am confident that he was contrasting the philosophy of Hamilton more or less with that of Thomas Jefferson.

Hamilton was a very able man, one of the greatest Americans this country has produced; but his philosophy, as the Senator well knows from studying his life and history, was different from that of Thomas Jefferson.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. THURMOND. I am pleased to yield for a question.

Mr. LONG. Is it the view of the Senator that Alexander Hamilton would ever for a moment have approved of any proposal whereby an American accused of a crime would have been denied the right to present his case before a jury of impartial people who would hear the case, judge the evidence, and find him guilty or innocent?

Mr. THURMOND. In reply, I will say no. I think Alexander Hamilton and Thomas Jefferson both would have approved of trial by jury. They were both delegates to the Constitutional Convention, and they both rendered magnificent service in many ways.

Mr. LONG. Mr. President, if the Senator will further yield, I believe he will find that Thomas Jefferson was not a delegate to the Constitutional Convention.

Mr. KNOWLAND. Mr. President, did the Senator yield for a question or a statement?

Mr. LONG. The Senator yielded for a question.

Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from South Carolina yield for a question?

Mr. THURMOND. I yield to the Senator from Louisiana for a question.

The Senator is correct about Thomas Jefferson. I had in mind Madison.

Mr. LONG. Does not the Senator realize that Thomas Jefferson was not a delegate to the Constitutional Convention? The Senator is perhaps confusing the Constitutional Convention with the convention which adopted the Declaration of Independence. Thomas Jefferson was the drafter of the American Declaration of Independence. Is not the Senator perhaps confusing the Constitutional Convention with the fact that Thomas Jefferson was one of those who participated in drafting the Declaration of Independence? Thomas Jefferson was the American Ambassador to France at the time the Constitution was drafted.

Mr. THURMOND. That is correct. Thomas Jefferson was Ambassador to France, but Alexander Hamilton was a delegate from New York State, and he signed the Constitution. In fact, he was the only delegate from New York State who signed the Constitution.

When I spoke a few minutes ago about Jefferson, I was thinking about Madison. Madison signed the Constitution, as did Blair. Both were from Virginia. George Washington presided over the Convention.

Mr. LONG. Is there any doubt in the Senator's mind that, so far as Alexander Hamilton was concerned, he would never for a moment have contested the right of any citizen to be tried before a jury if he were accused of a crime?

Mr. THURMOND. I agree. If he had taken any other position, he would not have signed the Constitution.

As I have stated, Alexander Hamilton was the only delegate from the State of New York who signed the Constitution as representing the State of New York. In the original Constitution, article III, section 2, provided for jury trial.

Mr. LONG. Is it not, therefore, true that insofar as the right of a citizen to be tried by jury for a crime is concerned, Alexander Hamilton and Thomas Jefferson would have agreed 100 percent that the freedoms guaranteed Americans under their form of government included the right to be tried by a jury of their own neighbors, in the area where the crime was committed, in the event they were accused of committing a crime?

Mr. THURMOND. I can yield only for a question. I shall be glad to express myself after the Senator has concluded. Let the Senator ask any question he wishes. I yield for a question.

Mr. LONG. Is it not correct to state that, although the book from which the Senator is reading may not reflect the views of Alexander Hamilton, it is nevertheless correct to state that Alexander Hamilton and Thomas Jefferson would both have agreed that anyone accused of a crime should have the right to be tried before a jury of his neighbors?

Mr. THURMOND. I thoroughly agree. In my judgment, if Alexander Hamilton and Thomas Jefferson were living today, and both were Members of the Senate, both would be fighting for the right to a jury trial, as provided in the Constitution of the United States.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. THURMOND. I shall be glad to yield for a further question.

Mr. LONG. Is it not correct to say that so far as we can determine there has never been a man who served in this body, and who was regarded as a great statesman, who has ever at any time advocated that American citizens should be denied their right to be tried by a jury in the event they were accused of committing a crime against the United States or against a State?

Mr. THURMOND. I think the able Senator is eminently correct. I do not know of a great man in our history, any man whom I would consider great, whose name is on the lips of the people—I cannot think of a single one in our history who would take a position in opposition to jury trials.

Mr. LONG. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER (Mr. SCOTT in the chair). Does the Senator from South Carolina yield to the Senator from Louisiana?

Mr. THURMOND. I yield for a question.

Mr. LONG. Is it not correct to paraphrase more or less the words of Shakespeare, that those American politicians who have fought against the freedom of Americans to be tried by a jury when accused of a crime have been politicians who more or less strutted and strutted their brief hour on the stage to be heard from no more?

Mr. THURMOND. I do not think any man who takes a stand against giving a person a jury trial will be long remembered after he has gone or when his record is searched and it is found that he opposed a jury trial. I think we would immediately call for a reappraisal of his whole life in the event he had been considered a great man previous to that time.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. THURMOND. I yield for a question.

Mr. LONG. Is it not true that men like George Norris, William Borah, and Robert M. La Follette, who fought through the years for the right of trial by jury, have statues standing in the Hall of Fame in the Capitol Building?

Mr. THURMOND. The Senator is eminently correct. In fact, there is a quotation from George Norris which I read last night. If I can put my hand on it I should like to read it to the Senator from Louisiana. I have never read a

stronger statement in behalf of a jury trial. He said that in all cases a man should have a jury trial. The distinguished Senator from Virginia [Mr. BYRD] and the distinguished Senator from Mississippi [Mr. EASTLAND], and I introduced a bill in March to provide the very type of jury trial which Senator Norris recommended.

Mr. LONG. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield for a further question.

Mr. LONG. The Senator from South Carolina having made a great study of all these matters involving jury trials, the freedom of Americans, and States rights, can he now name from memory a single one of those Senators who made a fight down through the years to deny American citizens of the right of trial by jury?

Mr. THURMOND. I could not name a single man whom I considered a great man or a great Senator who opposed jury trials.

Mr. LONG. Does the Senator recall the names of any Americans who have served in this body and who have made a fight against the right of a man accused of a crime to be tried by a jury? Can the Senator offhand recall the name of any such person?

Mr. THURMOND. I cannot recall the name of any American of any stature within my recollection who has opposed jury trials.

Mr. LONG. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield for a further question.

Mr. LONG. Is the Senator aware of the fact that Senator Borah's statue is just outside the main entrance of the Senate Chamber, immediately outside the door?

Mr. THURMOND. That is correct. I see it every time I go through the door.

Mr. LONG. Is the Senator aware of the fact that Senator William E. Borah, a great constitutional lawyer, even though he came from a very small Western State, population considered, was seriously considered by the Republican Party as its nominee for the Presidency of the United States?

Mr. THURMOND. I have been told that. I did not know the Senator personally; only through reputation. But I know he was a great American. He declared on April 8, 1930:

> I am not contending here that labor organizations can at any time employ threats, force, or violence or intimidation. They must keep within the law—

He was referring there to jury trials in labor cases.

I have a long report including a speech by Senator Norris on May 2, 1930. I read it last night——

Mr. LONG. Mr. President, will the Senator from South Carolina yield for a question at that point?

Mr. THURMOND. I shall be pleased to yield for a question.

Mr. LONG. Is it not true that those who oppose the right of jury trials are basically those who do not believe in the freedoms that Americans enjoy under the Constitution?

Mr. THURMOND. I certainly agree with the Senator. I think the jury trial is one of the greatest freedoms we have. I look upon it as the heart of the Bill of Rights.

Mr. LONG. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield for a question.

Mr. LONG. Is it not true that persons who fear that juries may not convict guilty persons are those who really have very little confidence in the determination of people to uphold free government?

Mr. THURMOND. It seems to me they could not have much confidence in human nature; otherwise they would favor jury trials. To be tried by a man's neighbors, his peers, his fellow men, is the fairest way a man could be tried. I sat on the bench for 8 years and tried many cases, but I always felt much better about it when a jury passed on the question. I watched closely the verdicts of juries. I was deeply impressed. I feel that juries come nearer to meting out justice to criminals than it can be done in any other way.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. THURMOND. I yield for a question.

Mr. LONG. Recognizing the fact that it is possible for a jury to turn a guilty person free, is it not also true that the freedoms which Americans enjoy under their Constitution were calculated in such fashion as to express the philosophy that it is better to turn 9 guilty men free than to send 1 innocent man to the penitentiary or to his death?

Mr. THURMOND. I never did go on the theory of nine guilty ones being turned loose. There is no doubt that there is a common saying to that effect. If I had to make a decision as to whether I would turn 9 guilty ones loose, or put 1 innocent man in prison, I would turn the 9 loose. I think that would be the thinking and the feeling of the average American.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I will be pleased to hear it.

Mr. LONG. Does not this logic become conclusively clear when we contemplate for a moment a capital punishment case where it is possible to put an innocent man to death? In such a situation, would it not be better for the court to turn 9 culprits loose rather than to kill 1 innocent man?

Mr. THURMOND. I agree with the Senator.

Mr. LONG. I thank the Senator.

Mr. THURMOND. There is no question about it. Some juries make mistakes. Anybody in any kind of work makes mistakes. Everybody has weaknesses and there are bound to be errors. Judges make mistakes. Of course, often a judge's philosophy is different.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I shall be glad to hear it.

Mr. LONG. In view of the fact that anyone can make mistakes, is it not somewhat better that the scales of justice should be weighted a little in favor of finding a person innocent when there is a considerable doubt as to whether the person is innocent or guilty?

Mr. THURMOND. Our law is based on the presumption that a man is innocent until he is proven guilty beyond a reasonable doubt. That is a common legal principle that any lawyer knows about who has practiced any criminal law. I do not know precisely what the Senator had in mind on that, though, for this reason: I do not think if a man is given a jury trial, a jury necessarily lets him go free. I think a jury is going to do what it thinks is right unless it is biased, or has been approached in some way, or influenced in some way. Of course, that happens sometimes. It does not happen often, but I think it does happen sometimes.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I will be pleased to hear it.

Mr. LONG. Can the Senator imagine a judge who issues an order ordering the entire world to comply with his injunction as being as fair and impartial as a jury before which a case involving a violation of his order should be tried?

Mr. THURMOND. When a judge hears a contempt case he is the legislator, he is the prosecutor, he is the judge, and he is the jury. If I were a judge and if such a law as is here proposed were on the books, if I were back on the bench, and if I had to act under this type law, I would submit it to the jury anyway.

Mr. LONG. Will the Senator yield for a further question?

Mr. THURMOND. I will be pleased to hear it.

Mr. LONG. In view of the fact that it is contemplated that a judge makes a law by issuing the injunction and then cites the individuals whom he cares to cite, can the Senator think of anything any more inappropriate than the judge who makes the law, addressed to individuals, should be the same person to try the same individuals for violating his own order? Does the Senator not believe that any judge worthy of the name would at least want to have a jury to prove that justice is being done to people who violated his own order?

Mr. THURMOND. I think the Senator is eminently correct. It is unfortunate that a judge who issues an order of contempt has to try the case, because he has already made up his mind to a certain degree. Of course, that might be removed. But still he has made up his mind, or he would not issue the order.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. THURMOND. I yield for a further question.

Mr. LONG. Is it not true that a person who is responsible for issuing the edict and commanding people to do certain things at his discretion should be

the last person to make the final decision on who should be punished for not obeying his order?

Mr. THURMOND. I agree with the Senator. In fact, this is known as injunction-made law. That is what it is. It is injunction-made law, and it is bad law. It is much better to have a jury trial. That is the American way of doing things. That is one of the grievances complained of by those who signed the Declaration of Independence, as I have brought out, namely, that in a great many cases they were denied jury trials. Provisions for jury trial are embodied in several places in the Bill of Rights and the Constitution, so there is no question about the whole intent of our judicial system. Our administration of justice has been based upon jury trials. I think it is one of the most fundamental principles embodied in our type of government.

If this so-called compromise amendment were to go a little bit further, it would sound more like a Communist amendment.

I do not believe I read what Senator Norris said about jury trial. He said:

I wonder if a suffering people, whose forefathers fought for liberty, are going to give up the idea of it in this day and age, in this civilized day, and are going to submit to injunction-made law.

He was wondering whether they were going to submit to it.

1. THE BEGINNINGS

"The true distinction," said Mr. Pendleton, with some irritation, "is that the two governments are established for different purposes, and act on different objects."

This was on the sunny afternoon of Thursday, June 12, 1788, in the New Academy on Shockoe Hill in Richmond. The Virginia Convention had been grappling for 10 days with the new Constitution, and Edmund Pendleton, aging and crippled, had been sitting in dignified silence for as long as he could stand it. Patrick Henry, who was a hard man to live with at any time, was being especially difficult. Once before, on the 5th, Pendleton had attempted to soothe him, but Henry was not to be soothed.

The State and Federal Governments would be at war with one another, Henry had predicted, and the State governments ultimately would be destroyed and consolidated into the General Government. One by one their powers would be snatched from them. A rapacious Federal authority, ever seeking to expand its grasp, could not be confined by the States.

"Notwithstanding what the worthy gentleman said," remarked Mr. Pendleton with some warmth, for there were times when he regarded Mr. Henry as neither worthy nor a gentleman. "I believe I am still correct, and insist that, if each power is confined within its proper bounds, and to its proper objects, an interference can never happen. Being for two different purposes, as long as they are limited to the different objects, they can no more clash than two parallel lines can meet. * * *"

They were big ifs that Edmund Pendleton, a judicious man, here used as qualifications. If the State and Federal Governments were each confined within its proper bounds, he said, the clash could never come. But the Federal Government could not be kept confined, even as Henry feared, and the clash did come. It continues to this day. Mr. Pendleton's geometry was fine, but his powers of prophecy (for he believed that each government could be kept in check) were sadly in error.

To understand how the parallel lines of State and Federal powers have turned awry, it is necessary to look back at the period before these lines were drawn. The acts of ratification by Virginia and her neighbors were acts of sovereign States. At stake was their consent to a written constitution. How, it may be inquired, did they come to be sovereign States? What is this concept of State sovereignty?

It would be possible, in any such review, to go back to the great roots of Runnymede, but it will suffice to begin much later, in the turbulent summer of 1776. The startling commitments of Lexington and Concord were behind us then; the bitter trials of White Plains, Vincennes, Camden, and Yorktown still lay ahead. March and April and May had passed—a time of bringing forth of newness, of fresh hope—and great human events had run their course. Now, in June, a resurgent people made the solemn decision to dissolve the political bands which had connected them with another. Thus Jefferson's draft began, thus the Continental Congress adopted it at Philadelphia; from this moment Americans unborn were to date the years of their independence.

The eloquent beginning of the Declaration—the assertion of truths self-evident and rights beyond alienation—is well known: It is a towering irony that Jefferson, whose convictions were cemented in the inequality of man, should have his precise phrase corrupted by the levelers of a bulldozer society. The Declaration's beginning is too much recited and too little read.

What counts, for our present purpose, is not the first paragraph, but the last. Let us inquire, What, precisely, was it that we declared ourselves to be that Fourth of July? Hitherto there had been colonies subject to the King. That form of government would now be abolished. We would now solemnly publish and declare to a candid world—what? That the people of the colonies had formed a free and independent nation? By no means. Or that they were henceforth a free and independent people? Still no.

This was the declaration: "That these United Colonies are, and of right ought to be, free and independent States." Not one State, or one Nation, but in the plural—States; and again, in the next breath, so this multiple birth could not be misunderstood, "that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

It had opened, this Declaration, as an enunciation of what often are termed the "human rights," but it concluded, in the plainest terms, as a pronouncement of political powers—the political powers of newly created States. And these powers of war and peace, these powers of alliance and commerce, were published not as the powers of a national government, but as powers henceforth asserted by 13 free and independent States.

To be sure, the States were united. Their representatives styled themselves Representatives of the United States of America, in Congress assembled, but it was not the spokesmen of a nation who gathered in parliament. These were States in Congress. "One out of many," it is said. In a sense, yes. But the many remained—separate States, individual entities, each possessed, from that moment, of sovereign rights and powers.

Certainly Jefferson so understood our creation. "The several States," he was to write much later, "were, from their first establishment, separate and distinct societies, dependent on no other society of men whatever."

So Mr. Justice Samuel Chase comprehended it: He considered the Declaration of Independence, "as a declaration, not that the United Colonies jointly, in a collective capacity, were independent States, etc., but that each of them was a sovereign and independent State, that is, that each of them had a right to govern itself by its own authority, and its own laws without any control from any other power on earth." From the Fourth of July, said Chase, "the American States were de facto as well as de jure in the possession and actual exercise of all the rights of independent governments. * * * I have ever considered it as the established doctrine of the United States, that their independence originated from, and commenced with, the declaration of Congress, on the Fourth of July 1776; and that no other period can be fixed on for its commencement; and that all laws made by the legislatures of the several States, after the Declaration of Independence, were the laws of sovereign and independent governments."

So, too, the sage and cool-minded Mr. Justice Cushing: "The several States which composed this Union * * * became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign States."

Even Marshall himself had no doubts: In the beginning, "we were divided into independent States, united for some purposes, but in most respects sovereign." The lines which separate the States, he later remarked, were too clear ever to be misunderstood.

And for a contemporary authority, it is necessary only to turn to Mr. Justice Frankfurter, who some years ago fell to discussing the dual powers of taxation preserved under the Constitution: "The States," he said, "after they formed the Union"—not the people, but the States, "continued to have the same range of taxing power which they had before, barring only duties affecting exports, imports, and on tonnage." Regrettably, Mr. Justice Frankfurter appears in more recent times to have lost his concept of States forming a Union.

It is no matter. Evidence of the States' individual sovereignty is abundantly available. Consider for example, the powers asserted on the part of each State in the Declaration "to levy War, conclude Peace, and contract Alliances." Surely these are sovereign powers. The States exercised them, as States, in the Revolutionary War. But it is of value to note that New York also very nearly exercised her war powers to enter into formal hostilities with the State of Vermont. Tensions reached so grave a point that Massachusetts, in 1784, felt compelled to adopt a formal resolution of neutrality, enjoining her citizens to give "no aid or assistance to either party," and to send "no provisions, arms, or ammunition or other necessities to a fortress or garrison" besieged by either belligerent. When New York adopted a resolution avowing her readiness to "recur to force," Vermont's Governor Chittenden (whose son was to be heard from 30 years later in another row) observed that Vermont "does not wish to enter into a war with the State of New York." But should this unhappy contingency result, Vermont "expects that Congress and the 12 States will observe a strict neutrality, and let the contending States settle their own controversy."

They did settle it, of course. New York and Vermont concluded a peace. The point is that no one saw anything especially remarkable in two separate sovereignties arraying themselves against each other. Vermont was then an individual political entity, as remote at law as any France or Italy. And New York, though a member of the Confederation, and hence technically required to obtain the consent of Congress before waging war, had every right to maintain a standing army for her own defense.

The status of the individual States as separate sovereign powers was recognized on higher authority than the proclamations of

Vermont and Massachusetts. It is worth our while to keep in mind the first article of the treaty of September 3, 1783, by which the War of the Revolution came to an end:

"His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, 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."

More than 5 years earlier, a treaty of amity and commerce with France had established the same sovereign status of the contracting parties. Louis XVI treated with the 13 American States, but he recognized each of them as a separate power. And it is interesting to note that Virginia, feeling some action desirable to complete the treaty, prior to action by Congress, on June 4, 1779, undertook solemnly to ratify this treaty with France on her own. By appropriate resolution, transmitted by Governor Jefferson to the French minister at Philadelphia, the sovereign Commonwealth of Virginia declared herself individually bound by the French treaty. In terms of international law, Virginia was a nation; in terms of domestic law, she was a sovereign State.

2. THE STATE

To review the process by which the colonies became States is not necessarily to answer the basic question, What is a State? It is a troublesome word. The standard definition is that a State is "a political body, or body politic; any body of people occupying a definite territory and politically organized under one government, especially one that is not subject to external control." Chief Justice Chase, in *Texas* v. *White,* put it this way: "A State, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed." In the Cherokee case, John Marshall described a State as "a distinct political society, separated from others, capable of managing its own affairs and governing itself."

Thus, variously, a State is defined as a body, a community, and a distinct society. Plainly, mere boundary lines are not enough; a tract of waste and uninhabited land cannot constitute a State. Nor are people, as such, sufficient to constitute a State. James Brown Scott once offered this clear and succinct definition:

"The State is an artificial person, representing and controlled by its members, but not synonymous or identical with them. Created for a political purpose, it is a body politic. It is a distinct body, an artificial person; it has a will distinct from its members, although its exercise is controlled by them; it has rights and duties distinct from its members, but subject to being changed by them; it may hold property distinct from its members, but in trust for them; it may act separately and distinctly from them and bind them by its acts, but only insofar as it is authorized by the law of its creation, and subject to being changed by the source of that power."

Thus the State is seen as a continuing political being, controlled by its citizens and yet controlling them. The State can be bound in ways that its own people cannot be bound; it can exercise powers that no citizen or group of citizens may exercise for themselves. The State may buy, sell, hold, grant, convey; it may tax and spend; it may sue, and if it consent, be sued; it exists to create law and to execute law, to punish crime, administer justice, regulate commerce, enter into compacts with other States. Yet there is no State until a community of human beings create a State; and no State may exist without the will and the power of human beings to preserve it.

It is this combination of will and power which lies at the essence of the State in being. This is sovereignty. In the crisp phrase of John Taylor, of Caroline, sovereignty is "the will to enact, the power to execute." Long books have been written on the nature of sovereignty, but they boil down to those necessities: The will to make, the power to unmake.

It was this power, this will, that the people as States claimed for themselves in 1776. Henceforth, they said, we are sovereign: The State government is not sovereign, nor is any citizen by himself sovereign. By the "sovereign State" we mean us citizens, the State; we collectively, within our established boundaries; this community of people; we alone who are possessed of the power to create or to abandon.

God knows it was a great, a priceless, power these people as States claimed for themselves. True, not everyone saw it that way. Mr. Justice Story, for one, never grasped the concept of States. Nor did Jackson. Albert J. Beveridge, in his biography of Marshall, refers sneeringly to the States as "these pompous sovereignties," but in a way, Beveridge's is perhaps a high acknowledgment of the simple truth: These infant States were sovereignties, and the people within them were proudly jealous of the fact. They saw themselves, in Blackstone's phrase, "a supreme, irresistible, absolute, uncontrolled authority." This, among other things, was the aim they had fought for. It cannot be imagined that they ever would have relinquished this high power of sovereignty except in the most explicit terms.

3. THE ARTICLES OF CONFEDERATION

In time, the Continental Congress gave way to the Articles of Confederation. The articles merit examination with the utmost care; they are too little studied, and there is much to be learned from them.

First proposed in 1778, the articles became binding upon all the States with Maryland's ratification in 1781. Throughout this period, as the war ran on, each of the States was individually sovereign, each wholly autonomous. Mr. Justice Iredell was to observe, in 1795, that had the individual States decided not to unite together, each would have gone its own way, because each "possessed all the powers of sovereignty, internal and external * * * as completely as any of the ancient kingdoms or republics of the world, which never yet had formed, or thought of forming, any sort of Federal union whatever."

But they did form a Federal union—a "perpetual union between the States of New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." They styled themselves, "The United States of America," and in the very second article of their compact, they put this down so no one might miss it:

"Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."

The third article is almost equally brief, and may be quoted in less space than would be required to summarize it:

"The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever."

There will be seen, in these opening paragraphs, the genesis of constitutional provisions that were to follow in less than a decade. Here is the forerunner of the 10th amendment, with its reservation of undelegated powers to the State or to the people; here are the aims set forth of "common defense" and the "general welfare."

The fourth article advanced other phrases that have come down to us: The free inhabitants of each State ("paupers, vagabonds, and fugitives from justice excepted") were to be entitled to "all the privileges and immunities of free citizens in the several States." Here, too, one finds the provision, later to be inserted substantially verbatim in article IV of the Constitution of 1787, providing for the extradition of fugitives. Here the States mutually agreed that "full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State."

The fifth article provided for representation of the States in Congress. There were to be no less than 2, no more than 7 delegates from each State. They would assemble on the first Monday in November of every year. In this Congress, each State cast one vote; each State paid the salary and maintenance of its own delegates. These provisions, of course, were later abandoned; but we may note that the fifth article prohibited delegates to the Congress from "holding any office under the United States for which he or another for his benefit receives any salary, fees, or emolument of any kind," and also provided that "freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress." Both provisions were to turn up later in article I, section 6, of the Constitution.

The sixth and seventh articles dealt generally with limitations upon the States in terms of foreign affairs and the waging of war. Again, many a familiar phrase leaps from this much-maligned compact of Confederation. No State, nor the Congress, was to grant a title of nobility; no two or more States were to enter into any treaty, confederation, or alliance without the consent of the other States in Congress assembled; no State was to keep vessels of war in time of peace ("except such number as shall be deemed necessary by the United States in Congress assembled"), nor was any State to engaged in war without the consent of Congress "unless such State be actually invaded by enemies, or * * * the danger is so imminent as not to admit of a delay * * *."

The eighth article provided for defraying the expenses of war among the State "in proportion to the value of all land within each State," and the ninth article dealt with the powers of Congress. Once more, the origin of a dozen specific phrases in our present Constitution is evident. Congress was given the "sole and exclusive right and power of determining on peace and war." It was to enter into treaties and alliances, establish certain courts, fix standard weights and measures, and establish post offices. But the Congress alone could do almost none of these things—it could exercise no important power—without the consent of nine of the member States.

The remaining 4 articles are of less interest and concern, although it may be noted that in 3 places, the framers of the Articles of Confederation provided that their union was a permanent union. The articles were to be inviolably observed by the States the delegates respectively represented, "and the union shall be perpetual."

4. WE, THE PEOPLE

Of course, it wasn't perpetual at all. Before 6 years had elapsed, the States came to recognize grave defects in the Articles of Confederation. And because they were sovereign States—because they had the will to

enact and the power to execute, because they who had made could unmake—they set out to do the job again.

What they made, this time, was the Constitution of the United States. So much has been writen of the deliberations that summer of 1787 in Philadelphia—so many critics have examined every word of the great document which came forth—that probably no new light can be shed upon it here. Yet the constitutions of most States command their citizens to recur frequently to fundamental principles and the commandment is too valuable an admonition to be passed by. There is much of interest to be found if one examines the Constitution, the debates and the commentaries of the time, in terms of the relationship there established between the States and the new Federal Government they formed.

It may be inquired, was sovereignty here surrendered in whole or in part? What powers were delegated, what powers retained?

Mr. KNOWLAND. Mr. President, I do not want the Senator to strain his voice but I do have some responsibilities as minority leader. I do not think the Senator is making any motion, but I should at least like to know what is going on in the Senate Chamber.

Mr. THURMOND. Mr. President, I yield for a question if the Senator has a question.

Mr. KNOWLAND. My question is, Would the Senator speak up? I do not want him to strain his voice, but I should like him to speak a little louder so I shall be sure no motions are being made or anything of that sort. I do have some responsibility here.

Mr. THURMOND. I suggest that the Senator move closer to me.

Mr. KNOWLAND. Under the rules of the Senate, which are now being strictly enforced, both Senators being in their respective seats, and this happening to be my seat as the minority leader, I urge my request of the Senator.

Mr. THURMOND. We might get unanimous consent to allow the Senator to come closer to me if he wishes. I do not think my colleagues will raise any point. There is an excellent seat here, I may say to the Senator.

Mr. KNOWLAND. I am very well satisfied with the seat to which I am assigned.

Mr. THURMOND. Mr. President, I continue to read:

What were the functions to be performed by the States in the future? Was it ever intended that the States should be reduced to the weakling role thrust upon them in our own time? We must inquire whether this proud possession of State sovereignty, so eloquently proclaimed in 1776, so resolutely affirmed in the articles of 1781, so clearly recognized in the events of the time, somehow vanished, died, turned to dust, totally ceased to exist in the period of the next 6 years.

Now, the argument here advanced is this—it is the argument of John Taylor of Caroline and John Randolph of Roanoke—that sovereignty, like chastity, cannot be surrendered in part. This was the argument also of Calhoun: "I maintain that sovereignty is in its nature indivisible. It is the supreme power in a State, and we might just as well speak of half a square, or half a triangle, as of half a sovereignty." This was the position, too, of the bellicose George Troup of Georgia, of Alexander H. Stephens, of Jefferson Davis. It is the position of plain commonsense: Supreme and ultimate power must be precisely that. Finality knows no degrees. In law, as in mountain climbing, there comes a point at which the pinnacle is reached; nothing higher or greater remains. And so it is with the States of the American Union. In the last resort, it is their prerogative alone (not that of Congress, not that of the Supreme Court, not that of the whole people) to make or unmake our fundamental law. The argument here is that the States, in forming a new perpetual union to replace their old perpetual union, remained in essence what they had been before: Separate, free, and independent States. They surrendered nothing to the Federal Government they created. Some of their powers they delegated; all of their sovereignty they retained.

It is keenly important that this distinction be understood. There is a difference between sovereignty and sovereign power. The power to coin money, or to levy taxes, is a sovereign power, but it is not sovereignty. Powers can be delegated, limited, expanded, or withdrawn, but it is through the exercise of sovereignty that these changes take place. Sovereignty is the moving river, sovereign powers the stone at the mill. Only while the river flows can the inanimate stone revolve. To be sure, sovereignty can be lost—it can be lost by conquest, as in war; the extent or character of sovereignty can be changed, as in the acquisition or relinquishment of territory or the annexation of new peoples; sovereignty can be divided, when two States are created of one. But properly viewed, sovereignty is cause; sovereign powers, the effect: The wind that blows; the branches that move. Sovereignty is the essence, the life spirit, the soul: And in this Republic, sovereignty remains today where it was vested in 1776, in the people. But in the people as a whole? No. In the people as States.

The delusion that sovereignty is vested in the whole people of the United States is one of the strangest misconceptions of our public life. This hallucination has been encouraged, if not directly espoused, by such eminent figures as Marshall, Story, and Andrew Jackson. It is still embraced by excessively literal and unthinking fellows who read "we the people" in the preamble to the Constitution, and cry triumphantly, "that means everybody." It does not; it never did.

The preamble to the abandoned Articles of Confederation, it was noted, declared the articles "binding between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York," and so forth. The preamble offered by the Convention of 1787, reads:

"We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The opening few words were questioned repeatedly by Patrick Henry in the Virginia Convention of 1788. He kept asking querulously, what was meant by "we the people," but he got no very satisfactory answer for his pains. Governor Randolph ducked the question, and Pendleton missed the point. Pendleton asked, rhetorically, "who but the people have a right to form government?" and the answer, obviously, in America, is "no one." Then Pendleton said this:

"If the objection be, that the Union ought to be not of the people, but of the State governments, then I think the choice of the former very happy and proper. What have the State governments to do with it?"

Again, the obvious answer is, "The State governments have nothing to do with it," but that was not the question Henry asked. There is a plain distinction between "we the States" and "we the State governments," for States endure while governments fall. It was Madison who came closest to answering the insistent Henry. Who are the parties to the Constitution? The people, said Madison, to be sure, are the parties to it, but "not the people as composing one great body." Rather, it is "the people as composing 13 sovereignties." And he added:

Mr. LANGER. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from North Dakota?

Mr. THURMOND. I yield for a question.

Mr. LANGER. I ask the distinguished Senator from South Carolina when he was a judge in South Carolina?

The PRESIDING OFFICER. The Chair cannot hear. Will the Senator speak a little louder?

Mr. THURMOND. From 1938 to 1946, 8 years.

Mr. LANGER. The Senator was a circuit judge, was he not?

Mr. THURMOND. Yes; in the highest trial court in the State. About half that time I was in the Army, overseas.

Mr. LANGER. I thank the Senator.

Mr. THURMOND. Continuing to quote from the Kilpatrick book:

"Were it * * * a consolidated government, the assent of a majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, we remaining States would be bound by the act of the majority, even if they unanimously reprobated it * * * But, sir, no State is bound by it, as it is, without its own consent."

Col. Henry Lee took the same point of view in responding to Patrick Henry. Lighthorse Harry spoke as other proponents of the Constitution did, in irritation and perplexity. He could not comprehend why Henry's question should even be asked. Obviously, the "we the people" mentioned in the preamble—the "we the people" there and then engaged in ratifying the Constitution—were we "the people of Virginia." If the people of Virginia "do not adopt it, it will always be null and void as to us."

Here Lee touched and tossed aside what doubtless was so clear to others that they could not understand what Henry was quibbling about. Of course, "we the people" meant what Madison and Lee found so obvious: It meant "we the people of the States." Why argue the point? "I take this," said Randolph testily, "to be one of the least and most trivial objections that will be made to the Constitution."

The self-evident fact, as plain as the buttons on their coats, was that the whole people, the mass of people from Georgia to New Hampshire, obviously had nothing to do with the ratification of the Constitution. The basic charter of our Union never was submitted to popular referendum, taken simultaneously among the 3 million inhabitants of the country on some Tuesday in 1788. Ratification was achieved by the people of the States, acting in their sovereign capacity not as "Americans," for there is no "State of America," but in their sovereign capacity as citizens of the States of Massachusetts, New York, Virginia, and Georgia.

This was the sovereign power that sired the new Union, breathed upon it, gave it life—the power of the people of the States, acting as States, binding themselves as States, seeking to form a more perfect union not of people but of States. And if it be inquired, as a matter of drafting, why the preamble of the Articles of Confederation spelled out 13 States and the preamble of the Constitution referred only to "we the people," a simple, uncomplicated explana-

tion may be advanced: The framers of the Constitution, in the summer of 1787, had no way of knowing how many States would assent to the compact.

Suppose they had begun the preamble, as they thought of doing, "We the people of New Hampshire, Massachusetts Bay, Rhode Island," etc., and the State of Rhode Island had refused to ratify? It very nearly did. It was not until May 29, 1790, by a vote of 34 to 32 that Rhode Island agreed to join a union that actually had been created with New Hampshire's ratification nearly 2 full years before. Given a switch of two votes, Rhode Island might have remained, to this day, as foreign to the United States (in terms of international law) as any Luxembourg or Switzerland.

Some of these forebodings clearly passed through the minds of the delegates at Philadelphia. When the preamble first appears in the notes, on August 6, it reads: "We the people of the States of New Hampshire, Massachusetts," etc., "do ordain, declare and establish the following Constitution." In that form it was tentatively approved on August 7. But the preamble, in that form, never is mentioned again. When the document came back from the Committee on Style in early September, the preamble had been amended to eliminate the spelled-out names of States, and to make it read simply that "we the people" ordain and establish. The change was not haggled over. No significance was attached to it. Why arouse antagonism in New York or North Carolina (where there was opposition enough already) by presuming to speak, in the preamble, as if it were unnecessary for New York or North Carolina even to debate the matter? The tactful and prudent thing was to name no States. Only the people as States could create the Union; only the people in ratifying States would be bound, as States, by its provisions.

5. THE STATES IN THE CONSTITUTION

In the end, that was the way the compact read. It bound States—"The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between"—between whom?—"between the States so ratifying the same." Not among people; it was "between States." And this proposal was put forward "by the unanimous consent," not of delegates assembled or of people gathered, but by "the unanimous consent of the States present the 17th day of September in the year of our Lord 1787 * * *."

On the plain evidence of the instrument itself, it is therefore clear: States consented to the drafting of the Constitution; States undertook to bind themselves by its provisions. If 9 States ratified, the Constitution would bind those 9; if 10, those 10. Rhode Island had not even attended the convention; "poor, despised Rhode Island," as Patrick Henry later was to describe her, could stay aloof if she chose. There was no thought here of people in the mass. There was thought only of people as States, and while the new Constitution would of course act directly upon people—that was to be its revolutionary change—it would reach those people only because they first were people of States.

The one essential prerequisite was for the State, as a State, to ratify; then the people of the State would become themselves subject to the Constitution. No individual human being, in his own capacity, possibly could assent to the new compact or bind himself to its provisions. Only as a citizen of Virginia or Georgia or Massachusetts could he become a citizen also of the United States.

Madison recognized this. He acknowledged in his famed Federalist 39 that ratification of the Constitution must come from the people "not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong." "Each State," he said, in ratifying the Constitution, "is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act." This fact lay at the essence of the Federal Union being formed. The States, and within them their local governments, were to be "no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere." The jurisdiction of the Federal Government was to extend "to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects." Even the most casual reading of the Constitution, it may be submitted, abundantly supports Madison's comment here.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for a question?

Mr. THURMOND. I shall be glad to yield to the able Senator from North Dakota for a question.

Mr. LANGER. I should like to ask whether at any time in the history of South Carolina the courts permitted a defendant to be tried without a jury.

Mr. THURMOND. In South Carolina anyone who wishes a jury may have one. There are a few instances where both sides agree to be tried without a jury, by the court. But a defendant is entitled to a jury trial in my State, as is the case in other States which follow the Constitution.

Mr. LANGER. In what year was South Carolina admitted to the Union? It was one of the original colonies, was it not?

Mr. THURMOND. In 1789. It was the eighth State admitted to the Union.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield further for a question?

Mr. THURMOND. I shall be pleased to yield for a question.

Mr. LANGER. Even at that time in South Carolina a defendant had the right to a jury trial, did he not?

Mr. THURMOND. That is correct.

Mr. LANGER. That has been the law continuously up to the present time?

Mr. THURMOND. That is correct. A defendant in South Carolina is always entitled to a jury trial when charged with a crime.

Mr. LANGER. Is that also true in North Carolina?

Mr. THURMOND. I would not attempt to speak for North Carolina, but I feel quite certain that that is a fact. I believe nine States ratified the Constitution before North Carolina did. So North Carolina came in after the Union was formed. So did Rhode Island. Rhode Island was the only State that did not send representatives to the Constitutional Convention in Philadelphia in 1787. The reason for that was that Rhode Island was in the hands of radicals at that time and it did not send any deputies.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield.

Mr. LANGER. Is it true that in every State in the United States under our Constitution a defendant has the right to a trial by jury in a criminal case?

Mr. THURMOND. In every State of the United States a defendant charged with a crime has the right of trial by jury. Some persons confuse magistrate courts or minor courts, but even there, although we may not see it, there is a jury box.

Most persons, unless they are lawyers, do not know that defendants are entitled to a jury trial in those courts. There is a jury box hidden somewhere. Nine out of ten do not ask for a jury trial; that is, in cases where the punishment is a fine of $100 or 30 days. But even there if a man says "Wait a minute, Mr. Recorder; I want a trial before a jury," it must be given to him.

Mr. LANGER. That is true, for example, if a man is arrested and charged with spitting on the sidewalk or with stealing one cent?

Mr. THURMOND. Any crime.

Mr. LANGER. In other words, trial by jury is fundamental?

Mr. THURMOND. That is correct; and rightly so, because that was one of the grievances pointed out a little earlier today that our forefathers listed in the Declaration of Independence. That was one grievance charged against the King, that in many cases persons had been denied trial by jury. That is written definitely into the Constitution. The right of trial by jury was included in several places in the Bill of Rights. The sixth amendment provides that a man charged with a crime is entitled to a jury trial. That was because our forefathers were taking no chances on not having a jury trial assured to them under the Constitution.

In the seventh amendment it is provided, also, and there is another provision, I believe, in the fifth amendment, that a man must be indicted by a grand jury before he is tried.

Under the bill that came from the House a grand jury will not pass on the question at all. Under this so-called compromise, a man is taken before a judge and is tried. He is not even asked if he wants a trial by a jury. But in the usual procedure, when the Constitution is followed, a man has to be indicted by a grand jury. In my State 18 grand jurors have to agree to a true bill before a man can be brought up for trial. He has a trial before a petit jury. In Federal courts a man can be indicted by a grand jury or on information, but in State courts a man is indicted by a grand jury. But in all the history of judicial administration in this country it has been clear that the American people have been entitled to a jury trial, and it goes back even further than the Declaration of Independence. It goes back to the Magna Carta, when the citizens of England wrung from King John in the year 1215, at Runnymede, certain rights for the people. I presume you and I, Mr. President, would call them civil rights, more or less, or corresponding to our Bill of Rights. But the people wrung from King John certain rights, and one of those rights was that a man charged with a crime would be entitled to a jury trial. So, going back to the year 1215, on down to this time, our people have had a jury trial.

Mr. LANGER. Mr. President, will the Senator yield further for a question?

Mr. THURMOND. I will yield for a further question.

Mr. LANGER. Is it the opinion of the Senator from South Carolina that of all the 10 amendments in the Bill of Rights the very heart and very core of the 10 amendments is the right of the defendant to be tried by a jury?

Mr. THURMOND. All the 10 amendments known as the Bill of Rights are important, but I think the trial-by-jury provision as generally spoken of is the heart of the Bill of Rights. That is the importance attached to it. It is generally spoken of as the heart of the Bill of Rights. In other words, if there should be cut out of the Bill of Rights the right of a trial by jury you have cut the heart of the Bill of Rights out; it would be excised.

What is it to have freedom of speech or freedom of religion or freedom of the press or right to petition the Government or the right to assemble, all of which are guaranteed by the Bill of Rights, or to keep troops from being quartered in our homes, or all the other things guaranteed by the Bill of Rights, if some tyrant, whether a Federal district judge, or any other kind of tyrant, can take a man and himself try him without a jury and put him in prison; and, of course, if a man is in prison he cannot enjoy his civil rights?

Mr. LANGER. Mr. President, I thank the distinguished Senator. We have gotten down to the very core of this entire proposal.

Mr. THURMOND. I thank the Senator very much. I appreciate his deep interest in this matter. The able and distinguished Senator from North Dakota has manifested an unusual interest in the right of trial by jury. He has the vision to see the importance of trial by jury and to see how this proposed bill the House has passed is attempting to bypass the Constitution and in doing so, of course, is violating the Constitution and therefore is a bill the Congress ought to kill.

Mr. LANGER. Mr. President, will the Senator yield further?

The PRESIDING OFFICER. Does the Senator from South Carolina yield further to the Senator from North Dakota?

Mr. THURMOND. I will be pleased to yield to the Senator from North Dakota.

Mr. LANGER. For 4 years I was attorney general of my State.

Mr. THURMOND. I understand the Senator made a very distinguished record as attorney general of the State of North Dakota.

Mr. LANGER. During that time, of course, I had a great deal to do with juries.

Mr. THURMOND. I am sure the Senator did.

Mr. LANGER. And in every single case I submitted to a court a jury trial had been waived.

Mr. THURMOND. Every case the Senator tried I imagine was before a jury.

Mr. LANGER. That is correct.

I should like to ask the distinguished Senator from South Carolina whether in his experience in South Carolina it is true that the average defendant can get better justice from a jury than he can from a judge, no matter how honest and fair the judge may be?

Mr. THURMOND. Regardless of how fair and impartial the judge is or wants to be, it is my judgment from my experience on the bench for 8 years—and as I said for about half of that time I was in the Army during World War II—and from my practice of law before then, since 1930 when I was admitted to the bar—and after I left the Governor's office in January 1951, I practiced until I came to the Senate—I consider that juries give fair verdicts, and I think it would be destroying the administration of justice if we should take any step to hamper or injure or impair in any way the jury system of the United States.

Mr. LANGER. Again I want to thank the Senator.

Mr. THURMOND. Mr. President, I read further:

But the Constitution ought not to be read casually. Viewed from the standpoint of State and Federal relations, what does the Constitution say and do? The rubrics do not demand, before an ordinary mortal may explore the question, that he be ordained a constitutional lawyer or put on the chasuble of the bench. Our Constitution is not the property of a juridical clergy only. The laity may read it too, and with equal acuity and understanding. The terms are not ambiguous.

The first thing to note, perhaps, is that the words "State" or "States" appear no fewer than 94 times, either as proper nouns or pronominals, in the brief 6,000 words of the original 7 articles. The one theme that runs steadily through the whole of the instrument is the knitting together of States: It is a union that is being formed, and while the people are concerned for themselves and their posterity, the Constitution is to be established binding States.

Legislative powers, to begin at the beginning, are vested not in one national parliament of the people, but in a Congress of the United States. The word "Congress" was chosen with precision; it repeated and confirmed the political relationship of the preceding 11 years, when there had been first a Continental Congress and then a Congress under the Articles of Confederation.

This Congress is to consist of two Houses. The first is the House of Representatives, whose Members are to be chosen "by the people of the several States." And here, in the very second paragraph, the framers encountered and opportunity to choose between a "national" and a "federal" characteristic: They might have established uniform national qualifications for the franchise, but they did not. Electors qualified to vote for candidates for the House of Representatives are to have "the qualifications requisite for electors of the most numerous branch of the State legislature."

Representatives and direct taxes are to be apportioned—how? "Among the several States which may be included within this Union, according to their respective numbers." How is this enumeration to be determined? The provision should be noted with care, for it is the first of four clauses that speaks eloquently of the plural nature of our Union: "The actual enumeration shall be made within 3 years after the first meeting of the Congress of the United States, and within every subsequent term of 10 years, in such manner as they shall by law direct." Now, the antecedent of they is not "Congress," but "United States." Nowhere in the whole of the Constitution or in any of the subsequent amendments is the United States an "it." The singular never appears.

What else sheds light in the second section of article I? We find that "each State shall have at least one Representative," whereupon follows a rollcall of the States themselves: "Until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse 3, Massachusetts 8," and so forth. And when vacancies happen "in the representation from any State," the Governor thereof is to issue a writ of election.

The dignity and sovereignty of States are made still more evident in the composition of the Senate. It is to be composed "of two Senators from each State," and whereas Representatives are required to be inhabitants of the States "in which" they shall be chosen, Senators must be inhabitants of the States "for which" they shall be chosen.

It is in section 4 that the first grant of authority to the Federal Government appears: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but"—and here the qualified concession—"the Congress may at any time by law make or alter such regulations, except as to the places of chusing Senators."

The delegations of power to a federal government appear most fully, of course, in section 8, but it is worth noting that not all the powers delegated to Congress are exclusive and unqualified powers. Thus, the Congress may raise and support armies, "but no appropriation of money to that use shall be for a longer term than 2 years." Thus, the Congress may provide for organizing, arming, and disciplining the militia, and for governing such part of the militia as may be employed in the service of the United States, but there is reserved "to the States respectively" the appointment of officers and the authority to train their militia according to regulation established by Congress. Thus, too, Congress may exercise Federal authority over federally owned property within the States, but how is such property to be acquired? The authority of the Congress extends only to those places "purchased by the consent of the legislature of the State in which the same shall be," and this applies not only to military and naval installations but also to "other needful buildings."

Several provisions in section 9 merit attention. As a concession to the slave trade—one of the essential compromises without which the Constitution never would have come into being at all—it was provided that "the migration or importation of such persons as any of the States now existing shall think proper to admit," shall not be prohibited prior to 1808. Then follow seven paragraphs of specific restrictions upon the powers of Congress. The privilege of the writ of habeas corpus shall not be suspended; no bill of attainder or ex post facto law shall be passed; no direct tax shall be levied except according to the census of the people as a whole; no tax or duty shall be laid on articles exported "from any State"; and—again emphasizing the separateness of the member States forming the Union—no preference shall be given by any regulation of commerce or revenue of the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another."

In section 10, the States undertook to restrict themselves. No State shall enter into any treaty, alliance, or confederation; no State shall coin money or make anything but gold and silver legal tender; no State shall make any law impairing the obligation of contracts. Yet even here, the prohibitions are not without qualification.

Thus, the States reserved to themselves the right to levy tariffs on imports or exports sufficient to execute their inspection laws; and though the fact is often forgotten, the States even reserved to themselves the solemn power they had claimed under the Articles of Confederation, to "engage in war," as States, if "actually invaded, or in such imminent danger as will not admit of delay."

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for a question?

The PRESIDING OFFICER (Mr. ELLENDER in the chair). Does the Senator from South Carolina yield to the Senator from North Dakota?

Mr. THURMOND. I am pleased to yield for a question.

Mr. LANGER. I am very curious. I ask the Senator from South Carolina whether he knows how the House of Representatives arrived at the decision to provide for a maximum of 45 days and $300 in this instance. Why did not the House of Representatives decide to make the maximum number of days 50, and why did it not choose, as the maximum amount of fine, $250 or $500?

Mr. THURMOND. I should like to answer the question the distinguished Senator asked, but I cannot do so. I was not consulted about this compromise. All I know about it is that I heard the majority leader make an announcement, following the taking of action in the House of Representatives. And then I read about it in the newspaper.

But I had understood—and the distinguished Senator from California [Mr. KNOWLAND] can correct me about this if I am mistaken—that there was an effort on the part of the Republicans to provide for 60 days. But, since the Senate had not voted for any provision of this sort, but had voted only for a straight jury-trial provision, 45 days was selected as a compromise. That is my understanding of the matter. I pass on to the Senator from North Dakota only what I heard. But perhaps the Senator from California can answer the question. At any rate, even if 60 days had been originally proposed, and finally 45 days was decided on, the Senate got the worst end of the bargain.

However, even if the provision had been for only 1 day, in my opinion the principle would be the same, because under the Constitution a citizen is entitled to a jury trial; and the Congress has no power to pass a law providing that a Federal judge or any other judge can deprive a citizen of a jury trial. However, under this proposal, a judge would be able, in two ways, to deprive a citizen of a jury trial. In the first place, the Federal judge could decide whether he wanted to allow the person to have a jury trial in the first instance. If the judge decided that there could be a jury trial, the citizen would have a jury trial. If the judge decided that there would not be a jury trial, the judge himself would try the case.

Next, if the judge decided to try the case himself, without a jury, the judge would proceed to try it. If, at the conclusion of the case, the judge were to determine that the punishment he would mete would be more than 45 days imprisonment or a fine of more than $300, the judge would then give the citizen another trial. In other words, this provision of the compromise would give the judge the option of trying the citizen in the first place, and it would give the judge the option of deciding how much punishment he would mete, and then the amount of punishment imposed would determine whether the citizen would receive still another trial.

All those exceptions are entirely foreign to the Constitution. The Constitution provides that a man charged with the commission of a crime is entitled to a jury trial. That provision is as plain as can be. Any child in the fifth grade in school can read it and understand it, and there should not be any difficulty in understanding it.

However, as I have understood in arriving at the compromise an attempt was made to get together on some provision; and the result was a monstrosity. It turned out to be an unconstitutional provision, in my opinion.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield again?

Mr. THURMOND. I am glad to yield.

Mr. LANGER. What I should like to know is this: Is there any precedent, anywhere in the entire United States, for a measure such as this, by means of which a defendant could be tried by a judge, if the sentence imposed were imprisonment for not more than 45 days, or any other number of days, or the imposition of a fine of any size; but that if the term of imprisonment were longer or the amount of the fine were greater, there must be a jury trial? Can the Senator from South Carolina name any precedent at all for such a provision?

Mr. THURMOND. I know of no place in the United States where a person charged with a crime does not have a jury trial. Even under the present criminal-contempt procedure, under existing law, if one is charged with criminal contempt, he is entitled to a jury trial. I know of no instance in any part of the United States, from Maine or the State of Washington on the north, to California, Arizona, New Mexico, Texas, Louisiana, Florida, or any of the other States in the southern part of the Nation, in which one who is charged with the commission of a crime does not have a trial by jury. It seems to me that in the conference, some one or more of the conferees should have raised the point, "This provision would be contrary to the Constitution, and we cannot include such a provision." It seems to me some of the conferees would have suggested that the Constitution provides to the contrary. There is a decision which can be cited on that point; I think I have called it to the attention of the distinguished Senator from North Dakota. The decision in that case holds that criminal contempt is a crime; and, since it is a crime, one charged with criminal contempt is entitled to a jury trial. If there is to be passed a bill providing punishment for criminal contempt, it should provide for a jury trial. I know of no way to get around a jury trial in this matter because the Constitution has laid down the law. That is basic law.

The Constitution can be amended. Congress can submit an amendment to it. There are four ways to amend the Constitution, and it can be amended so as to provide that a Federal judge in his discretion can give a man a jury trial. Then the compromise would be legal, and what it proposes would be effective. It would be valid.

As the Senator from Wyoming [Mr. O'MAHONEY] said today, confirming my judgment, as it stands now it is not valid. I think it is unconstitutional. The Senator from Wyoming expressed his opinion likewise. We could amend the Constitution to provide for it. Congress could pass a law to provide that a Federal judge could punish a man for contempt, by so many days' imprisonment, or by a fine of so many dollars. We could do that, but it has not been done. Until the Constitution is amended in the manner provided in the Constitution itself, we must abide by it. I know that many people in this country would like to get around the Constitution, and it looks as if they have been doing so.

The Supreme Court has been rewriting the Constitution in some cases, and other branches of the Government at times have encroached upon the Constitution because there is divisional power between the Federal Government and the State governments. When we cross the line of the State government, as here, without constitutional authority, we violate the Constitution.

The States entered into this pact, the Constitution, about which we are talking so much, and in this pact they delegated to the Union only certain things, and they are just as plain as they can be. They are listed in the Constitution. I should like to read to the distinguished Senator what the Constitution says on that point.

Article I, section 1, provides:

All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.

I will not take the time to go through all that. I will skip to the pertinent portions.

Section 7 of article I provides:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds—

I will skip to section 8. That is more pertinent. This is what the Congress has power to do. The powers are listed.

The Congress shall have power 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.

To borrow money on credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

The PRESIDING OFFICER. Will the Senator suspend to receive a message from the President of the United States?

Mr. THURMOND. Certainly.

MESSAGE FROM THE PRESIDENT

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

EXECUTIVE MESSAGE REFERRED

As in executive session,

The PRESIDING OFFICER laid before the Senate a message from the President of the United States submitting the nomination of Edward L. McCarthy, to be United States marshal for the district of Rhode Island, which was referred to the Committee on the Judiciary.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House has passed, without amendment, the bill (S. 2413) to clarify the authority of the President to fill the judgeship for the district of South Dakota authorized by the act of February 10, 1954, and to repeal the prohibition contained in such act against filling the next vacancy occurring in the office of district judge for such district.

The message also announced that the House had severally agreed to the amendments of the Senate to the following bills and joint resolution of the House:

H. R. 2075. An act for the relief of Albert Heinze;

H. R. 2904. An act for the relief of the Knox Corp., of Thomson, Ga.;

H. R. 3468. An act for the relief of J. A. Ross & Co.; and

H. J. Res. 374. Joint resolution for the relief of certain aliens.

CIVIL RIGHTS ACT OF 1957

The Senate resumed the consideration of the amendments of the House of Representatives to Senate amendments Nos. 7, and 15 to the bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

The PRESIDING OFFICER. The Senator will proceed.

Mr. THURMOND. I continue to read from article 1, section 2:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

Congress would not have the power to pass bankruptcy laws, indeed Congress could not pass a law on any subject except for the power given to it by the Constitution. This provision I have read is the basis for our bankruptcy law.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

That is your authority for the Federal Government to act in that field.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

That gives authority to Congress to establish certain courts of appeals and district courts. They are inferior tribunals, that is inferior to the United States Supreme Court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies, but no appropriation of money to that use shall be for a longer term than 2 years.

But no appropriation of money for that purpose shall be for a longer term than 2 years. We cannot appropriate money for the Defense Establishment for more than 2 years because the Constitution limits it. If we should attempt to do that, we would go beyond the Constitution.

I think that is a suggestion which may apply to foreign aid. If we should commit ourselves for 5 years or 10 years, I think that would be unconstitutional. But some of the defense items are classified under the term "foreign aid."

To provide and maintain a Navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

I want to read that last part again. I wish to call attention to a point:

Reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

Do you not know, Mr. President, that if that section was not in the Constitution the Federal Government would be appointing the officers of the National Guard? That is the reason the Government cannot do it: the Constitution reserves that power to the States.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

For that reason the Federal Government cannot go to Louisiana, North Dakota, South Carolina, or New Hampshire and buy a piece of land until the legislature passes an act approving such purchase. Under the provision the State must approve the transaction with respect to property within its borders, whether it owns the property or not, before the Federal Government can get it. Of course, the Government could condemn it; but if it followed the Constitution it would not be able to take it. The Constitution reserves that power to the States.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to year 1808, but a tax or duty may be imposed on such importation, not exceeding $10 for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Regardless of what a State wishes to do, the United States Constitution provides that a writ of habeas corpus shall not be suspended unless—note the exception—"unless when in cases of rebellion or invasion the public safety may require it."

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

We have the income-tax amendment to the Constitution. The 16th amendment to the Constitution provides that Congress can levy an income tax. That is the only authority in the Federal Government to levy an income tax. It does not inherently have that authority. The Federal Government can do only what the States gave it the authority to do when they entered into the compact in Philadelphia in 1787, and the amendments which have been adopted since then. Two years later, in 1789, the States adopted the 10 amendments known as the Bill of Rights, for which there was so much sentiment. I do not believe the Constitution would have been ratified if the delegates to the convention had not promised the Bill of Rights would be submitted, and it was submitted and adopted 2 years after the convention, in 1789.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any Regulation of Commerce or Revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

That is the only reason the States do not impose duties on some articles; otherwise they would probably do it, but under the Constitution they cannot do it.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

In other words, if I were an ambassador in London and the Queen of England wished to confer on me a title or wished to give me extra compensation for some reason, I could not take the title or compensation unless Congress permitted it. Congress would have to pass an act to permit it.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

In other words, that goes right down the line to support the point I make. So the Constitution provides exactly what the Federal Government can do. What hurts me is to see some distinguished Members of Congress, able men who believe in the division of powers between the Federal and State Governments—or I always thought they did—going along with the bill, because this is a bill that takes power away from the States and gives it to the Federal Government.

The matter of elections is left up to each State. That power was not delegated. The qualifications for electors, the holding of elections, and all relevant matters were reserved to the States. There has been a movement, I understand, to get the Congress to pass a bill eliminating the poll tax. I believe I told the Senate this morning, or this afternoon, that when I was Governor, I recommended that the poll tax be removed in my State, and it was removed. But Congress may not pass a law to do it. It could do it, but it would be unconstitutional for the reason that there is a provision of the Constitution which states that the qualifications of electors shall be left to each State. Therefore, New Hampshire has qualifications and, if the people of that State wish to make as a qualification for voting in that State the payment of a poll tax, they have a right to do so. The only way such a measure could be enacted legally, if it were going to be the law nationwide, would be for Congress to submit an amendment to the Constitution eliminating the poll tax.

The Senator from Florida [Mr. HOLLAND] has now pending a proposed constitutional amendment to eliminate the poll tax, amending the Constitution. To do that would be legal; it would be constitutional, and it would be proper. Personally I think it is better to leave to each State the power to fix the qualifications for voting of its citizens. In my State, as I have said, we have very low qualifications. We have heard much about people in my State not voting. I believe more people vote in my State than vote in New York, because New York has a much higher standard for voting. That State requires, I believe someone said, a high-school education. Someone else said it requires a grade-school education. It is certainly one of the two. In my State we require only that a man be able to read and write the Constitution, or that he own $300 worth of assessed property. So our requirements for voting are not stringent. They are not nearly as strict as they are in New York. I do not know about the requirements in the State of the Senator from North Dakota.

A few years ago I was Governor of South Carolina. At that time a bill was pending in Congress to remove the poll tax on a nationwide basis. Congress was to do it. It would have been just as unconstitutional as this so-called compromise, whose proponents are trying to get it through the Congress, to deprive the people of a jury trial.

Mr. LANGER. I thank my distinguished friend.

Mr. THURMOND. The Senator is welcome.

Mr. President, I do not believe that American history is taught sufficiently in our high schools and colleges. I do not believe that a course in government is taught in our high schools and colleges. I come in contact with a great many intelligent people, people who have been educated, big financiers who have made a great deal of money, and many others; yet they do not know the fundamentals of the Constitution. It is because they have not studied it. I think the people of the country would be wise to study the Constitution. I think it is more important today than ever before for the people to study it and be able to delineate the powers of the Federal Government, and learn what the Federal Government has not the power to do.

For example, the Congress has no power to abolish the poll tax as a prerequisite for voting, because the qualifications of voters are left to each State.

There are a great many things which Congress cannot do. Yet pressure is brought on Members of Congress, and they vote for certain measures anyway, because of the pressure.

Why do Senators think this so-called compromise on the civil rights bill is being pressed? Why is there any civil rights bill before us? Why call this measure a right-to-vote bill? It is a perfect farce. It is not a right-to-vote bill.

As I have stated, every State in the Union has statutes providing for the right to vote. The Federal Government has statutes providing for the right to vote.

Why is such a bill as this being considered at this time? Because there are pressures on Members of Congress to do so. Some Members of Congress attempted to do so, even though they were doubtful of the constitutionality of the measure. The Senator from Wyoming [Mr. O'MAHONEY] stated earlier in the day that he did not think the jury trial amendment which was put in the compromise bill in the House was constitutional. He said he would offer an amendment in January to correct it.

I would rather see him vote against it now. If the bill should pass anyway, he could later offer his amendment. But if a bill is unconstitutional, I think it is better for us not to vote for it. I think Members of Congress must develop stamina, fortitude, and courage to resist pressures, and to stand by the Constitution. If we do not do so, as I stated earlier in the day, we shall keep whittling away the rights of the States until, after a while, the States will not have any rights. There will be a powerful Central Government—and it will be a powerful monster, too. Everything will radiate from Washington.

I understand there is a movement on foot to establish a national police system. It is desired to convert the FBI, which is purely an investigative agency, into a law-enforcement agency. It is not a law-enforcement agency. Congress would not have the right to establish a national police agency, because under the Constitution the police power is reserved to the States.

However, this investigative agency, the FBI, is in a different situation. It does not do police work. It apprehends criminals and works with the States, and cooperates in the execution of Federal laws, apprehending violators and bringing them to trial. But it is not a police agency. I am glad that Mr. J. Edgar Hoover said that he was opposed to a national police system. I am sorry to see that the President has been recommending a bill to provide Federal aid to education by way of construction of school buildings. I have been amazed at the fact that so many people are not acquainted with the fact that in the entire Federal Constitution there is not a sentence which contains the word "education." The word "education" is not to be found in the United States Constitution. Therefore, since the States did not delegate the field of education to the Federal Government, the Federal Government has no jurisdiction in that field, unless we amend the Constitution and give the Federal Government jurisdiction in the field of education.

We can amend the Constitution. We can follow one of the four methods of amending the Constitution, and give the Federal Government authority in that field, if that is the wise thing to do, which I do not think it is. However, that is the way it must be done. We have no authority to appropriate money for Federal aid to education. I know that the President's intentions are good. However, at Columbia University several years ago he was against Federal aid to education. At any rate, it would be a great mistake for the Federal Government to enter the field of education.

After we begin giving money for Federal aid to education by way of construction, the next demand from the powerful National Education Association, which I understand is building a tremendous office building in Washington, will be for a supplement to the salaries of teachers. The National Education Association will bring pressure on Members of Congress, as do other pressure organizations, and will say, "We need supplements to teachers' salaries."

When we enact legislation for Federal aid to construct the buildings, and to provide supplements to teachers' salaries, the Federal Government will be asked to pay a larger share of such salaries, and there will be more and more control to go with it. Before we know it, there will be Federal control of education, and the parents of the Nation will find their children studying books selected in Washington, instead of by the people in Delaware, North Dakota, and South Carolina.

It is a great mistake for us not to follow the Constitution. If the Constitution needs amending, we can amend it. There is a provision for amending it, and it should be amended from time to time. There have been 22 amendments since it was adopted. In 1789 the first 10 amendments were adopted. Since then 12 other amendments have been adopted. There are now 22 amendments to the Constitution.

We were talking about the 16th amendment awhile ago, the income-tax amendment. I think most people feel that it is necessary, although the income tax appears high. Therefore there had to be a way to bring it about. Congress could not pass an income-tax law. It had no authority to do so until the Constitution had been amended to give Congress the power to do it.

I think it is important to understand what we mean by the division of powers between the Federal Government and the State governments. We have a compound Republic. It is a compound Republic because there are Federal powers and State powers. There are three branches in the Federal Government, each of which checks on the others, with the exception of the Supreme Court. It has practically no check on it, and it has gone wild.

There are three branches in the State governments. Each is supposed to be a check on the others.

There are two checks on the Supreme Court. In the first place, we can impeach Supreme Court justices. However, the House must do the impeaching, and the Senate sits as a jury to hear the case. So, there is not much the Senate can do from that standpoint.

The other one is that, under the Constitution, the appellate power of the Supreme Court can be controlled by the Congress, so that if Congress saw fit to pass a bill to limit the appelate power of the Supreme Court, Congress would have that right. The Constitution gives it the power to do that. Many persons think we have to amend the Constitution before we can do that.

Mr. KNOWLAND. Mr. President, will the Senator from South Carolina yield for a question?

Mr. THURMOND. I yield for a question.

Mr. KNOWLAND. Would the Senator say that would be a form of cruel and inhuman punishment to impose upon his colleagues?

Mr. THURMOND. I would say it is cruel and inhuman punishment to impose on the citizens of America if we pass a bill without providing for a jury trial.

(Manifestations of applause in the galleries.)

The PRESIDING OFFICER. The galleries will be in order.

Mr. THURMOND. I have received letters from a number of States, and I have been in California. I spent a week there in the fall of 1953. Starting at Long Beach and ending up at San Francisco, I made addresses all the way up the coast. I even went to Bakersfield and saw an old friend of the Senator from California there. I talked with many persons there. Unless they have had a change in sentiment, they think, just as the people of South Carolina do, that there should be jury trials.

Mr. KNOWLAND. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield for a question.

Mr. KNOWLAND. Does not the distinguished Senator also think that the people of California are interested in the 15th amendment to the Constitution, assuring all American citizens the right to vote?

Mr. THURMOND. I am sure that the people of California are, and I am sure the people of South Carolina are. The people of South Carolina have done something about it, just as have the people of California. Last night, when the distinguished Senator from California was resting comfortably, I was speaking here and trying to rouse the people of America concerning the dangers of taking away their right of trial by jury. I placed in the RECORD the statutes of California on that subject, and here is what they provide:

California: Unless otherwise designated, references are to Elections Code Annotated—West's—1955:

"Hindering public meeting: Every person is guilty of a misdemeanor who, by threats, intimidation, or unlawful violence, willfully hinders or prevents electors from assembling in public meetings for consideration of public questions (sec. 5004).

"Intimidating voter: Every person or corporation is guilty of a misdemeanor, who directly or indirectly uses or threatens to use force, violence, restraint, or inflicts or threatens to inflict any injury, damage, harm, or loss or other forms of intimidation to compel a person to vote or refrain from voting at any election (sec. 1158).

"Interference with free exercise of elective franchise: Every person or corporation is guilty of a misdemeanor who, by abduction, duress, or any forcible or fraudulent means, impedes or prevents the free exercise of the elective franchise by any voter; or who compels or induces a voter either to give or refrain from giving his vote at any election or to vote or refrain from voting for a particular person (sec. 11582).

"Election officers: Any election officer who induces or attempts to induce any voter either by menace or reward, to vote differently from the way he intended to vote, is guilty of a felony (sec. 11583).

"Threat by employer: Any employer, whether a corporation or natural person, is guilty of a misdemeanor, if he encloses material in the pay envelopes containing threats, express or implied, intended to influence political opinions or actions of employees, or who within 90 days before an election exhibits any placard, etc., in the place of employment, containing such threats (secs. 11584, 11585).

"Penalty: Any corporation guilty of intimidating a voter shall forfeit its charter (sec. 11586).

"Misdemeanor: Unless a different penalty is prescribed, a misdemeanor is punishable by imprisonment in the county jail for not more than 6 months or by fine of not over $500, or by both (Penal Code, sec. 19).

"Scope of penalty provisions: All penalty provisions listed above apply to both final elections and primary elections (sec. 11500)."

Those are statutes of the State of California, and they are good statutes.

Mr. KNOWLAND. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I yield for a question.

Mr. KNOWLAND. Does the Senator not recognize the fact that under the voting rights bill which the Senate is attempting to pass but which the Senator from South Carolina has, for the moment, successfully prevented the Senate from passing, there is not a single individual who can be cited for either civil or criminal contempt if another American citizen is deprived of his right to vote under the Constitution? So, if the Senator is correct in his statement that no person is deprived of his right to vote in his State—and I feel certain that no American citizen is denied the right to vote in my State—neither California nor South Carolina would cite any public official or other person criminally unless they were depriving people of their right to vote under the laws of the State.

Mr. THURMOND. I think some part of the Union could nullify the Constitution, just as I think some juries turn loose some defendants who are guilty. Some judges will make mistakes, too. But why do we not let the States alone and let them handle their own problems? I know the southern people and I know they are doing all they can for the Negro.

I see my friend the Senator from Kentucky [Mr. COOPER] sitting next to the Senator from California. He feels that his State is doing all it can. I know the State of Mississippi, from which come my good friends, Senator EASTLAND and Senator STENNIS, is doing all it can. We cannot change customs overnight. We have to let the local people work these things out. But Congress did not care to let the local people work these things out.

All that is necessary is to have enforcement of the Federal statute. There is a Federal statute, to which I called attention today. For the benefit of Senators who were not here at the time, I may say that this statute provides that whoever intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person, for the purpose of interfering with the right of such other person to vote, or to vote as he may choose, is guilty of a crime, punishable by a $1,000 fine or by imprisonment of 1 year.

Mr. COOPER. Will the Senator yield?

Mr. THURMOND. I yield for a question.

Mr. COOPER. Does the Senator know that there has never been any question, since the War Between the States, about the Negro population in

Kentucky having the right to vote, and exercising that right?

Mr. THURMOND. I have never heard any question about it. I simply say that in my State the Negroes are voting in large numbers. They claimed the credit for carrying the election for Stevenson in 1952, and at that time there was a very close election. They claimed they cast more than 80,000 votes, which was about 25 percent of the total. Their own newspaper contained that information. I have a clipping from that newspaper, the Lighthouse and Informer. So they are certainly voting in my State, and I am sure they are voting in the Senator's State.

Is it not better to let the local people work out these problems, rather than to rush things on them, and try to change their customs overnight?

As a matter of fact, if you gentlemen want to take any action, however, if the proponents of this bill are not satisfied—I do not think the distinguished Senator is dissatisfied—with the enforcement by the governors of the States of the Nation—and the governors are the chief executive officers of the States and are responsible for enforcing the law—or if the Federal Government is not satisfied with the enforcement being given by the governors to the voting laws of the States to protect the rights of people to vote, then why do they not enforce the Federal statute, which is already on the books?

Mr. COOPER. Because of the Senator's kind reference, I should like to ask a question as follows: Does the Senator know that in Kentucky all citizens, including all Negroes, have had, since the War Between the States, the right to vote, have exercised that right, and that it has never been questioned?

Mr. THURMOND. I am sure that is the case, because I have heard that they vote there. They are voting in the South in larger numbers than ever before. No persons in my State are deprived of the right to vote. If they are qualified to vote, they are allowed to vote. Of course, no man who is not qualified ought to be allowed to vote. New York State has a much higher standard, as I said a while ago, than we have. If a person can merely read or write in my State, he can vote. In New York one has to be a high-school graduate, I believe or at least has to meet a literacy test. So we are not nearly so strict in South Carolina as they are in New York.

The Senator comes from a border State. Kentucky is a great State. I suggest to the Senator, however, since he is from a border State that went in part with the North and in part with the South, that the Senator stick with the South.

Mr. COOPER. Mr. President, I will ask the Senator if it is not true that Kentucky had to make that choice almost a hundred years ago and they chose to stick with the Union?

Mr. THURMONL. Mr. President, if there is any Member in the Senate who is not satisfied with the voting protection given by the governors and the other officials of the States of the Nation, again I say that all they have to do is to call upon the Justice Department to enforce section 594. It is now against the Federal law to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any voter, in any way, shape, or form. That is the Federal statute which is on the books now. Why not enforce that statute? What is the idea of coming here with a right-to-vote bill? That is a big, high-sounding word that does not mean anything. If we pass this bill, we will pass an unconstitutional bill. It will be all right if the Justice Department will enforce section 594. I believe they are enforcing it. Is there anyone that thinks they are not enforcing this law? Is there anyone who thinks the present administration is not enforcing section 594?

If the Justice Department are enforcing this law, they are protecting people in this matter now. If they are not enforcing this law, let them enforce it and that will protect them. Either the Justice Department are not enforcing this law, if they have had complaints, or they have not had any complaints.

Has the Justice Department had complaints, such as we have been hearing about, that many people have been denied the right to vote? We hear that in the South many people are denied the right to vote. What is there now; what has there been in the past 5 years to keep the Attorney General from going to any Southern State to enforce this statute? It is a Federal statute. The Attorney General not only has the right to enforce it, but he has the duty. If there have been any complaints about people in the South not voting, I have not heard of them. But if there have been any complaints about them not voting, then the Justice Department ought to do something about it. If the Justice Department has taken no action to enforce this statute, it shows one of two things: The Department has not had anybody objecting, or, if there were objections, it ignored them and did not do its duty by enforcing the statute. The point is there is a Federal statute now, so why pass another bill? All the Congress needs to do is to follow the Constitution. If we will follow the line of demarcation in the Constitution between the powers delegated to the Federal Government and the powers reserved to the States, we will not get into difficulties about all these different things.

If a bill were introduced to repeal the poll tax as a prerequisite to voting, there would not be any question but that the Congress would not consider it because it would be unconstitutional. The qualifications of voting are reserved to the States. Why can we not look at it from that viewpoint and not try to say whether it is a good bill or a bad bill? On the right to vote bill, should there be any question whether we are going to accept this compromise? I do not think there should be any question at all, because the Constitution says a man charged with a crime is entitled to a jury trial. The court decision which I have before me holds that criminal contempt is a crime.

Mr. President——

The PRESIDING OFFICER (Mr. FREAR in the chair). The Senator from South Carolina.

Mr. THURMOND. I will proceed now, if there are no further questions.

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. THURMCND. Article III, defining the judicial power of the United States, contains several provisions of interest in this review.

Mr. LANGER. Mr. President, will the Senator yield for a question?

Mr. THURMOND. I will yield to the able Senator for a question.

Mr. LANGER. Is it correct that under Federal statute 594 there can be imposed a fine of $1,000 or imprisonment of 1 year in jail?

Mr. THURMOND. That is correct.

Mr. LANGER. The compromise right to vote bill cuts it down to a fine of $300 and 45 days in jail. If the judge determines that the defendant ought to suffer a greater penalty than that, the case has to go to a jury.

Mr. THURMOND. In reply to the Senator, I will say if this bill is passed, of course I am expecting it to be held unconstitutional as soon as it can be tested. But until that is done, they will have a choice.

There could be a prosecution under the Federal statute, which is section 594; or such a person could be taken before a Federal judge, and the Federal judge could decide whether he wanted to try the case. If the judge decided he was in a hurry to take a vacation trip, he could simply say, "I will try the case myself." Then, under the provisions of the compromise measure, the judge would try the case; and the person being tried could not complain.

Let me ask the Senator from North Dakota what he would do. Suppose he were to find himself in such a situation; and suppose the judge were to say to him, "Mr. LANGER, I will not give you a jury trial. I will try you myself"—and then the judge would rear back on his haunches and would grin.

What would the Senator from North Dakota do under those circumstances? There would be nothing he could do, because the judge would have a right to try him under the provisions of the compromise measure which has come to us from the House of Representatives.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for another question?

The PRESIDING OFFICER (Mr. FREAR in the chair). Does the Senator from South Carolina yield to the Senator from North Dakota?

Mr. THURMOND. I shall be pleased to yield for a question.

Mr. LANGER. Inasmuch as section 594 is on the statute books, why is not this right-to-vote bill entirely superfluous?

Mr. THURMOND. Mr. President, the Senator from North Dakota has put his finger on exactly what I have been discussing in the Senate for—let me see, Mr. President, how long has it been?

The PRESIDING OFFICER. Twenty-one hours.

Mr. THURMOND. No; Mr. President, it has been 22 hours and 10 minutes. [Laughter.] For 22 hours and 10 minutes I have been trying to emphasize that

point—namely, why is this compromise necessary, when a Federal statute on this subject is already on the statute books? It provides for a fine of $1,000 or imprisonment of 1 year in jail.

If the Department of Justice is interested in the persons who are alleged to have been deprived of the right to vote—regardless of whether they are whites, Negroes, or others—why does not the Department of Justice take action to enforce section 594 and thus protect the right to vote? The Department of Justice can do that under section 594. That is up to the Department of Justice. I do not know what the Department will do; that is up to the Department of Justice.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for another question?

Mr. THURMOND. I yield for a question.

Mr. LANGER. During the last 5 years, has anyone been arrested under section 594?

Mr. THURMOND. In reply to the question of the distinguished Senator from North Dakota, I wish to say that I have never heard that anyone in my State has been tried under that statute. So there is no use in having the representatives of the Department of Justice come to South Carolina and say that people there are deprived of the right to vote, because if anyone representing the Department of Justice does come to South Carolina and does make such a statement, I will tell him that it is his own fault, for those in the Department of Justice have failed to do their duty; they have a law under which they can punish such persons, but they have not done so. Either no one in South Carolina is deprived of the right to vote, or else the Department of Justice has failed to do its duty.

Mr. LANGER. I thank the Senator from South Carolina. I get the point very clearly.

Mr. THURMOND. Let me ask whether there are any more questions.

The PRESIDING OFFICER. Does the Senator from South Carolina yield the floor?

Mr. THURMOND. Mr. President, I shall proceed. I am just trying to find a section of the Constitution to which I wish to refer.

Mr. LANGER. Mr. President, while the Senator from South Carolina is doing that, will he yield for another question?

Mr. THURMOND. I shall be pleased to yield for a question.

Mr. LANGER. Can the Senator from South Carolina tell the Senate how many years ago section 594 was enacted into law?

Mr. THURMOND. I believe it was in 1939.

Mr. LANGER. Do I correctly understand that since that time, there has been no prosecution under that provision of law? Is that true, so far as the Senator from South Carolina knows?

Mr. THURMOND. I have not heard of a single prosecution in South Carolina under that statute.

Mr. LANGER. Has the Senator heard of one in any other State?

Mr. THURMOND. If there has been one, I have not heard of it. I would not say there has not been one in some other State, but I do not know of a case of that sort which has been tried in the Federal courts. Some have been tried in the State courts; we are enforcing our State laws.

But I have not heard of a case in which anyone has been tried under this Federal statute—which carries with it a heavy penalty, namely, a fine of $1,000 or imprisonment in jail for 1 year. I have never heard of anyone who has been tried under that law. But, Mr. President, of course I am not surprised at that, because in South Carolina, everyone who wishes to register to vote and to vote, does register and does vote, if he is qualified. So I do not think it likely that there would be any cases of that sort in South Carolina.

Mr. President, there have been insinuations to the effect that the Southern States are denying some people the right to vote. I think insinuations about any States should stop—whether that be Northern States, Southern States, Eastern States, or Western States. All of us are Americans. We have a great country. In all the wars the United States has ever fought, the United States has had brave soldiers from all sections of the country. It is very bad to have people in one section of the country try to snipe at people in another section of the country. That is the very thing George Washington warned against in his Farewell Address.

Mr. LANGER. Yes, I am familiar with that admonition by George Washington.

Mr. THURMOND. Mr. President, if anyone in the South has been intimidated or coerced or threatened with regard to voting—if anyone in any Southern State has been treated in that way—the district attorney in the State can take action any day he wishes to; and if the Department of Justice does not do it, the Department is failing to perform its duty with respect to such violations; or else there are no violations of that sort. So evidently there have not been any violations of that sort in the State of South Carolina, or else no one has complained about them. As a matter of fact, I am quite sure that there have not been any violations of that sort in my State, because, as I have said, anyone in South Carolina who wishes to vote, and who is qualified to vote, and who registers, can vote.

Mr. President, I should like to read what George Washington said.

Sometimes, Mr. President, when I see the able Senator from Kentucky [Mr. COOPER] sitting in his seat in this Chamber—so able a judge and lawyer, and a fine soldier in World War II; and when I see in the Chamber the distinguished senior Senator from Michigan [Mr. POTTER], who lost both of his legs in that war; and when I see my other fellow veterans who are distinguished Members of this body or are distinguished Members of the House of Representatives, and then when I see matters of a sectional nature brought up here, and when one group wishes to try to have enacted into law a measure aimed at punishing another section of the country, it makes my heart ache. My colleagues who are veterans did not feel that way when they were serving in the Armed Forces overseas; they did not feel that way when they were in uniform. If the Members of Congress from various sections of the United States would just accord to all the other States the same respect that they expect to have accorded to their own States I am sure that we would not be having this trouble; and then I would not have been speaking here on this subject for more than 22 hours in an effort to arouse the American people.

The PRESIDING OFFICER. For 22 hours and 10 minutes.

Mr. THURMOND. No, Mr. President, for 22 hours and 20 minutes. [Laughter.]

I would not be trying to arouse the American people if it were not necessary. But why should the North want to pick on those of us who live in the South? Why do the people in New York want to pick on us? Why do the people in New Jersey want to pick on us? Or why do the people of any other section of the country want to pick on us? We think we are fairly good people. We think we are patriotic. The Members of Congress from the Southern States want to work together with all the other Members of Congress.

Mr. President, I want to extend every courtesy to every other Member of Congress, and I want to see those who live in any particular section of the country extend to the rest of the people of the country the same courtesy that they expect to have extended to themselves.

But, Mr. President, I can tell you this: This right-to-vote bill—and I say this because I know something about its history—is aimed at the South. It is aimed at the South; and it hurts me to see that done, because South Carolina is not guilty, and this bill should not be enacted. I do not believe the other Southern States are guilty. The Southern States have done their part in every way. As I have said, the people of the Southern States have fought for their country and have served in public office in every way. They have been honorable people.

Yet, in order to try to win the votes of certain minority blocs, some pressure groups are willing to punish us, to put us under the heel, and to grind and grind and grind us. I am getting tired of it.

(Manifestations of applause by the occupants of the galleries.)

The PRESIDING OFFICER. The doorkeepers must keep the galleries in order.

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

Mr. THURMOND. I yield.

Mr. COOPER. A minute ago the Senator spoke very generously of our association and friendship during World War II. I know that he did not mean to intimate that there was any intention upon the part of the Senator from Kentucky, in his vote on the civil-rights bill, to show any bias or prejudice toward his own people in the South.

Mr. THURMOND. I am sure that there was not, Senator.

Mr. COOPER. Does the Senator remember?

Mr. THURMOND. I remember, and I say to the Senator from Kentucky he is one of the finest and most gracious gentlemen I have known.

The Senator from Kentucky is not one of those ardent proponents of the bill who is trying to ram the bill home. I do not know how he is going to vote, but he is a good constitutional lawyer. I hope he will not vote for it. I hope he will think over the jury trial issue and not vote for it.

He has not been one of those who has been baiting the South.

Mr. COOPER. The Senator from Kentucky is a good friend of the Senator from South Carolina, but the Senator from Kentucky will vote for civil rights. He intends to vote for the bill this evening or at some later time.

In the debate he said again and again that he believes in the juries in the South, and that the people of the South would respect the law and would follow the law. I am sure the Senator from South Carolina knows that the Senator from Kentucky said that.

Mr. THURMOND. I am sure he did say that.

The only thing is that if the Senator feels that the South obeys the law, I do not understand why he should want to have this bill passed.

I will get on with what George Washington said.

Mr. President, George Washington, in his Farewell Address, used his strongest language against those who would divide our country; he urged a unity of spirit. He said:

> In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations—northern and southern—Atlantic and western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations: they tend to render alien to each other those who ought to be bound together by fraternal affection.

That was George Washington speaking.

George Washington wanted to see the people from the North to the South, and to the East and the West, bound together with a fraternal feeling. He wanted a fraternal attitude manifested.

Why should we not manifest a fraternal attitude on these matters? Why should we not try to help another section, and not sponsor legislation which is aimed at any particular section, merely to try to get votes to win an election?

I have said, and I repeat, that since every State in the United States from Alabama to Wyoming has laws on its books to protect the right to vote, and since the Federal Government has a statute on its books to protect the right to vote, there is no need for this bill.

I say, and I repeat, that I think the bill is purely political, and I think that both parties have been trying to grab the ball to see who could get the spotlight for the elections coming up in 1958.

Article III, defining the judicial power of the United States, contains several provisions of interest in this review. We may note, for example, two further uses of the plural: First, the judicial power is to extend "to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." Second, treason against the United States is to consist "only in levying war against them, or in adhering to their enemies." Because the authority of the Court will be considered at length in a later chapter, it will suffice here merely to point out that nowhere in article III is the Court given jurisdiction over controversies between a State and the United States. That proposal was specifically advanced during the convention, and specifically rejected.

Every section—indeed, every paragraph—of article IV touches upon the Federal nature of the Union. Full faith and credit are to be given, in each State, to the acts and judicial proceedings of every other State. If this were not a Federal Union, the provision would be nonsense. Beyond this, the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. A person charged in any State with crime, who shall flee from justice and be found in another State, shall be delivered upon demand to be removed to the State having jurisdiction of the crime.

Then comes the provision that Northern States were to flout over a period of 30 years: "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due."

Finally, we may note in article IV the provision for admitting new States into this Union (not this Nation, but this Union): "No new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress."

Article V had best be quoted in full. It has not been changed by so much as an apostrophe in the years since it came from Philadelphia in September of 1787. It still fixes and defines the sovereign power:

> Pause for a moment over this article of the Constitution. We are dealing here with Taylor's "will to enact" and "power to execute"; we are dealing with Marshall's "power to make and unmake." It was plainly envisioned by the framers that their work would require amendment through the years. "That useful alterations will be suggested by experience, could not but be foreseen," Madison was to write. There was a double aim in the provision, even a triple aim. Aricle V, Madison tells us, was intended, first, to guard equally against too-easy amendment on the one hand and too-difficult amendment on the other. It was drafted, secondly, to permit amendments to originate both with the Federal and with the State Governments. But it was intended, finally, to leave the ultimate decision upon changing the Constitution to the sovereign States themselves—not to the people as a mass, nor even to a bare majority of the States as such. It was recognized that the great, overriding principle of protection for minorities should apply here as bindingly as it was to apply elsewhere. If one-fourth of the States plus one should object to a change in the Constitution—even if that change were desired by three-fourths minus one (and even if this larger fraction should include the great bulk of the total population)—the change could not be engrafted to the Constitution.

Article VI is brief. Its first provision covers debts and engagements entered into under the Articles of Confederation and continues these obligations under the proposed new Constitution; its third provision prohibits any religious test as a qualification for public office and requires an oath to support the Constitution of all public officers, both State and Federal.

It is the second provision that merits brief attention in this summary review:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Let us go back: What is to be supreme? Three things. First, "this Constitution." Secondly, "laws of the United States which shall be made in pursuance thereof." Third, treaties made "under the authority of the United States." That is all. Not Executive orders of the President. Not even judgments of the Supreme Court. The Constitution, the laws made in pursuance thereof, the treaties.

In passing, note the phrase "law of the land." It stems originally from the Magna Carta; but as it appears in the Constitution, "law of the land" was merely a substitution, proposed by the committee on style, for "law of the several States and their citizens and inhabitants." The object was to extend this new supreme law to Territories as well as to the States. And this phrase, "law of the land," is as close as the Constitution ever comes to suggesting a "nation." Actually the word "nation" or the word "national" never appears in the Constitution.

The aim, we will recall, was to form "a more perfect Union." Representatives and taxes were to be apportioned among the several States which may be included "within this Union." The militia may be called forth to execute "the laws of the Union." The President is to provide Congress with information on the "state of the Union." New States are to be admitted "into this Union." The guaranty of a republican form of government goes "to every State in this Union." But never, at any point, are the United States described, in the Constitution, as comprising a "nation."

This is not to contend, of course, that ours is not a Nation, or that the Federal Government does not operate nationally. It is only to suggest that the deliberate terms of the Constitution speak for themselves, and should be heeded: Our country is, first and foremost, originally and still, a Union of States. And when we speak of the law of the land, it should be kept steadily in mind that the land is a Federal Union, in which each of the States stands coequal with every other State. The Constitution is supreme not only in its authority over each State, but also in its protection over each State. And each State, each respective State, is entitled to rely upon the Constitution as embodying supreme law that all other States must adhere to with equal fidelity, like it or not, until the Constitution be changed by the States themselves.

Note, too, the careful qualification that defines laws enacted by the Congress. Just any laws of the United States are not enough: Laws, to be binding, must be laws made in pursuance of the Constitution. Any attempted statutes that invade the residuary authority of the States, Hamilton tells us, "will be merely acts of usurpation, and will

deserve to be treated as such." And he adds, at another point, that:

"There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid."

Surely, it may be urged that precisely the same standard must be applied to other branches of the Federal Government—the executive and judicial no less than the legislative. By extension, thus, judgments of the Court, to be supreme law of the land, must be made pursuant to the Constitution. A judgment of the Court, so violative of the clear terms and understandings of the Constitution as to invade the residuary authority of the States, must also be regarded as a usurpation, and should deserve to be treated as such. The argument will be pursued at greater length hereafter.

Finally, this brief examination of the Constitution from the standpoint of the States may be concluded with a second look at article VII. It should be read carefully, for this is the clause that binds: "The ratification of the conventions of 9 States"—not, again, the approval of a majority of the people in a popular referendum, but the ratification of 9 States—"shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

Thus, on September 17, the Convention concluded its work. George Washington, as President of the Convention, transmitted the document to the Congress. A prophetic sentence appeared in his letter, as he mentioned the compromises necessary for the surrender of sovereign powers: "It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved." The States had done the best they could through their delegates. Eager to consolidate their Union, each State had been disposed "to be less rigid on points of inferior magnitude than might have been otherwise expected." They launched the ship.

"Well, Doctor," said the lady to Mr. Franklin, "what have we got, a republic or a monarchy?"

"A republic," replied the doctor, "if you can keep it."

It is pretty hard to keep when bills are introduced to violate the Constitution by chipping off and whittling away the rights of the States in an effort, it seems, to reduce them to colonial status.

Continuing the quotation from the Kilpatrick book:

6. THE PROPHETIC MR. HENRY

For the States' understanding of what the Constitution was to mean to them, as States, we can look not only to the internal evidence of the Constitution itself, but to the debates in the ratifying conventions and to some of the contemporary criticism, notably in the Federalist papers. We can look, also, to some of the pronouncements of the Supreme Court from time to time, and to the writings of scholars of our own day.

The evidence is overwhelming. By written compact, solemnly ratified, the States agreed mutually to delegate certain of their sovereign powers to a Federal Government. They enumerated these powers. All other powers they reserved to themselves, and these reserved powers did not need to be enumerated: the reserved powers constituted all inherent powers of sovereign States not specifically abridged.

So plain was this understanding that the feeling most frequently encountered, in reading comments of the period, is one of incredulity that anyone should doubt it.

"The proposed Constitution," said Hamilton, "so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power."

So, too, said Madison:

"It is to be remembered that the General Government is not to be charged with the whole power of making and administering laws. Its jursidiction is limited to certain enumerated objects which concern all the members of the Republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all other objects which can be separately provided for, will retain their due authority and activity."

Neither Hamilton nor Madison could quite imagine the Federal Government ever seriously encroaching upon the States.

"Allowing the utmost latitude to the love of power which any reasonable man can require," said Hamilton, "I confess I am at a loss to discover what temptation the persons intrusted with the administration of the General Government could ever feel to divest the States of the authorities of that description. The regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition. Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought, in the first instance, to be lodged in the national depository."

Then he added, with a singular absence of prophecy:

"The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the Federal councils to usurp the powers with which they are connected. * * *

"It will always be far more easy for the State governments to encroach upon the national authorities, than for the National Government to encroach upon the State authorities."

That is where he was wrong. In other words, Hamilton had no idea that the Federal Government would ever attempt to encroach on the rights of the States. In his day it looked to him as if it would be easier for the States to encroach on the rights of the Federal Government than for the Federal Government to encroach on the rights of the States. But in recent years do-gooders, welfare-staters, and left-wingers, and other pressure groups are trying to transform this Government. They are trying to make of it a national government. It is not a national government; it is a Federal Government. The States came together in a federation and formed this Government. That is the conception which I hope we can get over to the people of the Nation, that our Government is not a national government; it is a Federal Government made by the States coming together and forming a federation and signing the compact which became the Constitution. Therefore we have a Federal Government, not a national government. I hope we shall never have a national government. We must stop the Federal usurpation that is now going on and has been going on for some years.

Madison, also, imagined that the Federal Government would "be disinclined to invade the rights of the individual States, or the prerogatives of their governments." For his part, Hamilton thought it more probable that the States would encroach upon the Federal Government, and he imagined that in such contests the State governments, because they "will commonly possess most influence" over the people, would dominate Federal agencies "to the disadvantage of the Union." However, all such conjectures Hamilton viewed as "extremely vague and fallible." He preferred to assume that the people "will always take care to preserve the constitutional equilibrium between the general and the State governments."

In No. 45, Madison treated at considerable length the widespread apprehension that the States would be obliterated. Some of his comments have been outdated; what he has to say about the election of Senators, for example, unhappily has been superseded by the misfortune of the 17th amendment. Some of his other observations, dealing with functions of what was to become the Bureau of Internal Revenue, may occasion some wary reflection on the lengths by which even a Madison could miss his guess. But as contemporary evidence of the role guaranteed to the States, No. 45 justifies quotation at some length:

"The State governments will have the advantage of the Federal Government, whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other.

"The State governments may be regarded as constituent and essential parts of the Federal Government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and exclusively by the State legislatures. Even the House of Representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the State legislatures. Thus, each of the principal branches of the Federal Government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing toward them. On the other side, the component parts of the State governments will in no instance be indebted for their appointment to the direct agency of the Federal Government, and very little, if at all, to the local influence of its members.

"The number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of 13 and more States, the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for 3 millions and more of people, intermixed, and having particular acquaintance with every class and circle of people, must exceed,

beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the Federal system. Compare the members of the three great departments of the 13 States, excluding from the judiciary department the justices of peace, with the members of the corresponding departments of the single government of the Union; compare the militia officers of 3 millions of people with the military and marine officers of any establishment which is within the compass of probability, or, I may add, of possibility, and in this view alone, we may pronounce the advantage of the States to be decisive.

"If the Federal Government is to have collectors of revenue, the State governments will have theirs also. And as those of the former will be principally on the seacoast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true, that the confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. * * *

"The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

"The operations of the Federal Government will be most extensive and important in times of war and danger; those of the State governments in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the Federal Government. The more adequate, indeed, the Federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States.

"If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of new powers to the Union, than in the invigoration of its original powers. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the Articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them."

Even John Marshall, who did more than any man in our history to aggrandize the Federal Government and to weaken the States, never doubted the basic structure of divided powers. Consider, briefly, his comment in the famed case of *McCulloch* v. *Maryland*. The case arose when Congress established the Bank of the United States, and Maryland undertook to levy a tax upon the bank's Baltimore branch; James McCulloch, the cashier, refused to pay the tax, and Maryland sued.

The legal questions were two: Did Congress have power to incorporate the bank, and secondly, did Maryland have power to tax it? Marshall answered the first one "Yes," the second, "No." With the bulk of his reasoning, strict constructionists and apostles of States rights will disagree: Marshall's sophisticated mind did not boggle at stretching "necessary" to mean "convenient." In considering the actual act of ratification by which the Union was formed, Marshall was not much impressed by the fact, which he could not escape, that the people met in State conventions. "Where else should they have assembled?" he asked. But even here, a couple of sentences merit quotation as evidence from the States greatest detractor:

"It is true, [the people] assembled in their several States—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States."

Marshall went on in his opinion to confuse "States" and "State governments," thus setting up a convenient strawman to batter down. No one ever had contended that the Constitution was ratified by State governments, but Marshall, with a glittering display of intellectual swordsmanship, neatly skewered the nonexistent objection. Then he went on to say:

"This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was pending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist."

True enough, the question of "the extent of powers" does continue to arise to this day, though the doctrines of Marshall have so pervaded public thinking that it often is forgotten that the Federal Government has any limitations whatever. But the separateness of the States and the nature of their delegated powers were clearly recognized when the Constitution was created. The prophets who foresaw the trend toward consolidation—notably Patrick Henry and George Mason—were told they were old women, seeing ghosts.

Consider, if you will, the debate on ratification in Virginia. The transcript offers some absorbing reading. If the clash of a Henry and a Mason with a Pendleton and a Madison does not prompt reflection upon subsequent corruption of the Constitution, at the very least their battle must lead to regrets at the decline in the quality of today's legislative debates. There were giants in those days. This was, to paraphrase Marshall, a Constitution they were debating. What was said of the relationship of the States and the Federal Government?

Go back in time. This was a sultry summer in Richmond. At least twice the brief convention was interrupted by thunder storms so severe the delegates were forced to recess. Tempers flared sharply. At one point Edmund Randolph, infuriated with Patrick Henry, was prepared to let their friendship "fall like Lucifer, never to rise again." They began on Monday, June 2; they adjourned sine die on Friday, June 27. Into those 4 weeks, the Virginians of 1788 packed a world of profound reflection upon the meaning and intention of the Constitution.

Edmund Pendleton served as president of the Virginia convention. He was a remarkable man: lawyer, scholar, statesman, thinker. In advocating ratification, Pendleton was joined by James Madison, John Marshall, Edmund Randolph, and Light Horse Harry Lee. They carried the day against Patrick Henry and George Mason, as leading opponents of the proposition.

The convention scarcely had begun before Henry established the broad spread of argument. He did not propose to abide by any parliamentary decision to debate one clause at a time. Before the convention in Philadelphia the previous summer, said Henry, a general peace and a universal tranquillity had prevailed. Now he was "extremely uneasy at the proposed change of government." He swept the room with a cold eye: "Be extremely cautious, watchful, jealous of your liberty. Instead of securing your rights, you may lose them forever."

George Mason came to his side. He charged that the new Constitution would create "a national government, and no longer a confederation." He especially denounced the authority proposed in the general government to levy direct taxes. This power, being at the discretion of Congress and unconfined, "and without any kind of control, must carry everything before it." "The idea of a consolidated government," he said, "is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the State governments. * * * These two concurrent powers cannot exist long together; the one will destroy the other; the general government, being paramount to and in every respect more powerful than the State governments, the latter must give way to the former."

Then Mason voiced the argument that is as applicable in the mid-20th century as it was toward the end of the 18th:

"Is it to be supposed that one national government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained, by history, that there never was a government over a very extensive country without destroying the liberties of the people. * * * Popular governments can only exist in small territories."

On Thursday, June 5, Pendleton undertook to respond to Henry and to Mason. Was the proposed government, he inquired, truly a consolidated government? Of course not. "If this be such a government, I will confess, with my worthy friend, that it is inadmissible. * * *" The proposed Federal Government, he said, "extends to the general purposes of the Union. It does not intermeddle with the local, particular affairs of the States. * * * It is the interest of the Federal to preserve the State governments; upon the latter the existence of the former depends. * * * I wonder how any gentleman, reflecting on the subject, could have conceived an idea of the possibility of the latter."

Henry conceived it. He conceived it very clearly. The proposed Constitution, he felt, was "extremely pernicious, impolitic and dangerous." He saw no jeopardy to the people in the Articles of Confederation; he saw great jeopardy in this new Constitution. And he had this to say:

"We are descended from a people whose government was founded on liberty: Our glorious forefathers of Great Britain made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: By that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and

chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism."

And note this prophetic observation:

"There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances?"

What indeed? What have these ideal checks and balances availed the States in the 20th century? Henry saw the empty prospect: "This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints toward monarchy; and does not this raise indignation in the breast of every true American?"

It was monarchy, per se, that Henry foresaw. And it was despotism at the hands of a general government that he feared.

"What are your checks in this Government?" he kept asking.

No one ever answered him accurately, though half a dozen members of the Convention undertook to refute Henry and to allay his apprehensions. Randolph, replying to the objection that the country soon would be too large for effective government from the capital, commented that "no extent on earth seems to me too great," but he added, "provided the laws be wisely made and executed." It has proved to be a large qualification.

Madison also responded to Henry's general objection that the liberty of the people was in danger: "Since the general civilization of mankind," he said, "I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power, than by violent and sudden usurpations."

Follow closely what Madison had to say next. He is expounding the relationship of the State and Federal Governments as he, above all men, understood it:

"Give me leave to say something of the nature of the Government. * * * There are a number of opinions; but the principal question is, whether it be a federal or consolidated government. In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others it is of a consolidated nature. * * * Who are parties to it?"

Note this, especially; it was quoted earlier but it bears repetition:

"The people—but not the people as composing one great body; but the people as composing 13 sovereignties."

Francis Corbin, one of the ablest political students of his time, then joined Madison in soothing the growing fear that the Federal Government might one day absorb the State Governments. "The powers of the General Government," he said, "are only of a general nature, and their object is to protect, defend, and strengthen the United States; but the internal administration of government is left to the State legislatures, who exclusively retain such powers as will give the States the advantages of small republics, without the danger commonly attendant on the weakness of such governments."

Henry, undaunted, straightened his red wig and returned to the debate. "That government is no more than a choice among evils," he remarked, "is acknowledged by the most intelligent among mankind, and has been a standing maxim for ages." He could not accept the idea that this new government would be "a mighty benefit to us."

"Sir, I am made of so incredulous materials, that assertions and declarations do not satisfy me. I must be convinced, sir. I shall retain my infidelity on that subject till I see our liberties secured in a manner perfectly satisfactory to my understanding."

This exchange occurred on Friday, June 16. The following Monday, Henry renewed his assault:

"A number of characters, of the greatest eminence in this country, object to this government for its consolidating tendency. This is not imaginary. It is a formidable reality. If consolidation proves to be as mischievous to this country as it has been to other countries, what will the poor inhabitants of this country do? This government will operate like an ambuscade. It will destroy the State governments, and swallow the liberties of the people, without giving previous notice."

Madison came back with fresh replies and new remonstrances. The States were safely protected, he assured the Virginia convention. And renewing the arguments he had advanced in the Federalist, "There will be an irresistible bias toward the State governments." It was utterly improbable—almost impossible—that the Federal Government ever would encroach upon the States. "The means of influence consist in having the disposal of gifts and emoluments, and in the number of persons employed by and dependent upon a government. Will any gentleman compare the number of persons which will be employed in the General Government with the number of those which will be in the State governments? The number of dependents upon the State governments will be infinitely greater than those on the General Government. I may say, with truth, that there never was a more economical government in any age or country, nor which will require fewer hands, or give less influence."

Pendleton again gained the floor to tackle Henry's objection. We are told, he said, "that there will be a war between the two bodies equally our representatives, and that the State government will be destroyed, and consolidated into the General Government. I stated before, that this could not be so. The two governments act in different manners, and for different purposes—the General Government in great national concerns, in which we are interested in common with other members of the Union; the State legislature in our mere local concerns. * * * Our dearest rights—life, liberty and property—as Virginians, are still in the hands of our State legislature."

Patrick Henry remained unconvinced. His opinion and Madison's were "diametrically opposite." The mild-mannered Madison said the States would prevail. Henry, a dramatic and eloquent speaker, feared the Federal Government would prevail. Bring forth the Federal allurements, he cried, "and compare them with the poor, contemptible things that the State legislatures can bring forth. * * * There are rich, fat, Federal emoluments. Your rich, smug, fine, fat, Federal officers—the number of collectors of taxes and excises—will outnumber anything from the States. Who can cope with the excise man and the tax men?"

Henry did not imagine that the dual governments could be kept each within its proper orbit. "I assert that there is danger of interference," he remarked, "because no line is drawn between the powers of the two governments, in many instances; and where there is a line, there is no check to prevent the one from encroaching upon the powers of the other. I therefore contend that they must interfere, and that this interference must subvert the State government as being less powerful. Unless your government have checks, it must inevitably terminate in the destruction of your privileges."

William Grayson, burly veteran of the Revolution, was another member of the Virginia convention who clearly perceived the absence of effective checks and balances. "Power ought to have such checks and limitations," he said, "as to prevent bad men from abusing it. It ought to be granted on a supposition that men will be bad; for it may be eventually so."

Grayson was here discussing his apprehensions toward the powers vested by article III in the Supreme Court of the United States. "This Court," he protested, "has more power than any court under heaven." The Court's appellate jurisdiction, especially, aroused his alarm: "What has it in view, unless to subvert the State governments?"

Mr. President, only in the past few months this Court rendered a decision which struck down the sedition statutes in 48 States and two Territories, merely because the Federal Government had a statute on sedition. The Supreme Court held that because of that fact, the Federal Government had preempted the whole field, and struck down the State statutes on sedition. Sedition means overthrowing the Government. That is the practical effect of it.

Steve Nelson, in Pennsylvania, was convicted under Pennsylvania law. He appealed his case to the United States Supreme Court, and the Court turned him loose, on the ground that when the Federal sedition statute was enacted, that statute preempted the field. Thus it struck down all the State statutes on the subject. Forty-two States and two Territories had statutes on the subject.

Judge Howard Smith, in the House, who was the author of the bill, said there was no such intention on his part when he introduced the bill. There was even a provision in the bill that the State laws should not be affected. Yet the Supreme Court struck down the sedition statutes in 42 States and two Territories. Nine men overruled the legislatures of 42 States, and would have overruled the supreme courts in 42 States if their statutes had been tested.

In New York a man named Slochower was employed by the City College of New York. The charter of the City College provides that if any schoolteacher takes refuge behind the fifth amendment, upon being asked by an official body about his Communist connections, he shall be automatically dismissed. He was questioned by an official body. He was automatically dismissed. But what happened? The Supreme Court reinstated him in his job. City College of New York cannot control its own faculty because of these nine men in Washington. Forty-eight State legislatures cannot have sedition statutes because of these nine men in Washington.

Out in New Mexico a man applied for membership in the bar. A similar situation occurred in California. One of the men was admittedly a former Communist. The bar did not want him to become a member. Certainly the bar board should have discretion enough to determine whether a man had the character to be admitted. The board turned him down.

In the other case the man refused to answer questions about his Communist

connections. Both of those men—one a former Communist, the other tied in with the Communists—were refused licenses to practice law, one in New Mexico and the other in California. But the nine men comprising the Supreme Court ordered those boards to give the applicants their licenses.

Also, in California there were 14 Communists convicted of actually organizing Communist cells. They were preaching the doctrine of communism. They were convicted in the California court. The case was appealed to the United States Supreme Court. What did that Court do? It turned five of them loose and gave the other nine a new trial. It virtually held, in fact, that one can preach communism all he wants to. So long as the organizing does not begin until a future day, it will be all right. In other words, there would have to be action to put it into effect immediately under the holding of the Court.

How are we going to protect this Government? How is the FBI going to protect it? How are the people of California going to protect it when they catch people who are actually organizing Communist cells and who are advocating communism and preaching communism, and then the Supreme Court turns them loose, laying down a dangerous doctrine—and it is a dangerous doctrine to which I just referred.

Then there is the Watkins case, Mr. President, which has hampered investigations by the Congress. The Supreme Court handed down a decision after Watkins had been convicted of contempt and turned him loose. The Court, in effect, held that a member of the counsel or someone who wanted to ask questions would have to explain the questions to the witness. A smart witness would never admit he understood or comprehended what was meant.

In the city of Washington, Mr. President, one of the most dangerous decisions, I think, that has ever been handed down involved the man Mallory, who raped a white woman. He was caught the next day. He was caught about 2 o'clock. Along about 8 or 9 o'clock he was given a lie-detector test, and he confessed the crime and admitted that he raped the white woman. The officers could not get hold of the United States Commissioner that night, and had to wait until the next morning, about 9 o'clock. They held the admitted criminal from about 2 o'clock one day to 9 o'clock the next day, and in the meantime he gave a confession to the police in Washington. He was tried, convicted, and sentenced to death. He had confessed his crime. But the case was appealed to the Supreme Court. What did those nine men do with it? They reversed the decision and said the police had held the man too long.

What is going to happen in this Nation if police officers cannot hold criminals from 2 o'clock one day to 9 o'clock the next day, especially when those criminals have confessed to their crimes?

Heretofore in judicial administration there has been no particular time fixed. A person could be held a reasonable time before arraignment. Under this decision the man would have to confess at just about the time he was arrested, because the Supreme Court held that after he is arrested he is under coercion; and because he was held that short time the Supreme Court reversed the case, and the district attorney said there would not be any use to try it again; that the evidence depended on the confession.

As a result of that case, the Chief of Police in Washington said it would be very difficult to apprehend and detect criminals and arrest them hereafter and be able to make the evidence stand up in court. He called it a terrible handicap to law enforcement in such cases.

Mr. President, there are other decisions the Supreme Court has handed down about which I should like to tell the Senate. The Court seems to get its greatest delight out of turning loose Communists.

The record is disgraceful. The FBI, the law-enforcement agencies, police officers chase down Communists and narcotic people—and they are hard to catch. Then the Supreme Court reverses decisions and turns them loose and they walk the streets, as did the confessed rapist who was sentenced on his own confession. It is a disgrace to this Nation.

Mr. President, I still think this compromise bill is unconstitutional, but with the present Supreme Court no one can predict what they will do about it.

It was John Marshall, who 15 years later would do so much to justify Mason's apprehensions, who undertook to allay his fears now. The Federal Government, he insisted, certainly would not have the power "to make laws on every subject." Could Members of the Congress make laws affecting the transfer of property, or contracts, or claims, between citizens of the same State?

"Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void."

Marshall saw no danger to the States from decrees of the Supreme Court: "I hope that no gentleman will think that a State will be called at the bar of the Federal court. * * * It is not rational to suppose that the sovereign power should be dragged before a court."

Madison, Monroe, and others joined Marshall in defending the third article. Their debate was long and detailed. Much of it was concerned with questions of pleading and practice. But after several days, they went on to other aspects of the Constitution: The prospect of judicial despotism was recognized by the few, and denied by the many.

7. THE STATES RATIFY

In the end, Virginia ratified. It was a close vote. A motion to postpone ratification until amendments, in the nature of a bill of rights, could be considered by "the other States in the American confederacy," failed by 88 to 80. Then the main question was put, and this was what Virginia agreed to. It merits careful reading:

"We, the delegates of the people of Virginia, * * * having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon, do, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power, not granted thereby, remains with them, and at their will; that, therefore, no right, of any denomination, can be canceled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be canceled, abridged, restrained, or modified, by any authority of the United States."

The vote on that main question was 89 to 79, but even that narrow margin of approval was predicated upon a gentlemen's agreement that the Virginia convention would recommend a number of amendments, in the form of a Bill of Rights, to be presented to the first Congress. And the first of these recommended amendments reads: "That each State in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the Federal Government."

By the time Virginia completed ratification, of course her decision no longer carried compelling importance. The Virginia convention had opened on June 2, not quite 2 weeks after South Carolina, on May 23, had become the eighth State to ratify. But while the Virginians were debating the issue, New Hampshire, on June 21, had become No. 9: The new union had been formed, and the Constitution had become binding upon the nine States "ratifying the same." It has ever been Virginia's fate to make the right decisions, but to put off making them as long as possible.

In this consideration of State and Federal relationships, there is something to be learned from the other resolutions of ratification. The easy ones came first: Delaware came first, on December 7, 1787, "fully, freely, and entirely" approving and assenting to the Constitution; and then, in quick succession, Pennsylvania on December 12, after a bitter fight; New Jersey on December 18, and Georgia—Georgians had not even read the Constitution—on January 2, 1788. Connecticut followed a week later, with a comfortable vote of 128 to 40.

Then a month's hiatus set in. Massachusetts did not become No. 6 until February 7, and her approval of this "explicit and solemn compact" was not unqualified:

"It is the opinion of this convention that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of this commonwealth, and more effectually guard against an undue administration of the Federal Government."

It will come as no surprise that the very first amendment recommended by Massachusetts was "that it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised."

Two months later, on April 28, Maryland ratified. Then there was another lapse of nearly a month before South Carolina, on May 23, became No. 8. South Carolina accompanied her resolution of ratification with a pointed statement that she considered it essential "to the preservation of the rights reserved to the several States" and for the freedom of the people, that the State's right to prescribe the manner, time, and places of Congressional elections "be forever inseparably annexed to the sovereignty of the several States." Then South Carolina added:

"This convention doth also declare that no section or paragraph of the said Constitution warrants a construction that the

States do not retain every power not expressly relinquished by them and vested in the General Government of the Union."

New Hampshire, in voting its approval on June 21, closely paralleled the action of Massachusetts, but New Hampshire's declaration as to reserved powers was even more explicit. The people of New Hampshire wanted it understood that all powers not "expressly and particularly delegated" were reserved.

Mr. LANGER. Mr. President, will the Senator from South Carolina yield for a question?

Mr. THURMOND. I am pleased to yield.

Mr. LANGER. Was the action of the South Carolina convention unanimous? [Laughter.]

Mr. THURMOND. I do not recall, from reading the history of that matter, whether it was unanimous or not. The action of the South Carolina convention was not unanimous when it acted on the question of adopting the resolution of ratification for the admission of South Carolina to the Union. South Carolina was the eighth State to be admitted to the Union. New Hampshire was the ninth. New Hampshire's action resulted in the formation of the Union; ratification by nine States was required in order to form the Union.

After that, Massachusetts, New York, North Carolina, and Rhode Island ratified the Constitution and became members of the Union.

Mr. LANGER. I thank the Senator from South Carolina.

Mr. THURMOND. I am not sure whether the action by the South Carolina convention was unanimous or not.

Mr. LANGER. I know the Senator from South Carolina, who has been a very distinguished governor of his State, is very well informed in regard to such matters.

Mr. THURMOND. As stated in the book, The Sovereign States—

South Carolina accompanied her resolution of ratification with a pointed statement that she considered it essential "to the preservation of the rights reserved to the several States" and for the freedom of the people, that the State's right to prescribe the manner, time, and places of Congressional elections "be forever inseparably annexed to the sovereignty of the several States."

Then South Carolina added:

"This convention doth also declare that no section or paragraph of the said Constitution warrants a construction that the States do not retain every power not expressly relinquished by them and vested in the General Government of the Union.

I construe that declaration to be part of the resolution of ratification, which was not adopted unanimously.

Mr. LANGER. I thank the distinguished Senator from South Carolina.

Mr. THURMOND. I have been glad, Mr. President, to have the Senator from North Dakota ask these questions.

Mr. President, a few years ago, when I was a young State senator, I made a commencement address in another county, about 40 miles from my home. The commencement was held in a long school building in which the acoustics were very bad. People in the rear could not hear, and looked as if they were going to sleep—and maybe they were. So I raised my voice, and said, "Ladies and gentlemen, I want you to know that I am speaking for the future citizens of South Carolina." By raising my voice, I woke up the people in the rear of the room; and one fellow rose up, shook his head, and said, "Well, brother, if you speak much longer, they will soon be here, too." [Laughter.]

Mr. President, I feel so good that I believe I could speak quite a long time. [Laughter.]

Mr. President, I felt it my duty to make sure that I had not failed to exert every effort to emphasize the dangers of this bill.

I began speaking at 8:50 last night. It is now 5 minutes after 9. I shall conclude my remarks in a very few minutes.

Mr. President, in closing, I desire to remind the Senate that every State in the Nation has laws to protect the right to vote; and the Federal Government has a statute which protects the right to vote. In my opinion, Mr. President, this bill is unconstitutional, for the reasons I have stated during this debate.

This so-called compromise, which came to the Senate from the House of Representatives, permits a Federal judge to decide whether he will try one who is charged with criminal contempt, or whether he will permit him to be tried by a jury. The bill further provides a Federal judge with the discretionary power—if he does not try the person, without a jury—to decide what punishment he will impose. If he imposes a fine greater than $300 or imprisonment for more than 45 days, the defendant can then demand a jury trial. That process could result in two trials in the case of a defendant charged with criminal contempt. I believe that would be unconstitutional. Under our system of jurisprudence, a man can never be put in jeopardy more than once for the same offense. Furthermore, if a judge should find such a person guilty, as a result of the first trial, we can realize what effect that would have on the jury which would be used in the second trial.

Mr. President, I should like to remind the Senate of the decision I have cited today, which holds that criminal contempt is a crime. That decision says criminal contempt is a crime. The Constitution says a man charged with a crime is entitled to a jury trial. The Constitution makes no exceptions.

The pending bill, which has come to the Senate from the House of Representatives, has now been amended in such a way that it could not conform to the Constitution.

Mr. President, in spite of the great amount of debate and discussion which previously have taken place on the subject of House bill 6127, I felt that this bill was of such importance to the citizens of the United States that it was my duty to make sure that I had not failed to exert every effort again to emphasize the dangers of the bill. I have spoken several times on it before.

Mr. President, I wish to say that my action was taken entirely on my own volition. I believe that every Senator must follow the dictates of his own conscience, in connection with such matters. I do not believe that the action of any other Senator should be judged according to the action I have taken.

Mr. President, if I have helped to bring home to the American people, the citizens of this Nation, the heartfelt conviction which I hold, namely, that this bill is unwise, unnecessary, and unconstitutional, then I shall have done what I believe to be my duty.

I should like to believe that some have been convinced by my arguments, and that my arguments have been accepted on the basis on which I intended them to be accepted—as arguments against what I am convinced is bad proposed legislation, proposed legislation which never should have been introduced, and which never should be approved by the Senate.

Mr. President, I urge every Member of this body to consider this bill most carefully. I hope the Senate will see fit to kill it.

I expect to vote against the bill. [Laughter.]

Mr. President, I wish to extend my sincerest gratitude to the officials of the Senate, to those who have come in to listen to this debate, to the various Senators who have listened to this debate from time to time; to the clerks and the attachés, and to all who did everything they could to make me as comfortable as possible during the 24 hours and 22 minutes I have spoken.

Mr. President, I am deeply grateful for these courtesies, and again I want to thank the Presiding Officer and the others for their courtesies extended to me, and with this I now give up the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. SMATHERS. Mr. President, I ask unanimous consent that the order for the rollcall be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR FROM WISCONSIN

At 1 o'clock and 5 minutes p. m. Thursday, August 29, 1957, Mr. JOHNSON of Texas said: Mr. President, will the Senator from South Carolina yield to me?

The VICE PRESIDENT. Does the Senator from South Carolina yield to the Senator from Texas?

Mr. THURMOND. I yield for a question.

Mr. JOHNSON of Texas. Mr. President, will the Senator from South Carolina yield to me, in accordance with the agreement previously reached, under the conditions previously stated, so the Senator-elect from Wisconsin may present himself?

Mr. THURMOND. I yield in accordance with that agreement.

Mr. JOHNSON of Texas. Mr. President, the Senator-elect, Mr. WILLIAM PROXMIRE, of the State of Wisconsin, comes to the Senate today with an overwhelming mandate from the people of Wisconsin. His victory represents the unity which has been achieved in every part of the State, by people from every walk of life.

Mr. President, we are very happy to welcome the Senator-elect from Wisconsin and the entire State of Wisconsin into the ranks of the Senate majority.

Pursuant to the consent previously given, I ask unanimous consent that it now be in order for the Senator-elect to proceed to the desk and to have the oath of office administered, immediately following the conclusion of the reading of the two telegrams which are at the desk, one being from the board of State canvassers, and the other being from the Governor of Wisconsin.

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

The telegrams will now be read.

The telegrams were read, as follows:

MADISON, WIS.,
August 28, 1957, 2:07 p. m.

Hon. FELTON M. JOHNSTON,
Secretary of the United States Senate,
Capitol Building, Washington, D. C.:

On the basis of unofficial returns of the vote cast August 27, 1957, for United States Senator, Mr. WILLIAM PROXMIRE is the United States Senator-elect from Wisconsin for the residue of the unexpired term ending January 3, 1959, official certificate of election will follow upon completion of official canvass of vote cast.

STEWART G. HONECK,
Attorney General,
WARREN R. SMITH,
State Treasurer,
Members of the Board of State Canvassers.

MADISON, WIS.,
August 29, 1957, 9:54 a. m.

Hon. FELTON M. JOHNSTON,
Secretary of the United States Senate,
Capitol Building, Washington, D. C.:

Unofficial election returns show WILLIAM PROXMIRE elected to the United States Senate for the balance of the term expiring January 3, 1959. Request no delay in swearing in Wisconsin's newly elected Senator. Upon receipt of official canvass I, as transmitting officer, will promptly forward official return.

VERNON W. THOMSON,
Governor, State of Wisconsin.

The VICE PRESIDENT. If the Senator-elect from Wisconsin will come to the desk, the oath of office will be administered to him.

Mr. PROXMIRE, escorted by Mr. WILEY, advanced to the desk; and the oath of office prescribed by law was administered to him by the Vice President.

[Applause on the floor and in the galleries.]

The Senator-elect thereupon subscribed to the oath in the official oath book.

Mr. THURMOND. Mr. President, I should like to ask unanimous consent for leave to speak to the new Senator without my losing the floor.

Mr. KNOWLAND. I did not hear the Senator's request for unanimous consent.

Mr. THURMOND. I ask unanimous consent for leave to speak to the new Senator, without my losing the floor, and without having another speech being counted against me.

Mr. KNOWLAND. I have no objection.

Thereupon Mr. THURMOND greeted the new Senator from Wisconsin.

Mr. THURMOND. Mr. President, may we have order, please?

CIVIL-RIGHTS ACT OF 1957

The Senate resumed the consideration of the amendment of the House of Representatives to Senate amendments Nos. seven and 15 to the bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Mr. ELLENDER. Mr. President, this morning I was aroused to come to the Senate at 10 o'clock to make the short speech I have to deliver. I have been sitting in my place now for 11 hours and 45 minutes awaiting my opportunity. While I am on my feet I wish to compliment the distinguished junior Senator from South Carolina [Mr. THURMOND] for his great feat of endurance. I know what an ordeal he went through. I wish to say that I held title of the longest filibuster for about 2 or 3 years until another idiot, in the person of the senior Senator from Oregon [Mr. MORSE] beat my record. [Laughter.]

But there is one record I hold which I do not believe anyone will ever exceed. It was established about a year after I became a Member of the Senate over 19 years ago, and I was successful in holding the floor for 6 successive days by unanimous consent, and speaking from 6 to 8 hours. So I know the ordeal through which my good friend from South Carolina went in the 24 hours he spoke.

Mr. President, I am opposed to the so-called compromise of H. R. 6127. As I have stated previously, the entire concept of the measure is repugnant to our Constitution and the separation of Federal and State powers provided under that Constitution. The bill, as it passed the Senate, was opposed by me and by a number of other Senators because it permits unwarranted and unjustified interference by the Federal Government of one of the most basic rights of the States, the right to fix qualifications of voters without interference from the Central Government. I am still opposed to it for that reason. Moreover, it still involves the creation of a super grand jury with nationwide jurisdiction, authorized and empowered to rove at will over the length and breadth of our country ferreting ways and means of injecting the heavy hand of the Federal judiciary into the electoral processes of our States.

But, Mr. President, the Senate bill provided one important safeguard against the exercise of tyrannical power by the Attorney General and the Federal judiciary: The right to trial by jury in all cases arising under it.

The Senate adopted the jury trial amendment by a substantial margin. Senators favoring it made logical and well-reasoned speeches urging its adoption. The Senate was convinced that guaranteeing trial by jury to all persons charged with what amounts to a criminal offense was the only proper thing to do.

Now, in the closing hours of this session of Congress, a small group of willful men in the House of Representatives, led by persons who have only minute numbers of Negroes in their Congressional districts, have determined to play politics once again with the so-called right-to-vote bill.

They, along with some Members of this body, have evidently forgotten the admonition of the distinguished junior Senator from Wyoming [Mr. O'MAHONEY], myself and others who warned that the Nation cannot afford to sacrifice the basic right of trial by jury in order to allegedly further safeguard another right, the right to vote.

I make that statement, Mr. President, because the jury trial amendment has not only been compromised, it has been brutally raped and almost nullified. The entire Constitution has been seduced and subverted by the sanctimonious sabotage of self-seeking pressure groups.

The Senate demonstrated, by voting overwhelmingly to adopt the jury trial amendment, that the right to trial by jury must remain equal to and as important as, the right to vote.

The so-called compromise amendment adopted by the House provides for jury trial as a matter of right only if the penalty to be imposed exceeds 45 days in jail or a fine of $300. This appears to be not only acceptable, but actually pleasing, to the so-called liberals in Congress.

Is it not strange now, Mr. President, that the very same Members of the Congress who cry in one breath that we must not encumber the right to vote with dollar qualifications, such as the poll tax, are now clamoring for and supporting an amendment which places a dollar value on jury trials?

This compromise is an abomination for no other reason than it puts a price tag on the right of trial by jury.

Of course, some of the membership of the other body would have our people believe that the alleged compromise merely brings the jury-trial feature of this bill into line with a District of Columbia law. This is not only poppycock; it is foolishness.

Here is the District of Columbia law from which the compromise was patterned and with which the jury trial would be alined. It is found in section 616 of title 11 of the District of Columbia Code:

> Prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury.
>
> In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than 90 days, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed 1 year. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch.

536; Mar. 3, 1901, 31 Stat. 1196, ch. 854, Sec. 44; Mar. 3, 1925, 43 Stat. 1120, ch. 443, sec. 4.)

Senators will note that this language is confined to prosecutions before the police court of the District of Columbia. The police court, incidentally, became part of the municipal court in 1942 under the Consolidation Act.

With this in mind, let us look at the jurisdiction of the police court, now part of the municipal court. Section 602 of title 11 of the District of Columbia Code enunciates that jurisdiction. It reads as follows:

The said court shall have original jurisdiction concurrently with the District Court of the United States for the District of Columbia, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post-office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the District Court of the United States for the District of Columbia. (June 17, 1870, 16 Stat. 153, ch. 133; Mar. 3, 1891, 26 Stat. 848, ch. 536; Mar. 3, 1901, 31 Stat. 1196, ch. 854, sec. 43.) (District of Columbia Code.)

In other words, Mr. President, by adopting the so-called jury-trial compromise, the pattern of jury trials in contempt cases before Federal district courts has been cut from the same cloth as I have heretofore stated as that covering trials in the District of Columbia police court, now part of the District's municipal court system.

During initial Senate debate on this bill, I warned that one of its byproducts would be the conversion of our Federal district courts into police courts. Evidently proponents of this legislation have now come into agreement with me, in a somewhat devious fashion. I might suggest, however, that instead of adopting an amendment which would reduce our Federal district courts to the same level as the old police court of the District of Columbia, it would be wise and more prudent to elevate the District's police court, now part of the municipal court, to the same level as the district courts insofar as jury trials are concerned.

It is also interesting to note, Mr. President, that those who so magnanimously declare that the new language merely brings policy governing jury trials under the pending bill in line with Congressional policy governing the District of Columbia, overlook one important fact. The trials which the new language would govern in this bill would be conducted by district courts. The policy in the District of Columbia, to which I have referred, controls only the actions of the District of Columbia municipal courts, not the United States District Court for the District of Columbia. Thus, once again, we have concrete proof that the amendment drags our Federal district courts down to the same level as the municipal court of the District of Columbia insofar as trial by jury is concerned.

I remind Senators that the only reason jury trials are not guaranteed in some proceedings before the District of Columbia municipal court is because that court has jurisdiction only over a limited number of offenses, all of which are of minor significance, such as violations of traffic regulations.

The reason why such minor infractions as these are not within the classes of offenses for which trial by jury is guaranteed under the Constitution is not complex—it has its roots in the English common-law tradition that petty criminal acts were not triable before a jury.

Thus, it appears to me that the liberals have impaled themselves upon the horns of a dilemma in this regard. They state on one hand that the right to vote is so basic, so precious, that it must be protected at any cost. Hence, it must follow logically that a violation of that right is a criminal act of a serious nature. Yet, the Senate is almost being horsewhipped into following a jury-trial precedent which has its only applicability in one area of the law—that covering minor, petty offenses.

Is it not illogical, Mr. President, for the Senate to plunge headlong into the adoption of this obnoxious legislation under the prodding of those who claim that violation of the right to vote is a heinous act, yet, when we seek to erect basic safeguards against persons accused of perpetrating such vile deeds, we are told that those safeguards are not necessary because they do not apply to the minor crimes within the jurisdiction of the District of Columbia's police court?

Let those who demand this compromise version decide whether this bill is fish or fowl.

If the right to vote is so basic that it must be protected as the measure before us proposes, then an act violating that right is a serious offense, and an accused should be accorded the right of trial by jury.

On the other hand, if the right to vote is to be relegated to the minor types of offenses within the jurisdiction of the District of Columbia police court, where there is no jury trial as a matter of right unless penalties imposed exceed certain dollar limits, then it is nothing less than constitutional larceny for the Senate to rob the States of their right to fix voter qualifications, under the guise of protecting the right to vote.

I would remind Senators again that the acts this bill would render punishable are not such that should be withdrawn from the protection of trial by jury. Senators will notice that one of the acts made grounds for seeking an injunction is a conspiracy to interfere with voting rights. Once an injunction issued, a conspiracy directed at that objective would be subject to punishment for contempt. In effect, the court could punish for conspiracy.

If the punishment meted out were less than the dollar limits or period of time recited in the pending bill, the accused would not be given a jury trial. Yet, in at least one case, the Supreme Court has ruled that the crime of conspiracy is an infamous crime within the meaning of the sixth amendment, and that an attempt to punish a conspiracy without trial by jury—no matter what the degree of punishment might be—was a violation of the Constitution.

I refer Senators to the case of *Callan* v. *Wilson* (127 U. S. 540), decided in 1888. In that case, several residents of the District of Columbia were charged with conspiring to deprive certain musicians of work by threatening to suspend them from a musicians union unless they paid their dues. The accused were convicted in the District of Columbia police court without a jury and fined $25. The petitioner, Callan, brought habeas corpus proceedings, and lost in the lower courts. However, he perfected an appeal to the Supreme Court of the United States, claiming that the provision of District of Columbia law dispensing with a jury trial in prosecutions by an information before the District of Columbia police court were unconstitutional, and that he was being wrongfully detained.

In finding for Callan and ordering his discharge from custody, the Supreme Court of the United States, speaking through Mr. Justice Harlan, said:

Without further reference to the authorities, and conceding, that there is a class of petty or minor offenses, not usually embraced in public criminal statutes and not of the class or grade triable at common law by a jury, and which, if committed in this District, may, under the authority of Congress, be tried by the court and without a jury, we are of opinion that the offense with which the appellant is charged does not belong to that class. A conspiracy such as is charged against him and his codefendants is by no means a petty or trivial offense (*Callan* v. *Wilson*, supra, at 555).

Later, the Court added:

These authorities are sufficient to show the nature of the crime of conspiracy at common law. It is an offense of a grave character, affecting the public at large, and we are unable to hold that a person charged with having committed it in this District is not entitled to a jury, when put upon his trial. The jurisdiction of the police court, as defined by existing statutes, does not extend to the trial of infamous crimes or offenses punishable by imprisonment in the penitentiary. But the argument, made in behalf of the Government, implies that if Congress should provide the police court with a grand jury, and authorize that court to try, without a petit jury, all persons indicted, even for crimes punishable by confinement in the penitentiary, such legislation would not be an invasion of the constitutional right of trial by jury, provided the accused, after being tried and sentenced in the police court, is given an unobstructed right of appeal to, and trial by jury in, another court to which the case may be taken. We cannot assent to that interpretation of the Constitution.

SYLLABUS

Except in that class or grade of offenses called petty offenses, which, according to the common law, may be proceeded against summarily in any tribunal legally constituted for that purpose, the guaranty of an impartial jury to the accused in a criminal prosecution, conducted either in the name, or by or under the authority of, the United States, secures to him the right to enjoy that mode of trial from the first moment, and in whatever court, he is put on trial for the offense charged. In such cases a judgment of conviction, not based upon a verdict of guilty by a jury, is void.

To accord to the accused a right to be tried by a jury, in an appellate court, after

he has been once fully tried otherwise than by a jury, in the court of original jurisdiction, and sentenced to pay a fine or be imprisoned for not paying it, does not satisfy the requirements of the Constitution. When, therefore, the appellant was brought before the Supreme Court of the District, and the fact was disclosed that he had been adjudged guilty of the crime of conspiracy charged in the information in this case, without ever having been tried by a jury, he should have been restored to his liberty (*Callan* v. *Wilson*, supra, at 556–557).

In other words, Mr. President, in the case just cited, the Supreme Court of the United States held that a conspiracy was a crime of such magnitude that it could not be withdrawn from the protection of trial by jury, even though the dollar amount of the fine imposed was within the maximum stated in the statute governing the District of Columbia police court.

The Senate should also realize the burden the new language places upon an individual charged with violating one of the injunctions issued under the authority of this bill. Instead of having to undergo the expense and trouble of only one trial, a defendant would have to pay for and endure two.

This would result simply because, after hearing the evidence, the judge could decide to impose a penalty exceeding $300 or 45 days in jail. If he did, the defendant would be entitled, as a matter of right, to demand a new trial, with a jury. Thus, in order to obtain the right of jury trial, as compromised in the pending bill, a defendant would have to subject himself to another trial. In effect, he would have to agree to be tried twice for the same offense.

Lawyers do not try cases for charity, Mr. President. Court costs are frequently not insignificant. Besides, the personal anguish to a defendant in having to be tried twice, the expense of supporting two trials would be most burdensome, to say nothing of the loss of time to an accused involved under such a procedure.

It is my considered judgment, Mr. President, that the compromise bill is no compromise at all. Rather, it is an abject yielding by the Senate—which inserted the jury-trial requirements as a matter of basic principle—of its judgment to that of a very few—a small group of men who desire to use the constitutional rights of American citizens as steppingstones to the political plum tree.

I emphasize with all the strength I have that the Senate will have assisted, aided, and abetted, the perpetration of a monstrous civil wrong under the guise of protecting civil rights if it passes this bill. I plead with Senators to vote down the so-called House compromise, to stand firm on the jury-trial amendment approved by the Senate. Senators who supported the jury-trial amendment did so, I am convinced, because a matter of principle was involved. Yet, now we are being asked, if not almost compelled, to abandon this position of principle and to temper it on the anvil of the almighty dollar. If the Senate felt a few weeks ago that the right to trial by jury in cases arising under this bill should be guaranteed as a matter of principle, then how can we now agree to pervert that principle by tying it to a sum of money, or a length of time?

I am going to vote against this so-called compromise, and I urge all my colleagues to do likewise. My only regret is that the pressure for adjournment is so great that those of us who seriously, conscientiously, and for good cause oppose this bill cannot obtain sufficient time to discuss it in detail—to lay its faults bare before the bar of public opinion.

I have on my desk in my office a speech covering over 1,500 pages. I had planned to make it should the necessity arise. I think the occasion for its delivery has arrived, and I am ready and willing to begin delivering it. However, I am a realist, Mr. President. I have discussed this matter with a number of my colleagues and it is obvious that proponents of the bill, as it has been compromised, are so numerous that they are able, and also willing and anxious, to choke off debate by invoking cloture at the earliest moment. Under the circumstances, it would be a futile gesture to attempt to obtain sufficient time to properly present the ugly picture of this bill to the American people.

I warn those who have been hypnotized by the legislative snake charmers who advocate this alleged compromise that they are making a bed of thorns for themselves. I urge all Senators to vote against this bill.

ORDER OF BUSINESS

During the delivery of Mr. THURMOND'S speech,

Mr. JOHNSON of Texas. Mr. President, will the Senator from South Carolina yield for a question?

Mr. THURMOND. I yield.

Mr. JOHNSON of Texas. Will the Senator yield under the same conditions under which he yielded earlier in the day, so that I may ask unanimous consent that the Senate concur in House amendments on minor bills, with the understanding that when he shall resume his remarks it shall not be counted as an extra speech on the part of the Senator, and with the further understanding that he shall not lose the floor?

Mr. THURMOND. I am pleased to yield with that understanding.

The PRESIDING OFFICER. The understanding of the Chair is that the request of the majority leader is that the Senator addressing the Senate be allowed to yield to him so that he may ask for action on minor bills, with the understanding that the Senator shall not lose his place on the floor. Is there objection? The Chair hears none.

FAVORING SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the concurrent resolution (S. Con. Res. 40) favoring the suspension of deportation in the cases of certain aliens, which was, on page 4, strike out line 8.

Mr. JOHNSON of Texas. Mr. President, on August 5, 1957, the Senate passed Senate Concurrent Resolution 40, to record Congressional approval of suspension of deportation in certain cases in which the Attorney General had suspended deportation for more than 6 months. Subsequent to this action, the Immigration and Naturalization Service requested that one case included in the concurrent resolution be deleted and returned to the jurisdiction of that service. On August 22, 1957, the House of Representatives passed Senate Concurrent Resolution 40, with an amendment to delete the one case.

The amendment is acceptable and I move that the Senate concur in the House amendment to Senate Concurrent Resolution 40.

The motion was agreed to.

LETIZIA MARIA ARINI

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1972) for the relief of Letizia Maria Arini, which were, on page 1, line 3, strike out "paragraph" and insert "paragraphs (9) and", and on page 1, line 9, strike out "paragraph" and insert "paragraphs."

Mr. JOHNSON of Texas. Mr. President, on August 5, 1957, the Senate passed S. 1972, to waive a ground of inadmissibility in behalf of the wife of a United States citizen. On August 22, 1957, the House of Representatives passed S. 1972, with amendments.

There is no objection to the amendments. I move that the Senate concur in the House amendments to S. 1972.

The motion was agreed to.

MRS. AHSAPET GAMITYAN

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1049) for the relief of Mrs. Ahsapet Gamityan, which was, to strike out all after the enacting clause and insert:

That the Attorney General is authorized and directed to cancel any outstanding order and warrant of deportation, warrants of arrest, and bonds, which may have issued in the case of Mrs. Ahsapet Gamityan. From and after the date of the enactment of this act, the said Mrs. Ahsapet Gamityan shall not again be subject to deportation by reason of the same facts upon which such deportation proceedings were commenced or any such warrants and orders have issued.

Mr. JOHNSON of Texas. Mr. President, on August 5, 1957, the Senate passed S. 1049, to grant the status of permanent residence in the United States to the beneficiary. On August 22, 1957, the House of Representatives passed S. 1049, with an amendment to merely cancel outstanding deportation proceedings in behalf of the beneficiary.

The amendment is acceptable, and I move that the Senate concur in the House amendment to S. 1049.

The motion was agreed to.

DANIEL ALCIDE CHARLEBOIS

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1271) for the relief of Daniel Alcide

Charlebois, which was to strike out all after the enacting clause and insert:

That the Attorney General is authorized and directed to cancel any outstanding order and warrant of deportation, warrants of arrest, and bonds, which may have issued in the case of Daniel Alcide Charlebois. From and after the date of the enactment of this act, the said Daniel Alcide Charlebois shall not again be subject to deportation by reason of the same facts upon which such deportation proceedings were commenced or any such warrants and orders have issued.

Mr. JOHNSON of Texas. Mr. President, on August 5, 1957, the Senate passed S. 1271, to grant the status of permanent residence in the United States to the beneficiary. On August 22, 1957, the House of Representatives passed S. 1271, with an amendment to merely cancel outstanding deportation proceedings in behalf of the beneficiary.

The amendment is acceptable, and I move that the Senate concur in the House amendment to S. 1271.

The motion was agreed to.

JUNKO MATSUOKA ECKRICH

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1321) for the relief of Junko Matsuoka Eckrich, which were, in line 3, strike out "paragraph" and insert "paragraphs (9) and", and in line 9, strike out "paragraph" and insert "paragraphs."

Mr. JOHNSON of Texas. Mr. President, on July 8, 1957, the Senate passed S. 1321, to waive a ground of inadmissibility in behalf of the wife of a United States citizen. On August 6, 1957, the House of Representatives passed S. 1321, with amendments to waive an additional ground for exclusion.

The amendments are acceptable, and I move that the Senate concur in the House amendments to S. 1321.

The motion was agreed to.

FAVORING SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the concurrent resolution (S. Con. Res. 41) favoring the suspension of deportation in the case of certain aliens, which were, on page 3, strike out line 4; on page 4, strike out line 5; on page 4, strike out line 12; on page 4, strike out line 15; and on page 4, strike out line 22.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate concur in the amendments of the House.

The motion was agreed to.

COMMITTEE MEETING DURING SENATE SESSION

During the delivery of Mr. THURMOND'S speech,

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations be permitted to sit during the session of the Senate today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSON of Texas. I make that same request for that committee for the remainder of the week.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMISSION TO COMMITTEES TO FILE REPORTS

During the delivery of Mr. THURMOND'S speech,

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Committee on Banking and Currency be permitted to file a report during the adjournment of the Senate summarizing its activities during the 85th Congress, 1st session.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JOHNSON of Texas. I also ask unanimous consent that during the recess of the Senate the Select Committee on Improper Activities in the Labor or Management Field be permitted to file a report, and the Committee on Government Operations be permitted to file a report of the Permanent Subcommittee on Investigations.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

IMPORT EXCISE TAX ON LEAD AND ZINC

During the delivery of Mr. THURMOND'S speech,

Mr. MURRAY. Mr. President, as has been pointed out on this floor many times recently, the domestic lead and zinc producing industries are in dire straits as a result of dumping of these commodities on the American market by foreign producers.

On July 19 the administration recommended to the Congress that it impose an import excise tax on lead and zinc. Hearings were held both by the Ways and Means Committee of the House of Representatives and the Finance Committee of the Senate.

At the conclusion of the Ways and Means Committee hearings, Chairman JERE COOPER, of that committee, addressed a letter to President Eisenhower pointing out that the President, under the so-called escape-clause provision of the Trade Agreements Extension Act of 1951 and the national security amendment—section 7 of the Trade Agreements Extension Act of 1955—had an avenue under which he, the President, could provide relief from import competition and suggested that such a course be followed.

Chairman COOPER stated in his letter to the President, and I now quote:

It is clear that in this instance you have not made recourse to existing administrative procedures which are available to provide relief to these industries.

On August 23 President Eisenhower replied to Chairman COOPER'S letter in which Mr. Eisenhower stated that in the event the involved industries initiated an escape-clause proceeding before the Tariff Commission and I quote from his letter:

I would request the Tariff Commission to expedite its consideration of the matter.

Because of the importance of this correspondence, I ask unanimous consent that Chairman COOPER'S letter to the President and the President's reply to that letter be carried in the body of the RECORD for today.

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

AUGUST 16, 1957.

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: I am writing to you in connection with the proposal of the Honorable Fred A. Seaton, Secretary of the Interior, on behalf of the administration, for the enactment of sliding-scale import excise taxes on lead and zinc.

Although the communication from Secretary Seaton on this subject was not received by the Committee on Ways and Means until June 19, 1957, at a time when the session was far advanced and the committee was diligently following an agenda previously determined by it, due to the importance of the subject and due to conditions in the lead and zinc industry as depicted by the communication of the Secretary, the committee broke into its agenda and conducted hearings on August 1 and 2, 1957.

I have now had time to carefully review and study the testimony which was presented to the committee at the public hearing on this important subject. It is my sincere conviction that you already have authority, previously delegated to you by the Congress in the trade agreements legislation, to afford relief to domestic industries from import competition in appropriate cases. The testimony of your representatives at the public hearings, in conjunction with the written recommendation of the Secretary of the Interior, indicates that the lead and zinc industries properly constitute such a case in the opinion of the administration. The testimony further shows that your present authority is adequate to afford the relief which you have recommended to the Congress.

As you will recall, one of the principal purposes of the so-called escape-clause provision (sec. 7 of the Trade Agreements Extension Act of 1951) and the national security amendment (sec. 7 of the Trade Agreements Extension Act of 1955) was to afford you an avenue under which you can provide relief from import competition to domestic industries according to the procedures and standards set forth therein. As may further be recalled, the committees of the Congress and the Congress in past years have devoted much time, thought, and attention to providing you with these powers so that our domestic industries can be afforded protection in appropriate cases and so that the national interest can be served by Presidential action without resort to further legislation.

It is clear that in this instance you have not made recourse to existing administrative procedures which are available to provide relief to these industries. In addition you have not advised the Congress that your existing authority under the escape clause and the national security amendment is inadequate in these matters generally, although a subcommittee of the Committee on Ways and Means last fall specifically called upon the administration for any recommendations which it might have for modifying or strengthening these provisions of existing legislation.

The testimony presented to the Committee on Ways and Means during the course of the public hearings on August 1 and 2, 1957, indicated that the proposal for a sliding-scale

import excise tax on lead and zinc is almost identical in major respects with the recommendations of the Tariff Commission made to you under the lead and zinc escape-clause proceeding in 1954. You rejected this recommendation, stating among other things, that the proposed relief did not meet the needs of these industries. The testimony of your representatives further indicated that the situation today in the lead and zinc industries is substantially the same as it was at the time of the escape-clause investigation by the Tariff Commission and your rejection of the unanimous finding of the Tariff Commission.

The testimony at the public hearings also clearly showed that the proposal which the Secretary of the Interior now recommends on behalf of the Administration is almost identical in effect to a proposal that was before the Committee on Ways and Means in 1953 and on which a strongly adverse report was submitted by the State Department. The State Department set forth ten reasons why this proposal was inadvisable and contrary to the national interest. This report was made a part of the recent public hearings.

The proposal which the Administration has now recommended would not become effective, in event of its enactment, until January 1, 1958. Yet, under the national security amendment any relief found appropriate could be put into effect by you almost immediately. Also, under the escape clause I see no reason why you cannot direct the Tariff Commission to report to you within a stated time as to measures which it may deem appropriate for relief of these industries, and I see no reason why you could not have done so on June 19, the date of the proposal, or even earlier for that matter. It is clear from the testimony presented to our committee, aside from the merits of the proposal, that relief can be afforded by you much more speedily than would be the case even with enactment of the proposal.

As you of course know, I have been a strong and consistent supporter of the reciprocal trade agreement program since the inception of the program in 1934. I have consistently supported and worked for proposals which you have made to continue our foreign trade policies, including, for example, your proposal during the last Congress and in this Congress for approval by the Congress for membership in O. T. C.

You have gone on record strongly supporting the reciprocal trade agreements program. At your request the Congress has provided three extensions of your authority during your Administration. An important consideration of the Congress in providing these extensions was the fact that should trade-agreements concessions result in such import competition that domestic industries are injured or are threatened with injury you would have the authority where it is in the national interest to relieve domestic industries of such injury.

I cannot refrain from expressing to you my very great concern as to the impact of a proposal such as the one which your administration has made concerning lead and zinc on the whole structure of the trade-agreements program. In stating this, I do not intend to imply that the lead and zinc industries may not need relief. My concern is due to the fact that this proposal would completely bypass existing authority given you in present trade-agreements legislation. You are asking the Congress to do that which you already have ample authority to do. The authority which you have is not selective, but broad and general, and applies to any and all industries which are injured or threatened with injury as a result of trade-agreements concessions. I am sure you are aware of the fact that there are many other industries that are asking for relief from import competition. Among these are textiles, velveteen, and ginghams; tunafish, hardwood-plywood, stainless-steel flatware, fluorspar, natural gas, petroleum, and many others. There are numerous bills now pending before the Committee on Ways and Means which would provide relief from import competition on the above specified items and many additional ones. I am confident that you would not want to see the Congress bypass and undermine your present authority under trade-agreements legislation by acting on individual items.

I sincerely urge you to personally review the situation in the lead and zinc industries and the proposal submitted to the Congress. Upon such a review, I am sure you will be convinced as I am that you do have ample authority to provide such relief as you deem necessary in the national interest to the lead and zinc industries. I am also confident that you will agree that to bypass the existing provisions of our trade-agreemnts law will undermine the trade-agreements program.

I can only observe in closing that there is considerable sentiment that, in the absence of your exercising such authority as you may have for an expansion of our foreign trade and the protection of domestic industries, the Congress will be forced to study again the delegation of authority made to you under the trade-agreements legislation. This is an eventuality which neither you nor I would contemplate with equanimity.

The other 14 Democratic members of the Committee on Ways and Means concur with me in this letter.

Very cordially yours,

JERE COOPER,
Chairman, Committee on Ways and Means.

THE WHITE HOUSE, *August 23, 1957.*

The Honorable JERE COOPER,
Chairman, Ways and Means Committee, House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: I appreciate having your letter concerning the administration's proposal for sliding-scale import excise taxes on lead and zinc. It is gratifying to know that your committee is giving attention to the distressed condition of the lead and zinc mining industries.

In 1954, as you pointed out, the Tariff Commission recommended higher duties for lead and zinc under the escape clause of the Trade Agreements Extension Act of 1951. But other means were available at that time both to meet the public need and afford the relief immediately necessary. Such means were found in the program of increased purchases of domestic ores for the stockpile and the barter of surplus agricultural commodities in exchange for foreign lead and zinc. These programs had the advantage of increasing our inventories of these materials as a security measure while, at the same time, removing price depressing excess supplies from the domestic and world markets. Recently, however, the attainment of our stockpile goals has necessitated adjustments in these programs, and the problem of distress has reappeared.

As I indicated in my press conference on August 21, my view with respect to maintaining the integrity of section 7 of the Trade Agreements Extension Act of 1951 is as one with yours and, I am sure, with that of all the members of the House Ways and Means Committee. H. R. 6894, as you know, is the sole exception proposed by this administration in over 4½ years. In view of this fact, I think you will agree that such exceptions are not proposed lightly.

The special circumstances of this case that suggest the desirability of following the legislative route were set forth by administration witnesses before both your committee and the Senate Finance Committee.

It is understood, of course, that the initiation before the Tariff Commission of an escape-clause proceeding by the industry is available in the last instance. It is my understanding that the industry will take such course if the Congress does not pass the requested legislation. In that event, I would request the Tariff Commission to expedite its consideration of the matter.

You mentioned the possibility of relief through the national-security amendment of the Trade Agreements Extension Act of 1955. Although a continuously productive mining industry is of fundamental importance to the national security, it is deemed appropriate in present circumstances to invoke the relief afforded by the escape clause of the Trade Agreements Extension Act of 1951 if the Congress does not enact H. R. 6894. The importance of this industry to a strong national defense should, however, not be overlooked.

I share your belief that expansion of foreign trade is in the best interests of the United States and I reiterate my conviction that such an objective can best be implemented by reciprocal trade agreements programs.

Sincerely,

DWIGHT D. EISENHOWER.

NOMINATIONS OF GERARD C. SMITH AND DR. HENRY VAN ZILE HYDE

During the delivery of Mr. THURMOND'S speech,

Mr. GREEN. Mr. President, late yesterday afternoon the Senate received the nomination of Gerard C. Smith, of the District of Columbia, to be an Assistant Secretary of State. Mr. Smith would be in charge of policy planning.

The rules of the Committee on Foreign Relations require that nominations lie over 6 days before they can be considered. The rules also require that public hearings be held on nominations to positions in this category.

In view of the apparently imminent adjournment of Congress, it would not be possible to act on the nomination unless these rules were waived. Although this could be done by a majority vote of the committee, it is my feeling—and the feeling of such members of the committee as I have been able to consult—that it would be unwise to do so. This nomination is to one of the most important positions in the Department of State, and it should not be considered in haste.

Failure of the Senate to act on the nomination will not appreciably interfere with the work of the Department of State. The President can give Mr. Smith a recess appointment. He can also send the nomination back to the Senate in the next session, and it can then be considered in orderly fashion.

I want to make it clear that lack of Senate action on the nomination in the current session is without prejudice to consideration of the matter next year.

Finally, I might say also, Mr. President, that there is also pending before the Committee on Foreign Relations the nomination of Dr. Henry Van Zile Hyde of Maryland to be the United States Representative on the Executive Board of the World Health Organization. This nomination was received subsequent to the last meeting of the Foreign Relations Committee, and it is also being passed over without prejudice. I am informed that no meeting of the World Health Organization Executive Board is scheduled until January, so that there will be no embarrassment if the nomination is not confirmed at this session.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House insisted upon its amendments to the joint resolution (S. J. Res. 35) to provide for the observance and commemoration of the 50th anniversary of the first conference of State governors for the protection, in the public interest, of the natural resources of the United States, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FRAZIER, Mr. ASHMORE, and Mr. KEENEY were appointed managers on the part of the House at the conference.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

H. R. 3028. An act to provide for the relief of certain female members of the Air Force, and for other purposes;

H. R. 3625. An act to amend section 214 of the Interstate Commerce Act, as amended, to prevent the use of arbitrary stock par values to evade Interstate Commerce Commission jurisdiction;

H. R. 3940. An act to grant certain lands to the Territory of Alaska;

H. R. 6258. An act to amend the act entitled "An act to provide additional revenue for the District of Columbia, and for other purposes", approved August 17, 1937, as amended;

H. R. 6562. An act relating to the north half of section 33, township 28 south, range 56 east, Copper River meridian, Alaska;

H. R. 6760. An act to grant to the Territory of Alaska title to certain lands beneath tidal waters, and for other purposes;

H. R. 8030. An act to amend the Agricultural Adjustment Act of 1938 with respect to acreage history; and

H. R. 8918. An act to further amend the act of August 7, 1946 (60 Stat. 896), as amended by the act of October 25, 1951 (65 Stat. 657), to provide for the exchange of lands of the United States as a site for the new Sibley Memorial Hospital; to provide for the transfer of the property of the Hahnemann Hospital of the District of Columbia, formerly the National Homeopathic Association, a corporation organized under the laws of the District of Columbia, to the Lucy Webb Hayes National Training School for Deaconesses and Missionaries, including Sibley Memorial Hospital, a corporation organized under the laws of the District of Columbia, and for other purposes.

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

PROPOSED TRANSFER BY NAVY DEPARTMENT OF PLANE PERSONNEL BOAT TO CITY OF GREEN COVE SPRINGS, FLA.

A letter from the Acting Secretary of the Navy (Material), reporting, pursuant to law, that the city of Green Cove Springs, Fla., had requested the Navy Department to transfer a 24-foot plane personnel boat, for use in river accident rescue operations by that city; to the Committee on Armed Services.

REPORT ON PRIME CONTRACT PROCUREMENT ACTIONS WITH SMALL AND LARGE CONCERNS FOR WORK IN THE UNITED STATES

A letter from the Assistant Secretary of Defense (Supply and Logistics), transmitting, pursuant to law, reports on Army, Navy, and Air Force prime contract procurement actions with small and large concerns for work in the United States, for the fiscal year 1957 (with accompanying reports); to the Committee on Banking and Currency.

REPORT ON NOTICE FOR DISPOSAL OF CERTAIN EXTRA LONG STAPLE COTTON

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a proposed notice of a proposed disposition from the national stockpile of approximately 134,384,000 pounds of extra long staple cotton (with accompanying papers); to the Committee on Government Operations.

PROVISION OF WAR RISK AND CERTAIN MARINE AND LIABILITY INSURANCE FOR AMERICAN PUBLIC

A letter from the Acting Secretary of Commerce, transmitting, pursuant to law, a report on the provision of war-risk insurance and certain marine and liability insurance for the American public, as of June 30, 1957 (with an accompanying report) to the Committee on Interstate and Foreign Commerce.

FINAL REPORT ON ADMINISTRATION OF REFUGEE RELIEF ACT OF 1953, AS AMENDED

A letter from the Secretary of State, transmitting, pursuant to law, the final report in respect of the administration of the Refugee Relief Act of 1953, as amended, which expired on December 31, 1956 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the VICE PRESIDENT:

A resolution adopted by My Maryland Post, No. 126, the American Legion, Department of Maryland, favoring the enactment of legislation to provide all known means of safeguarding the health and lives of all Americans from the dangers of the threatened influenza epidemic; to the Committee on Labor and Public Welfare.

The petition of E. K. Nelson, of Jenkintown, Pa., praying for the enactment of legislation to prohibit labor racketeering; to the Committee on Labor and Public Welfare.

A telegram from the Metropolitan Club of America, Inc., Grand Rapids, Mich., signed by Rolland W. Hess, national recording secretary, embodying a resolution favoring the enactment of House bill 2474, to provide increased compensation for postal employees; ordered to lie on the table.

RESOLUTION OF STATE SENATE OF NEW JERSEY

Mr. SMITH of New Jersey. Mr. President, I have just received from the Senate of the State of New Jersey a resolution which was adopted on August 19 with regard to the drought situation in our State.

I ask unanimous consent that this resolution be printed in the RECORD in connection with my remarks, and be appropriately referred.

There being no objection, the resolution was referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

Whereas the State of New Jersey has been visited with one of the most disastrous droughts which has occurred in many years; and

Whereas the farmers of the State have suffered and will continue to suffer tremendous losses by reason of damage to their crops occasioned thereby; and

Whereas the President of the United States has been requested to determine that the State is a disaster area, so that Federal aid may be made available to those suffering damage by reason of the drought and said request has been denied: Now, therefore, be it

Resolved by the New Jersey Senate, That—

1. The President of the United States is hereby respectfully requested to reconsider his determination that the farming areas of this State do not constitute disaster areas and to determine them as such disaster areas in order that Federal aid may be available to those persons who would be entitled thereto as a result of such determination.

2. The Secretary of the Senate is hereby directed to forward a copy of this resolution, duly signed by the President and attested by the Secretary, to the President of the United States and to each of the United States Senators, and each Member of the House of Representatives, from New Jersey.

ALBERT MCCOY,
President of the Senate.

Attest:

HENRY H. PATTERSON,
Secretary of the Senate.

RESOLUTIONS OF GENERAL FEDERATION OF WOMEN'S CLUBS

Mr. LANGER. Mr. President, I ask unanimous consent to have printed in the RECORD the resolutions adopted at the 66th annual convention of the General Federation of Women's Clubs, at Asheville, N. C., June 3–7, 1957.

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

RESOLUTIONS PASSED AT 66TH ANNUAL CONVENTION, ASHEVILLE, N. C., JUNE 3–7, 1957

TELEVISION SERVICE

Whereas the consideration of the best interests of the greatest number of people has always been of paramount importance to the General Federation; and

Whereas television vitally affects the interest of all the general public: Therefore

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1957, urges the Congress of the United States and/or governmental agencies, when evaluating and licensing any development in the use of television, to keep in the forefront of their thinking the necessity of assuring a freedom of choice in the selection of programs while at the same time insuring the maintenance of free television service as it now exists, and further improvement of such television service for all our people.

MRS. SAMUEL J. MCCARTNEY,
Chairman, Communications Department.

Approved:

MRS. J. HOWARD HODGE,
Chairman, Citizenship Division, Public Affairs Department.

PREPAREDNESS DAY

Whereas the date, December 7, should be forever engraved upon the minds of the people of the United States as a day of supreme tragedy due to unpreparedness; and

Whereas there is much concern in the minds of our people and in the Congress of the United States that the lessons so dearly learned in the attack upon Pearl Harbor should not be forgotten, but should serve as incentives for an adequate national defense: Therefore

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1957, expresses its approval and support of the proposed legislation by the Congress of the United States which names Decem-

ber 7 Preparedness Day, and asks that appropriate observance take place annually.

Mrs. GERALD WHITAKER,
Chairman, National Defense Division.

Approved:

Mrs. J. HOWARD HODGE,
Chairman, Public Affairs Department.

LIMITATION OF CAMPAIGN EXPENDITURES

Whereas the disclosure of heavy expenditures in the recent national campaign has shocked the Nation and the situations so presented constitute a definite threat to the continuance of free elections in the United States: Therefore

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1957, declares its conviction that—

1. Reforms in the laws governing political campaign spending are imperative;

2. There should be an enforceable and enforced ceiling placed upon campaign expenditures, both personal and total;

3. There should be a full public accounting of campaign funds;

4. A standardized system of reporting campaign funds should be established which will eliminate the loopholes existing in the law now governing such expenditures.

Mrs. J. HOWARD HODGE,
Chairman, Public Affairs Department.

POULTRY INSPECTION

Whereas poultry is a major item in the diet of the American public; and

Whereas the General Federation of Women's Clubs is vitally concerned with the health of the family, and realizes that the health of our people is menaced by the fact that mandatory ante mortem and post mortem inspection is not required of poultry processed for human consumption: Therefore

Resolved, That the General Federation of Women's Clubs in convention assembled June 1957, urges Congress to enact legislation which will require that poultry placed on sale and intended for human consumption be inspected by the United States Meat Inspection Division of the United States Department of Agriculture under the same conditions as now obtain in the case of meat and meat products.

Mrs. J. R. PATTERSON,
Chairman, Health and Welfare Division.

Approved:

Mrs. WALTER V. MAGEE,
Chairman, Community Affairs Department.

PRISON REFORM

Whereas the concept of punishment alone as a deterrent to crime has been outmoded by statistics and by modern scientific studies of treatment of criminals which take into account the physical, sociological, mental and spiritual aspects of personality; and

Whereas use of enlightened modern methods often develops responsible, law abiding citizens with consequent reduction of repeated offenses and recommitments; and

Whereas incarceration usually demonstrates that the inmate did not adapt himself to an accepted pattern of behavior, and since it is an established fact that the vast majority of prisoners will return to the outside world to be absorbed by their communities: Therefore

Resolved, That the General Federation of Women's Clubs in convention assembled June 1957, urges its member clubs to continue to study, and to urge their legislators to study recent advances in the conservation of human resources through psychological evaluation and wise use of all available methods of rehabilitation, and further, to encourage prison boards and administrators to take advantage of every possible resource in order that prisoners may be provided with and make use of:

1. Psychological evaluation and psychiatric treatment when indicated;

2. Adequate health standards and correction of physical defects where possible;

3. Remedial education;

4. Suitable job training;

5. Opportunity for religious education and counseling;

6. Opportunity for development of latent abilities for better use of leisure time; and further

Resolved, That efforts be made to improve rehabilitative services through raising educational and training standards of prison personnel and to provide adequate followup services upon release of prisoners in order to assist them in their adjustment as productive members of society.

Mrs. ALBERT KUSHNER,
Chairman, Rehabilitation Division.

Approved:

Mrs. WALTER V. MAGEE,
Chairman, Community Affairs Department.

RESTRICTIVE ACTION IN MUSICAL ACTIVITIES

Whereas the General Federation of Women's Clubs has consistently held that the cultural value of music and music study are integral parts of the educational experience, and should be available to the young people of America; and

Whereas the leadership of certain professional groups has opposed school bands and orchestras, musical instruction by radio, noncommercial radio programs by student musicians, and has interfered with the school activities involving music instruction to the detriment of the education and development of young people; and

Whereas there have been instances where interference with the conduct of music camps, a program with which the general federation has long been associated, has hampered activities in such camps, and seems to have as its purpose the destruction of such camps: Therefore

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1957:

1. Protests restrictive action by any group or individual affecting the musical education of students or their participation in musical activities, including music camps;

2. Recommends that such legislation as is now in force be invoked;

3. Strongly urges that additional legislation be enacted which can control the situation.

Mrs. WM. H. HASEBROOCK,
Chairman, Fine Arts Department.

Amend resolution entitled "roads and roadside development," by rescinding and substituting the following:

"ROADS AND ROADSIDE DEVELOPMENT

"Whereas the demands of rapidly growing traffic necessitate vast roadbuilding programs; and

"Whereas the Federal Government is engaged in superhighway construction across the Nation at a cost of billions of dollars; and

"Whereas, the problems of highway safety and conservation in roadside development are a constant and immediate concern to motorists and to communities adjacent to the highways: Therefore

"Resolved that the general Federation of Women's Clubs, in convention assembled, June 1957, and its member clubs continue in the effort to preserve the natural beauties of the landscape and to keep the roadsides free of litter and disfiguring structures; and further

"Resolved that the General Federation of Women's Clubs records its support of strict controls of roadside development through zoning regulations and well-designed planting for safety, beauty, and economy of maintenance; and further

"*Resolved*, That the General Federation of Women's Clubs urges its member clubs to support legislation providing proper development of highway programs using the scientific skills of highway engineers, landscape architects, and planning boards.

"Mrs. B. V. TODD,
"Chairman, Safety Division, Public Affairs Department."

Amend resolution on self-determination of peoples by adding:

"Be it further resolved, That the General Federation of Women's Clubs strongly condemns the use of mental or physical brutality and/or coercion on the part of an occupying power against a people seeking freedom.

"Mrs. ZAIO WOODFORD SCHROEDER,
"Chairman, International Affairs Department."

MAINTENANCE OF STRONG UNITED STATES ARMED FORCES

Whereas the deterrence of wars, and achieving victory in case wars are forced upon us, are basic national objectives demanding an every-ready system of adequate forces in all branches of the military system; and

Whereas it is obvious that the conditions of future warfare will render impossible systems of deliberate mobilization and unhurried training after an emergency situation has developed; and

Whereas it is the moral responsibility of the people and the Government of the United States to provide all members of the military service, every protection which physical fitness and adequate training in military science can give them;

Resolved, That the General Federation of Women's Clubs in convention assembled, June 1957, declares its conviction that this Nation should maintain its military forces in adequate quality and numbers; in strength and equipment; and in organization and deployment so as to permit it to meet fully its obligation:

1. To deter war in all forms;

2. To achieve victory in waging either atomic or non-atomic war should such be forced upon us.

Mrs. GERALD WHITAKER,
Chairman, National Defense Division.

Approved:

Mrs. J. HOWARD HODGE,
Chairman, Public Affairs Department.

ANNUAL NATIONAL TEACHERS DAY

Whereas the General Federation of Women's Clubs has shown continued interest in the educational progress of the United States; and

Whereas it further recognizes the need for a positive program to stimulate citizens' interest in educational problems; therefore

Resolved, That the General Federation of Women's Clubs, in convention assembled, June 1957, respectfully requests the President of the United States to issue a proclamation officially declaring the observance of a day during National Education Week each year to be known as Teachers' Day; and further

Resolved, That the General Federation adopt Teachers' Day as a nationwide project, for the purpose of giving recognition to the teaching profession for its great influence on the training and development of character of our children.

The General Federation of Women's Clubs recognizes and endorses the progress that has been made in establishing some special honor for teachers.

Mrs. AUBREY MAUNEY,
President, North Carolina Federation of Women's Clubs.

Approved:

Mrs. JOHN L. WHITEHURST,
Chairman, Education Department.

RESOLUTION OF BLINDED VETERANS ASSOCIATION, INC.

Mr. LANGER. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the

Blinded Veterans Association, Inc., of Washington, D. C., at its convention held at Hartford, Conn., on August 24, 1957, reaffirming their faith and trust in the basic rights guaranteed all citizens by the Constitution of the United States, and that no further legislation is needed to guarantee these rights to blind persons.

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

RESOLUTION 9 ADOPTED BY THE BLINDED VETERANS ASSOCIATION, 12TH ANNUAL CONVENTION, HARTFORD, CONN.

Whereas the Blinded Veterans Association, Inc., is a national membership organization composed entirely of blind individuals; and

Whereas this association has, since its inception in 1945, recognized its constitutional right to organize nationally and locally without restriction by any Federal or local laws; and

Whereas the association does, in fact, work closely with Federal, State, and local governmental and voluntary agencies serving blind persons, and has, in turn, been consulted by these agencies; and

Whereas the association, in its efforts to promote higher standards of service for all blind people in the United States, recognizes the value of a constructive approach to achieve this objective; and

Whereas S. 2411 and H. R. 8609, which have been introduced in the 85th Congress, appear redundant in the light of the above and would seem to serve no practical purpose, and, in fact, may be detrimental to the best interests of all blind persons: Now, therefore, be it

Resolved, That the members of the Blinded Veterans Association in national convention assembled in the city of Hartford in the State of Connecticut on August 24, 1957, do hereby reaffirm their faith and trust in the basic rights guaranteed all citizens by the Constitution and Bill of Rights of the United States and believe no further legislation is needed to guarantee these rights to blind persons; and be it further

Resolved, That the members of the Blinded Veterans Association do hereby offer the full cooperation of the association and its members to Members of Congress interested in raising standards of services to blind persons; and be it further

Resolved, That copies of this resolution be sent to all Members of the Senate and House of Representatives of the United States; to the executive directors of the American Association of Workers for the Blind, the American Association of Instructors of the Blind, the American Foundation for the Blind, the National Federation of the Blind, and the Council of State Agencies for the Blind; and to the officials of Government and voluntary agencies serving blind persons in the United States.

RESOLUTION OF LOWER YELLOWSTONE RURAL ELECTRIC ASSOCIATION, SIDNEY, MONT.

Mr. MURRAY. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution unanimously adopted at a special meeting of the board of trustees of the Lower Yellowstone Rural Electric Association, of Sidney, Mont., on August 14, 1957. The resolution expresses the trustees' wholehearted support of the REA Administrator, Dave Hamil.

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

Whereas Dave Hamil, REA Administrator is doing a first-rate job of administering the rural electrification and telephone program on a nonpartisan basis without being influenced by political, private or industrial factions; and

Whereas reports and rumors indicate the interference and pressure by the Secretary of Agriculture and others: Now, therefore,

Mr. President, we request that you give Dave Hamil a clean bill of health for the fine forthright job he has been and is doing in administrating the electric and telephone program for rural people and that you reprimand and stop the departmental heads of your administration (who are permitting themselves to be influenced against the REA Administrator) from interfering in any form.

Respectfully submitted.

C. R. THIESSEN,
Secretary.

RESOLUTIONS OF DEPARTMENT OF NEVADA, THE AMERICAN LEGION, REGARDING PROPOSED INCREASES IN SERVICE-CONNECTED DISABILITY COMPENSATION

Mr. MALONE. Mr. President, the 39th annual department convention of the department of Nevada, the American Legion at Elko, Nev., August 15 to 17, 1957, passed seven very pertinent and timely resolutions:

RESOLUTIONS

Service-connected disability compensation.

The veterans' employment service.

Foreign aid.

Status of forces agreement.

The Bricker amendment.

Red China.

The McCarran-Walter Immigration Act.

Our new department commander for 1957 and 1958 is Victor F. (Vic) Whittlesea.

The new president of the women's auxiliary is Mrs. Leona Smith.

I am glad to say that the service-connected compensation bill S. 52 was passed by both Houses of Congress and signed by the President.

Mr. President, I ask unanimous permission to have the resolutions appear at this point in the RECORD as a part of my remarks.

Mr. President, the resolutions passed by my department of Nevada, American Legion, correctly represents the thinking of Americans throughout the Nation.

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

RESOLUTION, SERVICE-CONNECTED DISABILITY COMPENSATION

Whereas H. R. 52, a bill to provide increases in service-connected disability compensation and to increased dependency allowance, passed the House of Representatives May 13, 1957; and

Whereas on July 22, 1957, this bill was favorably reported by the Senate Committee on Finance for consideration of that body; and

Whereas since this action information has been given to the public that the Executive Office of the President, Bureau of the Budget, under the signature of Percival Brundage, Director, opposes the enactment of this legislation which presages a possible Presidential veto, should the bill pass the Congress as seems possible at this session: Be it

Resolved by the 39th annual department convention of the Department of Nevada of the American Legion in convention assembled at Elko, Nev., August 15–17, 1957, Urge upon our Senators and Representative in Congress from Nevada that they support early action on this worthy measure before their respective Houses to the end that the measure may be passed at the present session of Congress; and be it further

Resolved, That in the event of a Presidential veto of this measure they support a resolution to enact the legislation over such veto; and be it further

Resolved, That a copy of this resolution be forwarded immediately upon adoption to the Senators from Nevada and the Representative in Congress for their consideration at the present session of Congress.

RESOLUTION, SUPPORTING THE VETERANS' EMPLOYMENT SERVICE

Whereas by the passage of the Servicemen's Readjustment Act of 1944, Public Law 346 (better known as the GI bill of rights) Congress reaffirmed the will of the Nation to provide for the readjustment of veterans to civilian life; and

Whereas the American Legion has, and always will, be a strong voice in seeing to it that service to veterans for which they, by reason of wartime service, are entitled; and

Whereas with the inclusion of the Korean veteran under the GI bill, there is still a great need for service to this group; and

Whereas because of the age bracket of World War I veterans, and some World War II veterans, there is an ever-increasing need that emphasis be placed on an older-worker program, this need becoming more and more urgent each year: Now, therefore, be it

Resolved by the delegates assembled at this 39th American Legion convention held at Elko, Nev., August 15–17, 1957, That there be no cutback in appropriations to the Veterans Employment Service and the Bureau of Veterans' Reemployment Rights, Department of Labor, or curtailment of service to veterans by that agency thereby assuring that the programs as outlined under Public Law 346 be continued.

RESOLUTION, FOREIGN AID

Whereas the annual appropriations of this country for foreign aid are reaching stupendous proportions, this year higher than ever before, and the distribution of the tax dollar of American citizens is definitely without the approval of the majority of American citizens; and

Whereas much of the appropriations goes to countries that are not allies of the United States and in most cases are aiding and abetting the Communist cause throughout the world; and

Whereas economic and military aid to Yugoslavia and Poland, two Communist controlled countries which are now scheduled to receive millions of American tax dollars, as well as other Communist nations which will also be the recipients of our millions, cannot do anything but harm to the United States: Now, therefore, be it

Resolved, by the 39th department convention of the American Legion at Elko, Nev., August 15–17, 1957, That we are strenuously opposed to either economic or military foreign aid to any nation within the Communist sphere of influence, and especially opposed to supplying any such nations any arms, ammunition, or aircraft or other machinery of war and urgently request our Senators and Representatives in Congress to do all possible to prevent such aid or equipment to be supplied such nations. (This is particularly directed to present situations where we are contemplating such action with Poland and Yugoslavia the recipients.)

RESOLUTION RE STATUS OF FORCES AGREEMENT

Resolved, That it is the sense of the American Legion that the rights of our own citi-

zens should not be sacrificed while the rights of freedom and self-government are secured to the peoples of other nations and that in order to insure justice, maintain the rights and privileges for our citizens who are serving with our Armed Forces in other countries, and to promote the general welfare, the President should forthwith address to the North Atlantic Council, as provided for by article XVII of the NATO Status of Forces Agreement, a request for revision of article VII of such agreement for the purpose of eliminating or modifying article VII so that the United States may exercise exclusive criminal jurisdiction over American military personnel stationed within the boundaries of parties to the treaty and that the President should take similar action with regard to the administrative agreement with Japan, as amended, and all other international agreements which give criminal jurisdiction over our Armed Forces to foreign governments which are parties thereto.

RESOLUTION, BRICKER AMENDMENT

Whereas: The American Legion, Department of Nevada, has previously gone on record as being in favor of the Bricker or a similar amendment limiting the treaty making powers of the executive branch of our Government: Now, therefore, be it

Resolved, by the 39th department convention of the American Legion at Elko, Nev., August 15–17, 1957, That we reiterate our previous stand in favor of the Bricker or a similar amendment and again urge our Representatives in Congress to do whatever is possible to put same in effect.

RESOLUTION, RED CHINA

Whereas, many of our so-called allies are propagandizing and pressuring this country to recognize Communist Red China; and

Whereas, this Nation should never sacrifice its principles and admit to the United Nations Organization, and to our family of friends this murderous, traitorious nation that has cruelly tortured hundreds of American soldiers and civilians and has broken all the laws of decency in conducting war and has broken every agreement and treaty they have made with us; Now, therefore, be it

Resolved, by the 39th department convention of the American Legion at Elko, Nev., August 15–17, 1957, That we reiterate our previous stand against admission of Communist Red China to the United Nations Organization or recognition of Red China by the United States and urge our Representatives in Congress to oppose any action by the United States of America that would allow this to happen.

RESOLUTION SUPPORTING MCCARRAN-WALTER IMMIGRATION ACT

Whereas there is now on the statute books of the United States the McCarran-Walter Immigration Act of 1952 which controls immigration to this country; and

Whereas this law establishes fair and just quotas for admittance of aliens desiring to come to this country and is a recodification of all previous immigration laws and regulations and has been endorsed by over 100 patriotic organizations, the FBI, the Department of Justice, and many other organizations and individuals conversant with the problems of immigration; and

Whereas again this year there is a movement on action to do away with many of the protective provisions of this law and allow an influx of possibly undesirable persons to enter this country without regard to the carefully thought-out safeguards established by this law, or any recognition of the fair quotas established by said law; and

Whereas these demands for revision of the McCarran-Walter Immigration Act are mostly from vociferous minority groups, American do-gooders and anti-Communists and subversive and Communist groups who are against any safeguards that would prevent the admittance of subversives and Communists; and

Whereas indiscriminate entry of foreign aliens to our country would increase our problems of employment, housing, schools, and other problems caused by lowering the bars of the present national origins quota system: Be it

Resolved, by the 39th department convention of the American Legion at Elko, Nev., August 15–17, 1957, in regular meeting assembled, That we are strenuously opposed to any action of any kind that would destroy the efficacy of the McCarran-Walter Immigration Act and allow entry of aliens without any of the safeguards provided by said act and that we respectfully request our Senators and Congressmen in Washington to do all in their power to maintain the McCarran-Walter Immigration Act in its present form on the statute books of this country without any lowering of the various restrictions by special permit, Presidential decree, or otherwise.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. 2864. A bill to provide for the appointment of additional judges for the Court of Appeals for the Second Circuit and the district courts for the southern and eastern districts of New York (Rept. No. 1157).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 1714. A bill for the relief of Roma H. Sellers (Rept. No. 1161); and

S. 2840. A bill to create a new and separate judicial district in California and to create a new division for the northern district in said State (Rept. No. 1158).

By Mr. O'MAHONEY, from the Committee on the Judiciary, without amendment:

S. J. Res. 131. Joint resolution authorizing the President to issue a proclamation calling upon the people of the United States to commemorate with appropriate ceremonies the 100th anniversary of the admission of the State of Oregon into the Union (Rept. No. 1159).

By Mr. McCLELLAN, from the Committee on Government Operations, without amendment:

H. R. 7964. An act to remove the limitation on the use of certain real property heretofore conveyed to the city of Austin, Tex., by the United States (Rept. No. 1160).

BILLS INTRODUCED

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

By Mr. CHAVEZ:

S. 2878. A bill to authorize the granting of mineral rights to certain homestead patentees who were wrongfully deprived of such rights; to the Committee on Interior and Insular Affairs.

S. 2879. A bill for the relief of Hiroyasu Hatakeyama; to the Committe on the Judiciary.

By Mr. HOLLAND:

S. 2880. A bill to amend paragraph (k) of section 403 of the Federal Food, Drug, and Cosmetic Act, as amended, to define the term "chemical preservative" as used in such paragraph; to the Committee on Labor and Public Welfare.

By Mr. LANGER:

S. 2881. A bill for the relief of Paul Hegedus; to the Committee on the Judiciary.

By Mr. ALLOTT (for himself and Mr. CARROLL):

S. 2882. A bill to authorize the Administrator of General Services to convey certain lands in the State of Colorado to the city of Denver, Colo.; to the Committee on Government Operations.

By Mr. SMITH of New Jersey (for himself, Mr. CASE of New Jersey, Mr. CLARK, and Mr. HUMPHREY):

S. 2883. A bill to amend the Legislative Appropriation Act, 1956, to eliminate the requirement that the extension, reconstruction, and replacement of the central portion of the United States Capitol be in substantial accord with scheme B of the architectural plan of March 3, 1905; to the Committee on Public Works.

(See the remarks of Mr. SMITH of New Jersey when he introduced the above bill, which appear under a separate heading.)

By Mr. SALTONSTALL (by request):

S. 2884. A bill for the relief of Earl R. Rawson; and

S. 2885. A bill for the relief of Eleanor Constan; to the Committee on the Judiciary.

INVESTIGATION OF LABOR-MANAGEMENT RELATIONS AT THE SANDIA CORP., NEW MEXICO

Mr. CHAVEZ submitted the following concurrent resolution (S. Con. Res. 51), which was referred to the Joint Committee on Atomic Energy:

Whereas the national security requires uninterrupted operations of vital atomic installations under contract with the Atomic Energy Commission;

Whereas disputes between labor unions and management at the Sandia Corp. atomic installation at Albuquerque, N. Mex., frequently require the intervention of the atomic energy labor-management panel:

Whereas the Director of the Federal Mediation and Conciliation Service has publicly criticized the Sandia Corp. at Albuquerque, N. Mex., for its inability to negotiate successfully collective bargaining agreements with labor unions representing its employees without the intervention of the atomic energy labor-management panel, and further has stated that labor-management negotiations at the Sandia Corp. have been referred to the atomic energy labor-management panel more often than those of any other atomic installation in the United States;

Whereas the revenues of the Sandia Corp., and hence the wages paid its employees, derive exclusively from public funds disbursed to it under contract by the Atomic Energy Commission; and

Whereas it is in the national interest that negotiation of collective bargaining agreements at atomic installations under contract with the Atomic Energy Commission should be conducted in a manner as to avoid work stoppages and consequent injury to the Nation's atomic energy program: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Joint Committee on Atomic Energy is authorized and directed to make a full and complete investigation and study of labor-management relations at the Sandia Corp., for the purpose of determining what action can be taken to improve such relations and thereby help assure continuity of operation of publicly financed atomic energy programs vital to the Nation's security.

The committee shall report its findings, together with such recommendations as may be desirable, to the Senate and to the House of Representatives at the earliest practicable date, but not later than February 1, 1958.

INVESTIGATION OF LOSSES TO PERSONS BY DEPREDATIONS OF WILDFOWL AND ANIMALS FROM FEDERAL WILDLIFE REFUGES

Mr. LANGER submitted the following resolution (S. Res. 196), which was referred to the Committee on the Judiciary:

Resolved, That a subcommittee of the Committee on the Judiciary, consisting of three Senators appointed by the chairman, is authorized and directed (1) to make a full and complete study and investigation with respect to damage to crops and other losses sustained by persons living in the vicinity of Federal wildlife refuges and other Federal reservations, by reason of depredations by wildfowl and animals from such refuges or reservations, and (2) to recommend to the Committee on the Judiciary such measures as it may deem desirable for the relief of persons sustaining such damage or loss.

ELIMINATION OF REQUIREMENT FOR REMODELING OF CENTRAL PORTION OF CAPITOL BUILDING

Mr. SMITH of New Jersey. Mr. President, on behalf of myself, my colleagues, the junior Senator from New Jersey [Mr. CASE], the Senator from Minnesota [Mr. HUMPHREY], and the Senator from Pennsylvania [Mr. CLARK], I introduce, for appropriate reference, a bill to prevent the emasculation of this lovely Capitol Building.

During the 1st session of the 84th Congress, the Congress unfortunately added a provision to the Legislative Appropriation Act of 1956 which authorized an extension of the Capitol in order to provide for additional offices and restaurant facilities, but required such extension to conform with the so-called plan B which was submitted to the Congress in 1905. The substance of plan B provides that the east facade of the central block of the Capitol be torn down and extended 32 feet 6 inches to the east.

Mr. President, this scheme not only will cost the American taxpayers an exorbitant sum of money for the additional space which will be obtained, but it will also do violence to the architectural beauty of this grand structure. The plan has been roundly criticized by the American Institute of Architects at 5 of their annual conventions, including the last 3 meetings in 1955, 1956, and 1957. I cannot believe that there is any justification for proceeding to emasculate this building in such a manner.

The purpose of this bill is to repeal the restrictive language which binds the Architect of the Capitol to undertake the expansion of the Capitol facilities in accordance with this plan.

I ask unanimous consent that the bill may lie open for a period of 24 hours for the purpose of permitting additional Senators to join in cosponsorship.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will lie on the desk, as requested by the Senator from New Jersey.

The bill (S. 2883) to amend the Legislative Appropriation Act, 1956, to eliminate the requirement that the extension, reconstruction, and replacement of the central portion of the United States Capitol be in substantial accord with scheme B of the architectural plan of March 3, 1905, introduced by Mr. SMITH of New Jersey (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Public Works.

AIR TRAINING FACILITIES

Mr. SYMINGTON. Mr. President, I have written a letter to the Secretary of the Air Force, and inasmuch as the subject matter of the letter has been discussed in the Senate, I ask unanimous consent that my letter to the Secretary be printed in the RECORD.

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

AUGUST 24, 1957.

Hon. JAMES H. DOUGLAS,
Secretary of the Air Force,
Washington, D. C.

DEAR MR. SECRETARY: In a letter to you of August 20, Senator NEUBERGER said that on Wednesday, August 14, he "appeared before the Task Force on Air Training Facilities, a subcommittee of the Senate Armed Services Committee under the chairmanship of Senator STUART SYMINGTON."

As I discussed with Senator NEUBERGER this morning, this was not a meeting of this task force. It was a conference, called at the request of Senator JACKSON, who asked that there be present members of the Air Force who knew about this matter and a representative of the General Accounting Office.

No stenographer was present, no record was kept of the conference, and therefore no conclusions were reached.

Sincerely yours,

STUART SYMINGTON.

LETTER OF GORDON GRAY, DIRECTOR OF THE OFFICE OF DEFENSE MOBILIZATION, TO CHAIRMAN OF MONOPOLY SUBCOMMITTEE OF SENATE JUDICIARY COMMITTEE

Mr. DIRKSEN. Mr. President, in the course of the hearings of the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee on the question of the issuance of tax amortization certificates to the Idaho Power Co., a colloquy developed when Mr. Gordon Gray, Director of the Office of Defense Mobilization, appeared before the committee, as result of which Mr. Gray, either expressly or by implication, was in effect charged with an attempt to conceal certain information from the subcommittee.

Speaking for myself, let me voice my complete confidence in the integrity of Mr. Gray, and his constant effort to disclose all information which the subcommittee requests.

Since the charges appeared, Mr. Gray submitted his views in a letter to Senator KEFAUVER under date of August 27, covering the question of the issuance of tax amortization certificates, and I requested that his letter be inserted in the CONGRESSIONAL RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF DEFENSE MOBILIZATION,
Washington, D. C., August 27, 1957.

The Honorable ESTES KEFAUVER,
United States Senate,
Washington, D. C.

DEAR SENATOR KEFAUVER: Because there have been public charges to the effect that I attempted to conceal evidence from the Subcommittee on Antitrust and Monopoly when I testified before the subcommittee on the issuance by ODM of accelerated tax amortization certificates to the Idaho Power Co., I should like to set forth the following facts which demonstrate why I could not produce Secretary of the Interior Fred A. Seaton's letter of March 11, addressed to Dr. Flemming, at the time I appeared before the Byrd committee on May 9 and at my first appearance before your committee on May 21. These facts will also explain why Secretary Seaton's letter involved a serious question of executive privilege.

On October 25, 1955, the Department of the Interior through Assistant Secretary Aandahl, who was the customary channel for such communications, advised ODM that the application of the Idaho Power Co. for tax amortization with respect to Oxbow and Brownlee met the criteria then applicable and recommended that necessity certificates be issued covering 60 and 65 percent respectively, of the cost of the projects.

On March 13, 1957, Dr. Arthur S. Flemming, whom I was to succeed as ODM Director the next day, handed to me a letter and one carbon copy, dated March 11, 1957, that he had received from Secretary Seaton recommending against the issuance of the certificates to the Idaho Power Co. Dr. Flemming told me that he had examined carefully the arguments that had been advanced against issuing the certificates and had concluded that these applications, as far as the law and regulations were concerned, could not be differentiated from the other applications that had been granted. He stated that he felt that Secretary Seaton's recommendation grew out of a general disapproval of the basic criteria that had been applied to all cases under the electric power goal. He stated further, however, that he had not issued the certificates before leaving office because of his inability to explore the matter thoroughly with Secretary Seaton by reason of the latter's illness.

In due course I concluded on the basis of my own judgment that certificates of necessity should not be denied under the criteria obtaining at the time of the Idaho Power Co.'s applications. My studies confirmed that Secretary Seaton's objections were not germane to the question of whether the governing criteria warranted issuance of the certificates.

On April 10, I notified Mr. Elmer Bennett, then Assistant to the Secretary of the Interior (the Secretary still being in the hospital), that I had concluded that the certificates of necessity should not be denied to the Idaho Power Co. under the criteria obtaining at the time of the company's applications, and that in my opinion, Secretary Seaton's letter did not discuss whether the company's application met the governing criteria but whether the governing criteria were in fact wise. Mr. Bennett and I agreed that the governing regulations did not provide for this type of recommendation, and that the Secretary's letter, therefore, did not have any legal status under the regulations in this particular case. In view of this, it was agreed that the Secretary's March 11 letter could appropriately be withdrawn, the decision to issue the certificates having been made by ODM.

On April 17, following a telephone conversation between Mr. Bennett and Mr. Charles Kendall, General Counsel of ODM, the Secretary's letter, together with the carbon copy, was returned to the Department of the Interior and I believed that it had thereby been withdrawn for the reasons stated above.

On the same day, April 17, Mr. Bennett sent me a suggested change in the proposed ODM press release concerning the issuance of the certificates to the Idaho Power Co. which he stated had been cleared with the Secretary in the hospital. This suggested change was incorporated in the press release which was actually issued except that in a paragraph which read: "In accordance with then accepted procedures and criteria, established by the ODM, the Department of the Interior on October 25, 1955, recommended that necessity certificates be issued on both projects", the word "accepted" was changed to "applicable." While it was clear to me that Secretary Seaton continued to disapprove the criteria on which certificates within the electric power goal were based, I nevertheless believed, since his letter of March 11 had been withdrawn, and the press release with respect to the issuance of the certificates had been cleared with him, that the Secretary did not regard his letter as an official expression of the views of the Department in this respect and that he did not wish to make what I therefore believed to be his personal views, as set forth in the letter, a matter of record. Based on this belief (although subsequently the Secretary apprised me of the fact that my belief was incorrect) the Secretary's views were clearly privileged and I was under a duty not to discuss them.

At the time of my appearance before the Byrd committee and of my earlier appearance before your subcommittee, no one in ODM had the original or any copy of Secretary Seaton's letter. It was not until after Secretary Seaton returned to his desk and we met for the first time on this matter on May 25, that I learned that he considered his letter of March 11 to be an official expression of the position of his Department. Upon learning this, it was agreed on May 27 that Secretary Seaton's letter of March 11 would be returned to ODM, and that I would furnish the original of the letter to your subcommittee as soon as possible and that the Department of the Interior would furnish the subcommittee with a copy. This was done on Monday, May 27th.

I should appreciate your making this letter a part of the record of your investigation.

Sincerely,

GORDON GRAY,
Director.

THE FACTS ABOUT THE SENATE RESTAURANT

Mr. DIRKSEN. Mr. President, much has been said on the floor of the Senate over a period of time about the operation, management, prices, and service of the Senate restaurant. Some of this has been critical, and I believe the time has come, in the interest of truth, to place the facts before the people and before the Senate.

The Nationwide Food Service of Chicago, which operates the Senate restaurant and other food establishments for the benefit of the Senate and its employees and guests, carries on this operation. This includes the cafeteria in the Senate Office Building, the coffee shop in the Senate Office Building, the snack bar in the Capitol, and the dining room in the Capitol, including quite a number of rooms which are used for private dining purposes.

For the week of August 19 to August 24, 1957, these various facilities served 21,955 patrons or guests and the income derived therefrom was $13,303.40.

The Senate dining room is open from 8 in the morning until the Senate goes out of session and of particular importance in this connection is the fact that 89 percent of the business done is handled between the hours of 11 a. m. and 3 p. m., making it in fact a single-meal operation. In the hours from 8 until 11 in the morning and from 3 in the afternoon until closing time is a period of low income and consequently a losing period for the restaurant since it is necessary to carry a staff during these periods.

Since the restaurant management does not know when the dining room will close in the evening, it is always necessary to maintain a standby staff which is large enough to handle a heavy dinner business if the Senate stays in session until a late hour.

Senate Members are fully aware of the fact that the Senate may adjourn or recess at 5 o'clock, 7 o'clock, 10 o'clock or some hour in the early morning but no matter when it may close, the restaurant must maintain service during that period.

To secure employees on such an unpredictable basis, it is obviously necessary for management to pay for 5 hours of work even though they may work for a shorter period and it is also necessary to pay time and a half for overtime, whether it constitutes extra help which may be brought in or whether they be full-time employees. Consequently, the employees must be paid even though the Senate adjourns the session early in the day and no dinner business develops.

When the Senate is not in session, the food facilities are maintained for a 4- or 5-month period on a reduced basis. Here again, the restaurant income drops to less than half its normal volume and, while it can operate with a reduced staff, it is impossible to actually reduce the staff to the same proportion as the drop in income. Then, too, it is necessary as a practical matter to retain key employees during the months that the Senate is in adjournment, if management is to have ready an efficient and trained force when the Senate returns in January.

It is quite evident to any observer that the present dining area is entirely too small for the volume of business which develops during the lunch period, and this has provoked some criticism from Senate Members and others. The fact that it is difficult to use side stands in connection with restaurant service has manifestly prevented the use of certain available space and this in turn necessitates more frequent and longer trips to the service pantry in order to serve the patrons.

Let me point out also that the kitchen is located down two flights of stairs below the pantry and this requires the maintenance of a very considerable utility force to help bring trays of food to the service pantry. Since it is not feasible to hire these people for just the 2-hour period when they are needed, it becomes necessary to carry them on the payroll for a longer period in order to retain their services. Finally, let me say that here as elsewhere there has been an upward trend in overall food prices, which must be absorbed, and it is my considered opinion that the prices and the service of the restaurant facilities, when considered in the light of the tremendous handicaps with which they are confronted, is, indeed, outstanding.

One other bit of testimony might be of interest and that is that the Senate restaurant has steadily reduced the losses compared with other years. As an example, for the period July 1, 1957, to August 3, 1957, the loss on the entire food operation was $6,131.96. This is one-half of the loss which was sustained for a comparable period in 1956.

I believe that the management and the personnel of the Senate Restaurant deserve high commendation for the way they have performed under great difficulty.

THE MUTUAL-SECURITY PROGRAM

Mr. SMITH of New Jersey. Mr. President, in connection with the mutual-security program, I want to take this opportunity to pay a tribute to my colleagues in the Senate. As my friends know, I have been deeply interested in our foreign policy ever since I came to the Senate 13 years ago and I have been particularly interested in helping, as best I could, in the development of our so-called foreign-aid program. I was one of those who worked continuously with the study we had made last year of the new approach to the mutual-security program and was most hopeful that the reports of the investigators whom we chose from among the most expert in the country would be accepted as a basis for the new approach. The results of these studies and the independent studies that the President had made gave us what might be called a new look on our mutual-security program. There was no difference of opinion by any of those who participated in the studies as to the need to continue the program and especially the need for the support of our military aid and defense assistance for our allies in various parts of the world.

Also it was felt that from the standpoint of the underdeveloped countries we should provide for a long-range revolving loan fund to enable those countries to secure their economic stability and to aid them in developing their own freedom, independence, and self-determination so that they could remain among the nations dedicated to freedom. This is a critical issue of our foreign policy and I believe is the strongest supporting pillar of the President's whole program.

Reviewing the action of the Senate, I call attention to the fact that the President originally asked for $3.8 billion. The Senate reported a bill authorizing $3.6 billion. The Senate vote on this

authorization bill was 57 to 25. The Senate brought the House appropriation bill in conference up to $3.3 billion and finally, in the Appropriations Committee, the Senate restored $500 million of the House slash of $800 million bringing the appropriation up to $3,025 billion. The Senate vote on this appropriation was 62 to 25. We have now witnessed the most unfortunate development, namely the unwillingness of the House to go above $2.7 billion for the final appropriation for fiscal 1958. This is a devastating defeat not only for the President, but for the safety of America. However, I want to take this opportunity to pay a tribute to our Senate leadership—our majority leader, the Honorable LYNDON B. JOHNSON and our minority leader, the Honorable WILLIAM F. KNOWLAND. Their work was one of the finest evidences of bipartisan teamwork and last ditch fighting in support of the administration and the security of our country.

The only conclusion I can possibly draw from this development is that there are those in the House and especially on the House Appropriations Committee who are determined to destroy the mutual security program. The matter needs our immediate attention and at the beginning of next year we must press the fight vigorously to present to the American people the issue involved in these unfortunate developments this year.

MAJOR ISSUES FACING WISCONSIN

Mr. WILEY. Mr. President, I ask unanimous consent that in the final edition of the CONGRESSIONAL RECORD there be printed a statement by myself on the subject of the principal issues of interest to the people of Wisconsin and the Nation.

The PRESIDING OFFICER (Mr. FREAR in the chair). Without objection it is so ordered.

THE LEGISLATION OF THE 85TH CONGRESS

Mr. WILEY. Mr. President, I ask unanimous consent that in the final edition of the RECORD it contain a statement which I am preparing on the subject of the legislation acted upon during the first session of the 85th Congress, and the subjects which await our attention in the second session, convening next January 7.

The PRESIDING OFFICER. Without objection, it is so ordered.

CIVIL RIGHTS ACT OF 1957

The Senate resumed the consideration of the amendment of the House of Representatives to Senate amendments Nos. 7 and 15 to the bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Mr. WATKINS. Mr. President, the civil rights bill compromise which has come over from the House for action in the Senate is not all that I had hoped for, but it is about all that can be expected under the circumstances. Most controversial legislation finally emerges as a result of compromises. The present bill is no exception. With jury trials limited to voting rights only, some of the major objections I had to the Senate bill have been eliminated.

I believe the bill as amended is one that will make for decided progress toward the objective of protecting the civil rights of the colored people of this Nation. Whether it will be effective will depend largely upon the attitude of the white people of the States where colored people have been essentially denied the right to vote. If white people in these areas act in good faith, the measure will be effective. Without their cooperation the law will be difficult to enforce. I have a very firm conviction that the people will act in good faith.

It was stated in Congressional debate that southern juries will convict in criminal contempt proceedings if a case has been made that the court's orders have, in fact, been violated. The proof of this claim, and the effectiveness of the new law, now is entirely up to the people of the States where it is claimed that voting rights of colored people have been denied.

With the passage of this measure, the eyes of the whole Nation will be upon the officials and the people of the States affected. The power of public opinion should go a long way to help correct a situation that has long been unfair to our colored citizens. Every American citizen should be allowed to vote, no matter what his color, creed, or economic status may be. The Constitution guarantees this right to all citizens of this land of the free.

Next year is an election year. The Civil Rights Commission provided for in the bill should be in operation well ahead of that election. It should throw some needed light on conditions affecting voting rights. Colored people will more than ever be interested in voting, and I hope that their constitutional rights will be preserved, as President Eisenhower has so vigorously insisted.

The American people will be watching to see what the response will be to the first civil rights law in more than 80 years. I sincerely hope that the compromise remedy, worked out in lengthy and difficult consideration in the Congress, will prove effective.

Mr. President, I shall vote for the compromise.

Mr. BYRD. Mr. President, I have already spoken at length in opposition to this proposed legislation, but I wish again to make very clear my strong opposition to this so-called civil-rights bill now pending.

When this bill was before the Senate previously, I enumerated all of the rules which were broken in its highly unorthodox consideration, and predicted that nothing but bad legislation would come of such rule-breaking procedure as was being used to force the bill into law.

After the bill was passed by the Senate, and sent back to the House of Representatives, it was subjected again to more unusual treatment.

In the ordinary routine the House would have accepted the Senate amendments, or called for a conference. But, did this bill get the ordinary routine? No. It was given a procedure unused in the House for years. It was submitted to the full House for amendment.

Personally, I believe the underlying purpose of this legislation was misguided and generally bad. The first House bill was greatly improved by Senate amendments, and the Senate is to be highly commended for the watering-down job it did under the harsh parliamentary circumstances which were forced upon it.

A victory for good government was won in knocking out the vicious part III which would have set up star-chamber proceedings for the very broad field of civil rights. In the Federal-election section of the Senate bill, we provided for jury trials in alleged criminal-contempt cases.

There is not adequate time for study of the provisions of the House amendments. But, I am advised that under the pending language a Federal judge, in his discretion, without trial by jury, may haul citizens before him on criminal-contempt charges, in civil-rights cases, and fine them up to $300 or put them in jail for 6 weeks.

It is true that trial by jury in such cases can be granted by Federal judges, and I assume that many Federal judges will grant jury trial; but jury trials in all criminal proceedings should be the inalienable right of every citizen.

Where the penalty is more than $300 fine, or jail sentence of a month and a half, the citizen is dealt with more magnanimously. He may request a trial by jury, at his own expense and before the same judge who has already prejudged his case and convicted him.

I have noted the majority leader's proposal for a thorough study of the question of trial by jury in criminal-contempt cases. I hope some good will come of it. I wish it had been made before the proposed procedure became such an important part of the pending bill.

The Senate cannot overlook the fact that the bill now before us would establish a snooping Commission authorized to go abroad in the land stirring up trouble; and provides, further, for a new Division in the Department of Justice, with a special Assistant Attorney General, fortified with all the investigation powers of the Department, for operations in this delicate field. It will be easy to foment strife through these activities in which allegations, supported and otherwise, will be made.

No good can come out of legislation characterized by the kind of consideration given this bill, and I am unwilling to carry acquiescence in any part of it on my conscience.

I can remember the reaction of shock which spread instantaneously across the country when the senior Senator from Georgia [Mr. RUSSELL] pointed out that the armed might of the military forces of the United States could be used under the infamous part III of the bill.

I remember the reaction of surprise, even by Members of Congress, when, during the previous Senate debate, equally iniquitous provisions were pointed out in other sections of the bill.

I am aware of a tremendous reaction at the moment to the so-called compromise adopted by the House.

What has been compromised is the right of an American to trial by jury in criminal cases.

I deny the publicized contention that this bill represents an improvement over the Senate bill. Nothing is improved under a statute which would allow innocent people to suffer severe punishment at the whim of a Federal judge without being able to submit proof of their innocence to a jury of their fellow citizens who owe no allegiance to a politically appointed Attorney General.

The Nation will regret enactment of this bill as it stands, just as it regrets the actions of a Supreme Court which hands down political-social decisions which undermine our fundamental principles of government, which preempts State laws, which lightly frees a felon guilty of horrible crime to roam the community, which opens up FBI confidential files, and which strikes down the will of a private citizen which has stood for decades.

I am opposed to this bill. It deserves the Senate's most vigorous rejection.

Mr. SMATHERS. Mr. President, I voted for the Senate version of the civil-rights bill when it passed the Senate on August 7. I am prepared now to vote for—and would like to vote for—that bill again. I thought the Senate bill was a sensible civil-rights bill. It embodied two basic principles. It protected the right of qualified citizens to vote regardless of race, color, or creed, and it reaffirmed and strengthened the basic right of trial by jury for all citizens who are charged with criminal contempt or crime.

The House of Representatives has now sent us a compromise version of that bill. It retains all the provisions with respect to voting rights, but, in my judgment, it effectively destroys the protection of trial by jury in criminal-contempt cases which we in the Senate had put into the bill. In my opinion, the basic civil right of trial by jury is as fundamental and precious as is the right to vote. The Constitution of the United States mentions specifically in four separate instances the importance of trial by jury. It mentions voting rights in only one section.

I do not believe that we, as responsible legislators adhering to basic democratic principles, should be willing to sacrifice the basic right of trial by jury, even to get a provision which has as its purpose the protection of voting rights. I do not believe we should exchange one fundamental civil right in order to try to strengthen or improve another. I do not believe that it is judicious, nor wise, nor fair to try to give to one group of citizens the full enjoyment of one civil right, by taking away from other groups of our citizens other more fundamental civil rights.

For these reasons, I shall not support this compromise version of the so-called civil-rights bill.

Mr. SCOTT. Mr. President, we have been through a long and laborious ordeal concerning the civil-rights bill that is now before us.

I will not dwell at any length, but there are 1 or 2 points that I would like to make concerning the bill.

Everybody, naturally, strives for the day when all sections of this Nation can come before the bar of public opinion with clean hands concerning their social, economic, and political problems.

I would be the last to say that there never has been a Negro in the South denied the right to vote, but the matter is not as serious and the problems are not as extensive as many people would try to lead the public to believe.

Of course, we have our soft spots in the South, and there are soft spots in the North, but we are fast reaching the day when demagogs dare not dabble in our race problems.

People everywhere are realizing that these are problems that must be settled man to man and neighbor to neighbor.

Once we realize this, once we face the facts about the workings of the social structure of democracy, then everyone will know that human relations is someing the makers and molders of laws and orders had best leave to the hearts and minds of men.

With these thoughts as a background, I once again ask the Members of the Senate to search deep into their souls before casting a final vote on the bill before us. If this is done I think the Senate will defeat the bill.

There are a great many reasons why the Senate would be well advised to defeat the bill before it.

As I have said, the bill itself is not as harsh as it could be, but the important point is this: Its ultimate effect—be it damage or benefit—will depend upon how it is administered.

This, Mr. President, is the danger in this whole area of problems—in this whole business of the day-to-day relations between men.

If the bill becomes law, and is administered with restraint and reason, then that is one thing.

But if it is administered with the idea of getting mass blocks of votes in the big cities from minority groups, then those responsible will be guilty of the sorriest crime of our times.

This is the fear that is held in the hearts of the people of the South—this is the danger of this whole bill—because if it happens you will see violence and bloodshed.

Nobody will deny that we have made a great deal of progress in race relations in the South in the past generation. In recent years this progress has been frustrated to an extent by several decisions of the Supreme Court, but basically we are still people of good will and we want to keep it that way.

To pass this bill and have it administered by careless and reckless people would bring about complete chaos in the South. There is too much at stake to take such a chance.

The South, Mr. President, is on the move. We are rounding out our economy with industrial expansion and more diversified agriculture. We are building schools and hospitals and health centers and recreational facilities at a rate that is unbelievable under present conditions.

We of the South, Mr. President, are determined to continue our progress, and we resent the idea of outsiders trying to coach us from the sidelines.

I ask, therefore, that we not be hindered; that we not be interfered with; that we are left to solve our own problems.

Mr. HILL. Mr. President, I had concluded when the Senate adopted the jury-trial amendment on August 2 by the substantial vote of 51 to 42 that this body had acted with finality in rejecting the plea of advocates of civil-rights legislation that in the name of buttressing the right to vote it was necessary to deny the right to trial by jury. Today, however, we find ourselves once again fighting the same old battle for individual liberty. The most recent threat to personal freedom is presented to us under the banner of a compromise—a compromise that is held out to us as a constructive proposal, which comes halfway between the stand of the Senate in favor of jury trials and the insistence of the House of Representatives that this ancient bastion of human liberty be denied under this bill. I submit, Mr. President, that this proposal is not and cannot be regarded as a compromise. It is, rather, an abdication of principle.

I am categorically opposed to this strange proposal to give to the unfettered discretion of a Federal judge the power to determine whether a person shall or shall not be entitled to a trial by jury. I strongly believe that the proposal is unconstitutional, and if the proponents of the so-called compromise are successful in securing its enactment I should devoutly hope that the judiciary would strike the measure down. I am also opposed to the compromise because it would reverse a legislative history of 126 years' duration, in which the Congress has repeatedly expressed itself in favor of preserving and extending the right to trial by jury, as opposed to restricting it or abolishing it in the wake of powerful pressures arising out of the political issues of the day. The American people are innately contemptuous of despotic power whether it be exercised by king, dictator, or judge, and I believe that the arbitrary powers the compromise would grant to Federal judges might well bring the entire judiciary into disrepute.

In recent years the judiciary has evinced growing and thoughtful concern for the preservation and strengthening of the right to trial by jury. In the course of this debate there have been those who have argued that Congress has no legitimate concern to provide for jury trials in cases of criminal contempt. They have insisted that when we set a jury between an accused person in a contempt proceeding and summary punishment we question and affront the dignity of the court and the power of the court to vindicate its dignity. I submit, Mr. President, that in recent expressions of Justices of the Supreme Court of the United States there are voiced admonitions against those who would recklessly abandon such constitutional guaranties as the right to trial by jury in the name of preserving the dignity of the courts.

It certainly in no wise can be argued that the jury-trial amendment which the Senate adopted is either unconstitutional or an extension of statutory rights of

which the courts themselves would disapprove. In the case of *Michaelson* v. *United States* (266 U. S. 42), the Supreme Court of the United States clearly disposed of any doubts in this regard. Justice Sutherland, in delivering the opinion of the Court, said:

The simple question presented is whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself, *Gompers* v. *Bucks Stove and Range Co.* (221 U. S. 418). The fundamental characteristics of both are the same. Contempts of the kind within the terms of the statute partake of the nature of crimes in all essential particulars. "So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure."

The Court further states:

The statutory extension of this constitutional right to a class of contempts which are properly described as criminal offenses does not, in our opinion, invade the powers of the courts as intended by the Constitution or violate that instrument in any other way.

In the case of *Sacher et al.* v. *United States* (343 U. S. 1 (1952)), two Justices took the position that even in cases of direct criminal contempt an accused person is constitutionally entitled to a trial by jury.

The Sacher case grew out of a turbulent 9-month trial of 11 Communist leaders on charges of violating the Smith Act. Defendants' counsel in the presence of the trial judge and in the face of repeated warnings from him that their conduct was regarded as contemptuous persisted in a course of conduct that was highly contemptuous and that tended to disrupt and delay the trial and possibly cause a mistrial. When the verdict of the jury had been returned the trial judge, without further notice or hearing immediately filed a certificate under rule 42 (a) of the Federal Rules of Criminal Procedure summarily finding such counsel guilty of direct criminal contempt and sentenced them to imprisonment. Although the majority of the Court upheld the power of the trial judge under rule 42 (a) to impose such punishment, Justices Black, Frankfurter, and Douglas dissented.

In his dissenting opinion, Justice Black listed the reasons why the conviction ought to have been reversed, among which was:

Petitioners were constitutionally entitled to have their guilt or innocence of criminal contempt decided by a jury.

The opinion further states:

I would reverse on the further ground that petitioners are entitled to all the constitutional safeguards provided to protect persons charged wih crime, including a trial by jury.

Article III, section 2, of the Constitution provides that "the trial of all crimes * * * shall be by jury." Not satisfied with this single protection for jury trial, the founders reemphasized the guaranty by declaring in the sixth amendment that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury * * *." And the fifth amendment provides that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. * * *" These contempt proceedings are "criminal prosecutions" brought to avenge an alleged public wrong. Petitioners were imprisoned for terms up to 6 months, but these terms could have been longer. The Government's position in *United States* v. *United Mine Workers of America* (330 U. S. 258) was that the amount of punishment for the crime of contempt can be fixed at a judge's discretion, with no limit but the eighth amendment's prohibition against cruel and unusual punishment. Certainly, petitioners have been sentenced for crimes. Consequently, these lawyers have been wrongfully deprived of the jury benefits of the foregoing constitutional provisions unless they are inapplicable to the crime of contempt.

There are, undoubtedly, sayings in some past opinions of this Court broad enough to justify what was done here. Indeed, judges and perhaps lawyers pretty generally subscribe to the doctrine that judicial institutions would be imperiled if judges were without power summarily to convict and punish for courtroom offenses. Our recent decisions, however, have expressed more cautious views about the judicial authority to punish for contempt. Returning to the early views of this Court, we have marked the limits of that authority as being "the least possible power adequate to the end proposed." In re Oliver (333 U. S. 257, 274), and cases there cited. The end proposed is power adequate in the court to preserve order and decorum and to compel obedience to valid court orders. To achieve these ends—decorum and obedience to orders—courts must have power to act immediately, and upon this need the power of contempt rests. Concurring opinion, *United States* v. *United Mine Workers of America*, supra (330 U. S. 331–332). Measured by this test, as Judge Charles Clark's dissenting opinion pointed out, there was no necessity here for Judge Medina's summary action, because the trial was over and the danger of obstructing it was passed. For the same reason there was no longer need, so far as that trial was concerned, to try petitioners for their courtroom conduct without benefit of the Bill of Rights procedural safeguards.

A concurring judge in the court of appeals feared that it might bring about "demoralization of the court's authority" should any one other than Judge Medina try the case. The reason given was: "For instance, in all likelihood, at a trial of the lawyers, Sacher would introduce the testimony of himself and others in an effort to prove that he was not 'angrily shouting,' as charged in specification VII, and did not speak 'in an insolent manner,' as charged in specification VIII; Gladstein would similarly seek to prove there he did not 'angrily' advance 'toward the bench' or make remarks in a 'truculent manner,' as charged in specification VIII, and did not speak to the judge 'in a sarcastic and impertinent manner,' as charged in specification VI"; etc. (182 F. 2d 416, 461). What would be wrong with this? Are defendants accused by judges of being offensive to them to be conclusively presumed guilty on the theory that judges' observations and inferences must be accepted as infallible? There is always a possibility that a judge may be honestly mistaken. Unfortunately, history and the existence of our Bill of Rights indicate that judicial errors may be from worse causes.

The historic power of summary contempt grew out of the need for judicial enforcement of order and decorum in the courtroom and to compel obedience to court orders. I believe the idea of judges having unrestricted power to bypass the Bill of Rights in relation to criminal trials and punishments is an illegitimate offspring of this historic coercive contempt power. It has been said that such a "summary process of the Star Chamber slipped into the common law courts," and that the alleged ancient history to support its existence is "fiction." With the specific reservation that I think summary contempt proceedings may be employed solely to enforce obedience and order, and not to impose unconditional criminal punishment. I agree with this statement by Mr. Justice Holmes: "I would go as far as any man in favor of the sharpest and most summary enforcement of order in Court and obedience to decrees, but when there is no need for immediate action, contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts." (*Toledo Newspaper Co.* v. *United States* (247 U. S. 402, 425–426).)

I believe these petitioners were entitled to a jury trial. I believe a jury is all the more necessary to obtain a fair trial when the alleged offense relates to conduct that has personally affronted a judge. The majority here and the majority below appear to have affirmed these convictions on the assumption that appellate review so fully guarantees a fair trial that it is an adequate substitute for trial by jury. While I agree that the power of lawyer-judges to set aside convictions deemed prejudicial or erroneous is one vital safeguard of liberty, I cannot agree that it affords the full measure of security which the Constitution has provided against unjust convictions. Preference for trial by a jury of laymen over trial by lawyer-judges lies behind the constitutional guaranty of trial by jury. I am among those who still believe in trial by jury as one of the indispensable safeguards of liberty.

Justice Douglas also declared:

I also agree that petitioners were entitled by the Constitution to a trial by jury.

These opinions clearly reflect the growing emphasis in juridical thinking on the sanctity of the constitutional right of trial by jury in prosecutions for crimes and the insistence that a prosecution for a criminal contempt is a prosecution for a crime.

In a more recent case, *Offutt* v. *United States* (348 U. S. 11 (1954)), we find similar expressions of the Justices regarding the constitutional right to trial by jury in criminal contempt cases.

In the Offutt case during the course of a criminal trial in a United States district court the judge became personally embroiled with the defense counsel during which the judge displayed animosity and a lack of proper judicial restraint. At the close of the trial, acting under rule 42 (a) of the Federal Rules of Criminal Procedure, the judge summarily found the defense counsel guilty of criminal contempt for "contumacious, and unethical conduct during the trial" and ordered him imprisoned for 10 days. The court of appeals agreed that the counsel was guilty of reprehensible misconduct but found that "appellant's conduct cannot fairly be considered apart from that of the trial judge" and reduced the punishment to 48 hours.

The Supreme Court held that in the exercise of the Court's supervisory authority over the administration of criminal justice in the Federal court the contempt conviction should be set aside and the cause be remanded to the district court with a direction that the contempt charges be retried before a different judge, citing *Cooke* v. *United States* (267 U. S. 518).

Several Justices joined in the opinion of the Court and concurred in the re-

versal and remand of the case for hearing before another judge. They stated that "they would go further, however, and direct that petitioner be accorded a jury trial for reasons set out in the dissents in *Sacher* v. *United States* (343 U. S. 1, 14–23), and *Isserman* v. *Ethics Committee* (345 U. S. 927).

I wish to emphasize that these opinions go much further than the jury trial amendment the Senate adopted, first, because they state that an accused has a constitutional right to a jury trial in a criminal contempt proceeding, whereas the O'Mahoney amendment merely sought to provide a statutory right of trial by jury, and secondly, the opinions which I have quoted extend the constitutional right of trial by jury to cases of direct criminal contempt, whereas the O'Mahoney amendment would extend this cherished liberty only to cases involving indirect criminal contempt.

A recent expression of the Supreme Court of the United States was given in the jointly decided cases of Reid against Covert and Kinsella against Krueger, listed as Nos. 701 and 713 of the October term, 1955, decided on June 10, 1957. These were the famous cases involving the wives of servicemen who had been convicted by military tribunals of having murdered their husbands, who were serving in the armed services abroad. I need not recite all the facts in the cases but the Court had originally decided that the military trials of Mrs. Smith and Mrs. Covert were constitutional, 351st United States Reports, pages 470, 487. The majority in those cases held that the provisions of article III and the fifth and sixth amendments, which require that crimes be tried by a petit jury after indictment by a grand jury did not protect an American citizen when he was tried by the American Government in foreign lands for offenses committed there. The Supreme Court subsequently granted a petition for rehearing, 352d United States Reports, page 901.

I realize, of course, that these cases do not precisely involve the question of whether a person is constitutionally entitled to the right of trial by jury in a prosecution for criminal contempt. The decision in the combined cases, however, clearly shows the emphasis that the Supreme Court of the United States places upon the sanctity of the right to trial by jury and indicates that with the recently changed composition of the Court there was no hesitancy on the part of the majority of the members to upset even a recent case on the constitutional ground that the right to trial by jury had been denied.

Let us consider some of the passages from the majority opinion. The opinion declares:

> The rights and liberties which citizens of our country enjoy are not protected by custom and tradition alone, they have been jealously preserved from the encroachments of Government by express provisions of our written Constitution.
>
> Among those provisions, article III, section 2, and the fifth and sixth amendments are directly relevant to these cases. Article III, section 2, lays down the rule that:
>
> "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."
>
> The fifth amendment declares:
>
> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."
>
> And the sixth amendment provides:
>
> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."
>
> The language of article III, section 2 manifests that constitutional protections for the individual were designed to restrict the United States Government when it acts outside of this country, as well as here at home. After declaring that all criminal trials must be by jury, the section states that when a crime is "not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." If this language is permitted to have its obvious meaning, section 2 is applicable to criminal trials outside of the States as a group without regard to where the offense is committed or the trial held. From the very first Congress, Federal statutes have implemented the provisions of section 2 by providing for trial of murder and other crimes committed outside the jurisdiction of any State "in the district where the offender is apprehended, or into which he may first be brought." The fifth and sixth amendments, like article III, section 2, are also all inclusive with their sweeping references to "no person" and to "all criminal prosecutions."
>
> This Court and other Federal courts have held or asserted that various constitutional limitations apply to the Government when it acts outside the continental United States. While it has been suggested that only those constitutional rights which are "fundamental" protect Americans abroad, we can find no warrant, in logic or otherwise, for picking and choosing among the remarkable collection of "Thou shalt not" which were explicitly fastened on all departments and agencies of the Federal Government by the Constitution and its amendments. Moreover, in view of our heritage and the history of the adoption of the Constitution and the Bill of Rights, it seems peculiarly anomalous to say that trial before a civilian judge and by an independent jury picked from the common citizenry are not fundamental rights. As Blackstone wrote in his Commentaries:
>
> "The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases. * * * It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of 12 of his neighbors and equals."
>
> Trial by jury in a court of law and in accordance with traditional modes of procedure after an indictment by grand jury has served and remains one of our most vital barriers to governmental arbitrariness. These elemental procedural safeguards were embedded in our Constitution to secure their inviolateness and sanctity against the passing demands of expediency or convenience.

Then at another point the opinion declares:

> Colonials had also seen the right to trial by jury subverted by acts of Parliament which authorized courts of admiralty to try alleged violations of the unpopular Molasses and Navigation Acts. This gave the admiralty courts jurisdiction over offenses historically triable only by a jury in a court of law and aroused great resentment throughout the Colonies. As early as 1765 delegates from nine colonies meeting in New York asserted in a declaration of rights that trial by jury was the inherent and invaluable right of every citizen in the Colonies.
>
> With this background it is not surprising that the Declaration of Independence protested that George III had "affected to render the military independent of and superior to the civil power" and that Americans had been deprived in many cases of "the benefits of trial by jury." And those who adopted the Constitution embodied their profound fear and distrust of military power, as well as their determination to protect trial by jury, in the Constitution and its amendments. Perhaps they were aware that memories fade and hoped that in this way they could keep the people of this Nation from having to fight again and again the same old battles for individual freedom.

Because of these and other Supreme Court opinions which could be cited, I assert that there is reason to believe that if we pass a law which gives to a Federal judge the authority to decide whether an accused person shall or shall not have the right to a trial by jury in cases of indirect criminal contempt the courts will strike the measure down and brand it as an unconstitutional infringement of the right guaranteed in article III, section 2 of the Constitution and in the sixth amendment.

Similarly, the adoption of the proposed compromise would reverse the 126-year history of public policy declared by Congress, which has been to extend rather than restrict the right to trial by jury. Following the impeachment trial of Judge Peck in 1831, Congress adopted the Buchanan-Webster amendment extending the jury trial right, which has been recodified as section 401 of title 18 of the Criminal Code. The long line of judicial abuses and aggressions in cases arising out of labor disputes lead to the enactment of a provision in the Clayton Act of 1914, which has been recodified as sections 402 and 3691 of title 18. These sections likewise extend rather than restrict the right to trial by jury. The Norris-La Guardia Act of 1932 was an additional recognition by Congress of the importance of extending the statutory right to jury trial. Even as late as 1948 a provision of the Norris-La Guardia Act was recodified and reenacted as section 3692 of title 18. There, again, it was declared by Congress to be the public policy of the United States to preserve and extend the right to trial by jury.

Despite these facts of legislative and judicial history of the United States, we are today told that in order to satisfy a majority in the House of Representatives we must compromise the constitutional principle guaranteed in article III, section 2 of the Constitution and in the sixth amendment. We are told that we must nullify and reverse the 126-year legislative history of extending the right to trial by jury. We are told that, despite the growing concern in modern juridical thinking in favor of broad extensions in the interpretation of the

constitutional right to trial by jury, that precious right should be freely given or freely taken away upon the whim and caprice of a single man.

In addition to the fact that the proposal now before us is clearly an abdication of the principles embodied in our constitutional and statutory laws and judicial decisions, the proposal otherwise is bound to be productive of great evil and may well bring the entire judiciary into scorn, ridicule, and disrepute.

In the first place, despite the fact that the so-called compromise has been modified since its original presentation last week, it still requires a Federal district judge to prejudge the facts in a case before he can make a determination as to whether or not an accused person shall be entitled to the right to a trial by jury. It would invite a judge to make his decision upon the basis of hearsay, newspaper articles, and insinuations and unsubstantiated assertions whispered into the ear of the judge. I agree with those who assert that any good judge would grant the right to trial by jury, but we cannot assume such beneficence or wisdom on the part of all men having life tenure of office when we are considering granting them such broad and unlimited authority. As Senator ERVIN has stated regarding so many other features of the pending measure, this proposal gives to a single official broad powers which no bad man ought to have and no good man ought to want.

In the second place, the so-called compromise injects, for the first time, into our Anglo-American jurisprudence the strange and alien philosophy that the fundamental democratic process of trial by jury is not a matter of right but is rather a privilege which can be granted or denied on the basis of considerations other than legal—on the basis of financial or fiscal considerations. Such a fiscal determination by an economy-minded judge might be a fine of exactly $300, which means that the accused has been "$300 bad" and that he shall be denied his right to a trial by jury. If, on the other hand, a more free-spending judge regards the defendant as having been "$300.01 bad," then, lo and behold, 1 penny's difference assures him his constitutional right to trial by jury.

Under the so-called compromise, a judge with a bent more toward imposing imprisonment as punishment for criminal contempt, might order the defendant to be incarcerated. He might determine that the accused has been "45 days bad," to the very second, and thus there will be no jury trial for the likes of him. If, however, a judge should prescribe a sentence of 45 days and 1 minute, then the accused would be given his jury trial.

In other words, the strange and alien philosophy which prompted this latest proposal declares that if a man is a little bad he has no right to a jury trial, whereas if he is very bad he shall be given that right.

I contend, Mr. President, that it is patently ridiculous to assert that the safeguard of trial by jury should be granted or denied at the sufferance of a single man. It is ridiculous to assert that the right of trial by jury should be granted or denied on the basis of 1 cent in fines. It is ridiculous to assert that our basic democratic process of trial by jury should be granted or denied on the basis of 1 day, 1 hour, 1 minute, as part of a defendant's sentence to jail. Is a paltry sum or a fleeting moment to determine the precious right to trial by jury?

The compromise proposal, on the pretense of doing away with that which has ben so erroneously called second-class citizenship, is in fact providing for a second-class contempt—a contempt proceeding whereby the basic rights of a free people may arbitrarily be swept away and an accused person be left shorn of the basic safeguards that protect him from tyranny.

In the third place, in many instances it would strip from the Federal judge his right and duty to be a fair and impartial arbiter of the rights of an accused person. In cases where the judge decides to impose a fine in excess of $300 or a jail sentence in excess of 45 days, the accused person could demand a trial de novo before a jury. We would then behold the incredible spectacle of the judge who previously had made the law the defendant was accused of violating, who had indicted the accused, who had tried the accused, who had found the accused to be guilty, and who had affixed the sentence, presiding at the jury trial in which the accused would theoretically have a fair and impartial judgment rendered. Such a strange and indefensible procedure, I submit, Mr. President, can only be calculated to engender contempt in the minds and hearts of a free people for any man who possesses such powers.

As I have previously emphasized, the Founding Fathers embodied in the Constitution and the Bill of Rights their determination to protect trial by jury. Thus they sought to avert the necessity of having to fight again and again the same old, hard-won battles for individual freedom. They would never have dreamed, I am sure, that despite their efforts to secure forever cherished liberties such as the right to trial by jury, in the Senate today we would find ourselves fighting the battle for individual freedom. We are fighting that battle against those who seem to regard trial by jury as a thing of another day, another year, another age; as a ragged, old relic of bygone years that perhaps has served its purpose well, but has no place in the fast-moving, dynamic, modern America. Perhaps they are willing to shed a tear at its passing, in loving memory of its past greatness in protecting against tyranny. But they are not willing to let affection for tried and true institutions quell the tempest generated by powerful pressures or misguided zeal. Thus, they are willing to say to the constitutionally ordained institution of trial by jury: "Up to a point, you did your job well, and we are grateful. We shall always have sweet memories of you, and pay you our tribute whenever the opportunity conveniently presents itself. But when you do not serve our purposes, you must hie thee off to other realms, where people still cherish this ancient bastion of human liberty. And so we bid you a fond farewell."

Mr. President, the right to trial by jury in all criminal prosecutions is exactly what the Constitution says it is: It is a right—not a privilege, not special treatment, not an institution to be bargained away or to be granted or denied at the discretion of one man or any group of men. As Jeremiah Black said:

> I prove my right to a trial by jury as I would prove my title to an estate if I held in my hand a solemn deed conveying it to me, coupled with undeniable evidence of long and undisturbed possession under and according to the deed. There is the charter by which we claim to hold it. It is called the Constitution of the United States. It is signed by the sacred name of George Washington, and by 39 other names only less illustrious than his. They represent every independent State then upon this continent, and each State afterwards ratified their work by a separate convention of its own people. Every State that subsequently came in acknowledged that this was the great standard by which their rights were to be measured. Every man that has ever held office in the country from that time to this, has taken an oath that he would support and sustain it through good report and through evil.

Mr. President, I reiterate, for all those who will listen, that the sixth amendment to the Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, * * *.

As Jeremiah Black further declared:

> Is there any ambiguity there? If that does not signify that a jury trial shall be the exclusive and only means of ascertaining guilt in criminal cases, then I demand to know what words or what collocation of words in the English language would have that effect? Does this mean that a fair, open, speedy, public trial by an impartial jury shall be given only to those persons against whom no special grudge is felt by the Attorney General, or the Judge Advocate, or the head of a department? Shall this inestimable privilege be extended only to men whom the administration does not care to convict? Is it confined to vulgar criminals, who commit ordinary crimes against society, and shall it be denied to men who are accused of other offences? * * * No; the words of the Constitution are all embracing "As broad and general as the casing air."

Mr. President, the sanctity of the tradition and guaranty of trial by jury were enshrined in these immortal words:

> I do not assert that the jury trial is an infallible mode of ascertaining truth. Like everything human, it has its imperfections. I only say, that it is the best protection for innocence and the surest mode of punishing guilt that has yet been discovered. It has borne the test of a longer experience, and borne it better, than any other legal institution that ever existed among men. England owes more of her freedom, her grandeur, and her prosperity, to that than to all other causes put together. It has had the approbation not only of those who lived under it, but of great thinkers who looked at it calmly from a distance, and judged it impartially * * * and no people ever adopted it once and were afterward willing to part with it.

Mr. President, I want the record to be abundantly clear that I was never

counted among those who inherited that great safeguard of personal freedom, the institution of trial by jury, who enjoyed its benefits and its blessings, and who "were afterward willing to part with it."

In a moment of impatience for adjournment, let us not unadvisedly vote to have the Senate abdicate its historic role as the impregnable fortress of constitutional liberty. Let us strike this measure down, so that all the world shall know that the Senate will not compromise with principle, for compromise with principle is nothing more or less than surrender of principle. The Senate has already made its stand—I would hope, its irrevocable stand—in behalf of the principle of trial by jury. Let us neither retreat 1 inch nor surrender a single principle of justice where the rights and freedom of our people are at stake. Let us purge this legislation from the Halls of Congress, so that men may always say, "Here was the Senate in its finest hour, rendering its highest service to the American people."

Mr. President, some time ago, the Senator from Rhode Island [Mr. GREEN], the distinguished and able chairman of the Senate Foreign Relations Committee, requested the junior Senator from Alabama [Mr. SPARKMAN] to undertake for this committee the important assignment of visiting the countries of the Far East and of southeast Asia, and making to the committee recommendations regarding these vital areas. The junior Senator from Alabama agreed to the assignment, and a date was set well beyond what was expected to be the date for the sine die adjournment of Congress.

The assignment called for an extensive itinerary throughout these great and vital areas of the world. The assignment was of such a nature that details had to be worked out in advance of departure from this country. Schedules and appointments had to be arranged and transportation planned.

Plans in connection with the assignment were completed last week, and Senator SPARKMAN'S departure was scheduled for last Saturday night.

Senator SPARKMAN met with the southern Senators of our group in Senator RUSSELL'S office on Saturday morning, and would not consent to leave on the assignment until he was assured by Senator GREEN of a live pair in connection with the vote to be taken on the amendments of the House to the amendments of the Senate numbered 7 and 15 to House bill 6127.

The junior Senator from Alabama [Mr. SPARKMAN] has been a bulwark in the fight to kill this politically inspired and unnecessary legislative proposal, or, failing that, to eliminate from the bill its worst and most dangerous provisions. We are all indebted to him for his contribution in this momentous fight.

Were he here today, he would speak out in opposition to the passage of this proposed legislation. He prepared a statement to be used as part of his planned speech. I ask unanimous consent that this statement be printed in the RECORD immediately following the comments I have just made.

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

STATEMENT PREPARED BY SENATOR SPARKMAN IN OPPOSITION TO THE CIVIL RIGHTS BILL

We from the South have worked together from the very beginning in opposition to the so-called civil rights bill. We have felt completely justified in doing so because of the great harm the bill would do.

Many Democrats and Republicans outside the South agreed with us regarding some of the most vicious and most dangerous provisions of the original bill. With their help we have been able to eliminate many of the worst features of the bill.

It was clear to most Members of the Senate, to many Members of the House, and to Americans all over the Nation that the bill as originally drawn would have gone far toward destroying the authority of State and local governments, and also toward destroying the right of jury trial guaranteed by the Constitution. The results would have been calamitous.

The very foundations on which this country has grown to be great, and has become a beacon of democracy and individual freedom for all the nations of the world, would have been done irreparable harm. A sufficient number understood these dangers to help us from the South to make major changes in the bill and to remove much of its danger.

Now we have before us a compromise of the Senate version of the bill. We from the South—and I dare say the same is true of many outside the South—do not like this compromise. We recognize, though, the cold hard reality that majorities in both Houses of Congress are in a mood to pass the bill with the compromise, and to adjourn Congress. As strong as members of our southern group oppose this bill and as great as we believe the danger in the long run to be, we cannot but recognize and at the same time deplore the great odds against us.

I want to point out that none of us from the South who have opposed every word and every comma of this bill from the start was a party to working out the compromise.

The compromise goes far toward restoring to the bill one of the dangerous features removed in the Senate—the impairment of jury trials.

To me it came personally as a great surprise.

I have known all the Federal judges in Alabama for years. They are good friends of mine. They are all honorable men steeped deeply in the Constitution and in the desire to preserve the constitutional rights that have given to the people of this Nation the greatest protection ever accorded by any government to its people. I believe they recognize the importance of trial by jury. I have confidence in their acting to uphold and to preserve this great constitutional right.

Even should they do so, however, and even should the same be true of every judge in every state of this Nation, the compromise presented to the Senate is unwise.

Some, of course, will argue that where a man is to be imprisoned for 45 days or less and is not to be fined in excess of $300 in criminal contempt cases, there is no justification for grave concern. Some will contend that the penalty is too small to cause concern, that right of jury trial in cases in excess of these penalties gives sufficient protection to the jury principle.

I disagree wholeheartedly with any such claims. People receiving such penalties will rightfully consider them severe, and they will want jury trials.

I submit that the denial of one's liberty under such circumstances for even 1 day without a trial by jury of his peers is abhorrent to freemen and does great damage to our judicial system.

The important thing to remember is that this compromise will take away the absolute right to trial by jury secured by the constitution to every citizen accused of crime.

This is the right that we fought on the Senate floor for a period of several weeks to retain. This is the right that Senators from all parts of the country fought shoulder to shoulder to write into this legislation. This is the right that our forefathers struggled for centuries to establish. It was the abuse of this right by the King of England that caused the colonies to revolt, and our Founding Fathers to write into the Constitution the guaranty of jury trial.

The compromise is clearly unconstitutional. I cannot conceive of the members of the Supreme Court, once the matter is before them, taking any action other than to declare it unconstitutional.

I realize that the bill, even with the compromise provision in it, is a much less vicious and a much less dangerous bill than that originally drawn by the Attorney General and sent to the Congress by the President of the United States. Even so, it is still a bad bill and it should be given a permanent burial.

This bill was conceived in political iniquity. It will do the Negro more harm than good. It will serve to drive further apart the leaders of both races in the South where the problem is the greatest. It will create disunity among our people at a time when unity is sorely needed.

The bill is completely unnecessary. The Negro has made tremendous gains in the South during the last 25 years. As the economy of the South has improved so have the living standards of both our Negro and white citizens. Along with better living standards and an improved economy have come improved race relations.

As the education level of the Negro has improved he has registered and voted. The Southern Regional Council reported recently that during the last 10 years the percentage of Negro voters in the South has increased by 500 percent.

Negro teachers with similar training and experience receive the same salaries as do white teachers. School facilities for Negroes are rapidly being equalized with those of whites and in many cases far excel those of whites.

Until the Supreme Court decision on school desegregation and the agitation from outside sources thereafter, racial relations between the Negroes and whites of the South were on a friendly basis.

Since the Supreme Court decision, race relations have deteriorated. The leaders of the two races are no longer able to sit down together and work out problems to the mutual satisfaction and advantage of both races. Our people have grown fearful and resentful.

This bill will simply serve to create more hard feelings and more distrust among our people. It will further impair the progress our people have made. I repeat, it is completely unnecessary and the ills it will create will plague us in the years ahead.

Mr. CASE of South Dakota. Mr. President, the House of Representatives has concurred in the amendments of the Senate with two amendments, which are amendments to Senate amendments Nos. 7 and 15.

The amendment of the House of Representatives to Senate amendment No. 15 modifies the so-called trial-by-jury provisions which were adopted by the Senate. That has been discussed by others.

The amendment of the House of Representatives to the amendement of the Senate No. 7 deals with the problem of protection for newspaper reporters, radio commentators, and others who might, without permission, publish

information developed by the proposed Commission in executive sessions. I rise to speak on this other amendment.

The problem sought to be met by means of that amendment was brought out in comments made on the bill after it had been passed by the Senate. I speak, therefore, for the benefit of the legislative history of the amendment.

Subsection (g) of section 102 of the bill, as originally passed by the House of Representatives, and also as passed by the Senate, read, and reads, as follows:

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than 1 year.

Mr. President, some of the newspaper publishers of the country and members of the fourth estate generally feared that the last sentence of subsection (g) might imperil reporters who reported information, which they might obtain through their natural initiative, which paralleled or was identical to evidence developed in the executive sessions of the commission.

It will be noted that the subsection provides that—

Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than 1 year.

A parliamentary problem developed by reason of the fact that that language of the bill as passed by the House of Representatives was not disturbed by the amendments adopted in the Senate. The bill went back to the House with that paragraph untouched and hence not in disagreement. Under the rules pertaining to conferences, Mr. President, and under the House rules applicable to House bills returned from the Senate, sentences not disturbed or changed by amendment in Senate passage of a bill are not subject to direct change by conferees or by motions to concur with an amendment on the floor of the House.

Senate amendments may be accepted by the House or they may be accepted with a modification by concurrence with an amendment either on the floor or in connection with a conference report.

The problem of those concerned by the possible application of the penalty subsection to news reporters, however, was that paragraph (g), the penalty subsection of section 102, was not amended in any way—hence not in disagreement.

In thinking over that problem, after it developed, and in reading the amendments which had been adopted, however, it occurred to me that one of the amendments which was adopted by the Senate related to that subject matter, in a way, and that therefore, since that amendment which had been adopted by the Senate would be within the purview of conferees, it would also be within the power of the House to deal with by an amendment to the Senate amendment.

That is the course which has been followed in the bill as it is now before us for final action.

I now invite the attention of the Senate to amendment No. 7 of the Senate, which was a part of the amendment to section 105, offered by the distinguished minority leader, the Senator from California [Mr. KNOWLAND], dealing with the powers of the Commission.

Paragraph (b) of section 105, as it originally passed the House of Representatives, provided that the Commission could accept and utilize the services of voluntary and uncompensated personnel.

Objection was made to that by various Members of the Senate. I recall that the distinguished Senator from Georgia [Mr. RUSSELL], thought that would interfere with the proper functioning of the Commission, and, perhaps, make it a creature of some existing agency.

In any event, the Senator from California proposed an amendment to section (b) which struck out the language providing for the utilization of voluntary and uncompensated personnel, and proposed, instead, this amendment, which the Senate adopted:

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel.

In reading that amendment over, after the bill had passed the Senate, it occurred to me that it offered a way to meet the problem raised in the section to which I have previously alluded with regard to the unauthorized release of testimony.

Since the ban on the release or use of testimony was on testimony or evidence taken in executive session, it would naturally follow under the Knowland amendment that the only persons present in executive session would be members of the Commission or employees of the Commission, or persons employed or compensated by the United States to take the testimony, or transcribers of the testimony whose services would be compensated by the United States, or employees, perhaps, of the Government Printing Office whose services would also be compensated by the United States; and that news reporters would not be present in executive sessions of the Commission and would not be persons compensated by the United States.

Therefore on the 19th of August I made the suggestion on the floor of the Senate—and my remarks appear at pages 15131 and 15132 of the RECORD—that to the language of the Knowland amendment numbered 7 on page 7 of the bill, we could add certain words to define "whoever", as used in the section relating to the unauthorized use of evidence or testimony——

So I suggested that we add to the amendment offered by the Senator from California, and adopted by the Senate, certain language to define the word "whoever" as used in the section relating to the release or use of evidence or testimony without permission.

I suggested that the amendment might read, taking up the words of the Senator from California:

The Commission shall not accept or utilize services of voluntary or uncompensated personnel—

And adding these additional words—

and the term "whoever" as used in section 2, subsection (g), hereof shall be construed to mean a person whose services are compensated by the United States.

In addition to bringing that to the attention of the Senate, in the morning hour, August 19, I supplied copies of it to the distinguished Senator from California, to the Senator from New Mexico [Mr. ANDERSON], and to others, and to some of the leaders or possible conferees on the part of the House of Representatives, if the bill should go to conference.

Mr. KNOWLAND. Mr. President, will the Senator yield at that point?

Mr. CASE of South Dakota. I yield to the Senator from California.

Mr. KNOWLAND. I wish to say that the Senator from South Dakota has made an accurate statement of the situation. He not only made on the floor the statement to which he refers, but he sent letters together with copies of certain suggested language to me and to the majority leader and to a number of other Senators, and, as he pointed out, also, to some of the possible House conferees.

When this bill got to the House and had been delayed for some time, and then finally there were suggestions being made of a way whereby acceptable language might be worked out, and the other problems had been solved, at informal meetings I discussed with the distinguished majority leader and with some of the leadership in the House the question of solving this problem which had caused some concern to the press of the country. The language which was suggested was the language which the Senator from South Dakota had previously proposed and of which advised a number of other Senators. That language, after having been gone over by the majority leader and the minority leader and the leadership of the House was found to be acceptable, and the fact that the Senate had amended the section to which the Senator has alluded made it possible to make this correction when the House concurred with amendments. The Senator is to be thanked for developing this record; he has made an excellent contribution toward solving the problem which had existed.

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

Mr. CASE of South Dakota. Mr. President, I deeply appreciate the remarks of the distinguished minority leader.

I yield to the Senator from New York.

Mr. JAVITS. I should like to join the majority leader in commendation of the Senator from South Dakota. I raised the question after the third reading of the bill. I stated that I could see no other way in which the correction could be made possible, although, if the Senate and the House had adopted the same language, a concurrent resolution might have been in order before the President signed any bill. The Senator from South Dakota made a very wise and a very resourceful suggestion. He solved that dilemma for all of us, and I think both the Senate and the press should

be very grateful to him for having made this excellent contribution.

Mr. CASE of South Dakota. I appreciate the remarks of the Senator from New York. I did think it would be better to handle it directly in the bill itself than to try to do it by concurrent resolution, which might or might not be adopted before the President signed the bill. To try to take care of a situation by the adoption of a concurrent resolution, in an attempt to amend a bill which has not been enacted, has always seemed to me of dubious quality if direct amendment was possible.

By making the direct amendment in the bill itself before it is finally passed, we have taken care of the situation beyond doubt or question.

Mr. President, I should like to incorporate in my remarks at this point the remarks I made on the 19th of August, together with a brief colloquy I had with the Senator from New Mexico [Mr. ANDERSON] and the Senator from New York [Mr. JAVITS], in order that the entire history of the amendment might appear in the RECORD.

There being no objection, the material will be printed in the RECORD, as follows:

THE CIVIL-RIGHTS BILL

Mr. CASE of South Dakota. Mr. President, there has been some reference in the press, and also some concern expressed, as to whether paragraph (g) of section 102 of the so-called civil-rights bill would imperil newspaper reporters who on their own initiative and by their own ability obtained information concerning evidence or testimony given at an executive session of the Civil Rights Commission. The difficulty arises under the rules of both the Senate and the House which provide that language in a bill which has not been changed by either House may not be altered by conferees.

I believe an answer can be found by an addition to the amendment which was adopted to section 105, relating to the powers of the Commission. That amendment of the Senate, which is numbered 7, struck out certain language and inserted the following:

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel.

The problem which arises with respect to paragraph (g), and the $1,000 fine provided therein, to which fear is expressed that reporters may become liable, could be corrected by adding to the amendment numbered 7 which I have read, these words:

"And the term 'whoever' as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States."

Mr. President, the reason I believe that language would reach the problem is that paragraph (g) states:

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than 1 year."

Since it is proposed by the amendment already adopted by the Senate to provide that "the Commission shall not accept or utilize services of voluntary or uncompensated personnel," the only persons who would be present at an executive session would be employees compensated by the United States.

Secondly, if we add to paragraph (b), which reads "The Commission shall not accept or utilize services of voluntary or uncompensated personnel," the words "and the term 'whoever' as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States," it would automatically exclude reporters of newspapers or radio or other media of public information.

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

Mr. CASE of South Dakota. I yield.

Mr. ANDERSON. I merely wish to say that I am very anxious to have this difficulty resolved. I am glad the Senator from South Dakota has devoted his time in trying to resolve it. I hope it may be resolved so that the section in the bill will clearly make it possible for a newspaper reporter to develop a story without being in danger because he does so.

Mr. CASE of South Dakota. Under a rule which the House sometimes adopts, the House takes a bill from the desk of the Speaker to the end—and the term "to the end" is used—that amendments of the Senate be concurred in, or that amendments of the Senate be agreed to with certain amendments.

The adoption of that rule takes the place of a conference. If it is a concurrence with an amendment, then the additional amendment would have to come to the Senate for concurrence in the modification.

That is why I am suggesting this procedure, since it has been suggested that the House is considering the possibility of a rule which would concur with certain amendments, presumably limiting the jury-trial provision to criminal contempt cases arising under the act itself.

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

Mr. CASE of South Dakota. I yield.

Mr. JAVITS. I am very glad to hear the suggestion made by the Senator from South Dakota. The Senator will remember that I called to the attention of the Senate this very grave problem. I hope it will be worked out in a way which will be permissible under the rules of the House. All of us should be very grateful to the Senator from South Dakota for making the suggestion, which is so obviously based on careful and considered judgment.

Mr. CASE of South Dakota. I thank the Senator from New York. He is familiar with the rules of the House and knows the parliamentary problem which exists.

Mr. CASE of South Dakota. In conclusion, I merely wish to say that there should be no doubt of any kind now that the press of the country and the reporters generally are exempted from any applicability of the penalty provided for unauthorized disclosure of evidence taken before the Commission in executive session. Members of the press could not be considered to be persons compensated by the United States, so that if they developed information in some way, they would not come under the penalty provisions.

In closing, I should like to recall, in essence, what I said earlier during the debate when the bill was before the Senate. That this Congress is to pass this civil-rights bill is due in large degree to the determined, unwavering, iron will of the distinguished minority leader, the senior Senator from California [Mr. KNOWLAND]. It was his action that kept the bill before the Senate when it came over from the House of Representatives. It was his motion that made it the pending business of the Senate. He resisted every effort to sidetrack it. He worked steadily to improve the bill and to preserve it when others might have given up. In this he was joined by the distinguished majority leader, the Senator from Texas [Mr. JOHNSON].

The cooperation of others and the spirit of trying honestly to serve our common country, exhibited by Members on both sides of the aisle and on both extremes of the issue, so to speak, must also be credited for the enactment of this legislation. There has been debate. There has been difference of opinion. But there has not been blind, stubborn, unreasoning bitterness. So we come to this point of final voting on the amended bill as modified by House amendments to Senate amendments.

This bill, when enacted into law, will be an outstanding piece of legislation so far as the Eisenhower administration is concerned. Civil-rights legislation has been a part of the Eisenhower program. It is the first major legislation of this character in some eighty-odd years.

This bill will be an effective piece of legislation, in my judgment.

It provides for a Civil Rights Commission with powers to investigate and recommend. If it did nothing more than that, it would represent a great social advance without question.

Then there is the provision for an additional Assistant Attorney General.

There are the specific provisions of part IV to protect the right to vote.

This is a well-rounded piece of legislation. Possibly, it is not entirely satisfactory to every Member of the Senate but it has worked its way through the procedures of the House of Representatives and of the Senate in the best parliamentary traditions.

Changes may come with experience in operation, but I predict that this Civil Rights Act of 1957 will be a landmark in the legislative history and the social and political history of the United States.

Mr. LONG. Mr. President, during the past 2 months my opposition to the so-called civil-rights bill has been made amply clear to the Senate and to the Nation. I urge the Senate to reject the so-called compromise bill.

The bill as it passed the Senate protected in his right to a jury trial every citizen who is charged with criminal contempt. That provision has been eliminated by the House. The bill before us makes it a matter of discretion with the judge. In other words, a citizen's right to a jury trial is made a matter of discretion at the whim of a Federal judge. A citizen's right in this Nation should not depend upon the caprice of a Federal judge appointed for life and beyond account to the electorate. If the measure is passed in its present form, Senators will live to regret voting for it. If it should pass, as I fear it will, I shall immediately start working to restore the right of citizens to a jury trial. I urge my southern friends as well as all Senators who voted for the jury-trial provision of the bill as passed by the Senate to join me at the beginning of the next session to stop and reverse the process of stripping citizens of their constitutional rights before it goes further.

Meanwhile, I expect to use my best efforts to persuade every judge in Louisiana to accord every citizen his right

to a jury trial, as a judge may do if he desires. In that way I hope to prevent the evil in the bill from injuring citizens in Louisiana, in the event the bill should pass.

It would be a serious mistake for Congress to eliminate the due process of justice which citizens enjoy under the Constitution and replace it with the contempt powers of a Federal court. Government by contempt will achieve little more than contempt for Government.

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

The PRESIDING OFFICER. The Secretary will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on concurring in the amendments of the House to Senate amendments Nos. 7 and 15.

Mr. KNOWLAND and Mr. MANSFIELD asked for the yeas and nays.

The yeas and nays were ordered.

Mr. TALMADGE. Mr. President, H. R. 6127 was passed by the House of Representatives and reached the floor of the United States Senate without any significant change from the iniquitous version submitted to Congress by Attorney General Brownell.

As taken up initially by the Senate, it was a force bill of the rankest order. It would have conferred upon the Attorney General of the United States unlimited power to harass, intimidate, and control the thoughts and actions of all Americans in all areas of human conduct. It would have empowered the President of the United States—or the Attorney General acting for him—to use the full armed might of the Nation to force integration of the races in every facet of life, public and private, in the South. It would have repealed the constitutional right of trial by jury.

Seventeen determined southern Senators—with all odds against them—set out to do what their counterparts in the House of Representatives were unable to do: to eliminate the more vicious provisions of this monstrous legislation. The success of their skillful, courageous efforts and the effectiveness of their persuasive, dignified arguments speak for themselves.

The measure as the Senate returned it to the House of Representatives was an emaciated shadow of its former brute self.

The Senate version struck out those provisions which would have restored bayonet rule and authorized the use of the Army, Navy, and Marine Corps to force racial integration in the South.

The Senate version eliminated those provisions which would have given the Attorney General dictatorial powers to regiment the thoughts and actions of the American people.

The Senate version contained an ironclad guaranty that the constitutional right of trial by jury would be respected and upheld in all cases of criminal contempt arising under it.

The success of the southern Senators in pyramiding their 17 votes to win these herculean victories for constitutional government and individual liberty was beyond their fondest original expectation. As repugnant as are the remaining provisions to constitutional principle and States rights, it nevertheless had to be admitted, even by advocates of the measure, that southern Senators gained far more than they lost.

It had been hoped that the House of Representatives would sustain the full gains made by the Senate.

Unfortunately, however—through a so-called compromise which compromises at best principle and at worst the Constitution of the United States—the jury-trial guaranty was sacrificed.

After only an hour's delay, the House returned the bill to the Senate.

The problem then confronting southern Senators was how best to protect the interests of their constituents.

Certain Members of the House of Representatives presumed to advocate that we conduct a filibuster against the bill.

I do not know why these men arrogated unto themselves greater wisdom than the combined intellect of 16 southern Senators. It could not possibly be because they were more successful in eliminating the more vicious and iniquitous provisions of the bill.

To be sure, the fact that a grandstand of long-winded speeches would be immediately popular with our constituents—who, like us, are unalterably opposed to this bill in any form—was not lost upon us.

But reason dictated that, in determining our course of action, we should measure the gains we had made against the potential losses.

The facts we had to face were these:

First. It would be impossible for 17 Senators to conduct a filibuster until the convening of the 86th Congress in January 1959. Debate in the Senate can be limited by 64 votes, and with 79 Members of the Senate favoring a civil-rights bill, there exist 15 votes more than the number necessary to impose gag rule at will.

Second. There is pending in a subcommittee of the Rules Committee of which I am chairman 7 different resolutions—Senate Resolutions 17, 19, 21, 28, 29, 30, and 32—to liberalize the provisions of Senate rule XXII, under which debate in the Senate can be limited. Those resolutions contain an aggregate of 54 signatures—5 more than necessary to pass any one of them.

As chairman of that subcommittee, I have been successful in my insistence upon full hearings on, and thorough study of, these resolutions before any action is taken on them. Because of the present complexion of the Rules Committee, it is well known that any filibuster attempt would result in the reporting of one or more of these pending resolutions and the imposition of a much stronger cloture rule, which would further limit the ability of individual Senators to protect their constituents.

Third. The majority of the Members of the Senate—by at least 3 to 1—favors a stronger bill than the one presently under consideration. This is evidenced by the fact that, in voting on amendments to parts III and IV of the bill, 12 to 15 Senators voted with the South on one amendment, only to vote against it on the other.

There is considerable sentiment on the part of the President and the majority of the Members of both Houses of Congress to add a new section III to this bill which would empower the Attorney General, without jury trial, to force complete integration of our society. During the course of prolonged debate, such action still could be taken.

Fourth. Next year is a Congressional election year. Both the Democratic and Republican Parties—aided and abetted by the White House and the Vice President—undoubtedly will demand next January that this same Congress pass a much stronger civil-rights bill, probably with FEPC provisions. These efforts will again require determined opposition on the part of southern Senators, and our success will depend in large measure upon the good will of Senators from other areas of our country.

Should we destroy what good will remains among independent Senators of this Congress, the passage of new, radical civil-rights legislation, with FEPC provisions, will be a foregone conclusion.

For these reasons, it was the unanimous opinion of the 16 dedicated southern Senators that no organized filibuster against the Brownell bill be conducted on the floor of the Senate.

Speaking for myself, Mr. President, I have represented, and will continue to represent, my constituents and our beloved State of Georgia to the best of my ability and according to the dictates of my conscience.

I have never compromised principle, and I never will.

But I declare to this Senate, the Nation, and the world, Mr. President, that neither will I allow those who are uninformed as to the facts and circumstances to stampede me into acts which I am convinced would, in the long run, wreak unspeakable havoc upon my people.

And it is to them, Mr. President, that I leave the judgment of my decision and action.

Mr. KNOWLAND. Mr. President, during the course of this debate, I have differed on numerous occasions with the distinguished junior Senator from Georgia [Mr. TALMADGE]. He has thought that this approach to the pending bill was wrong, and I have thought that it was right. I respect him for his opinions, and I believe he respects me and those who have differed with him for our opinions.

Anyone who knows the Senate of the United States is aware of the fact that the overwhelming majority of the Senate desires to pass a voting rights bill. There can be no question that had the majority desired to do so, cloture could have been invoked to pass the bill in its present form, with votes to spare.

As one who has served in the Senate for over 12 years, I honor the Senate of the United States and its great tradition. One of these traditions is that of free debate.

During the entire debate up until yesterday, the discussion was both germane and helpful. Up until then, the debate

had contributed to the working out of amendments and modification of the bill, some very substantial in character.

Because of the high standard of the general debate, the majority properly decided neither to circulate a cloture petition nor to attempt to invoke cloture. Had the Senate been blocked by dilatory tactics and obstructionism in debate, we would have had no other choice. That this condition did not come about is due to the restraint and the statesmanship of the opponents of the proposed legislation and to the reasonableness and the moderation of the proponents.

It has been a hard fight. I hope it leaves no scars that cannot be quickly healed.

We honor and we respect our colleagues from the South who have made an honorable and a determined fight against heavy odds. Their fight resulted in substantial amendments to the bill as it came to the Senate from the House of Representatives. I hope and believe that the Commission that will be appointed by the President of the United States under this bill will be a fair and moderate one in its approach to the great problems involved.

I make this final plea tonight particularly addressed to our colleagues from the South. Let no gulf divide us. Let us close ranks as Americans and try for just solutions to our common problems.

Mr. JOHNSON of Texas. Mr. President, there are times when men must take a long, hard look at practicalities.

This is one of those occasions.

I agree with those of my colleagues who believe that the House amendment is inferior to the Senate's version of the jury trial. I do not agree with those who maintain that it is a compromise of principle which cannot be accepted.

In my view, the principles of the Senate's jury-trial amendment have been left intact. The deficiencies of the House version have been grossly exaggerated.

The House version is not a big bad wolf with sharpened fangs and steel-tipped claws ready to leap upon innocent people. The fears in this respect cannot, in my opinion, be justified.

Neither is the House amendment a plumed knight in shining armor ready to ride to the rescue of innocent maidens. The hopes of its backers, in my opinion, are somewhat premature.

Let us be frank with all our people. The House amendment is purely and simply compromise language—the price that must always be paid for the passage of effective legislation in a controversial field.

I am no lawyer. I am not going to make a constitutional argument. But I am capable of recognizing reason and practicality.

And the practicalities are that the chances of a criminal contempt trial without a jury under this amendment are extremely remote. When they occur, the offenses will be minor and petty—about on the level of a traffic court.

No prudent judge is going to undertake a case without a jury when he will probably have to try it twice. He will call for the jury the first time—and save himself and the community some headaches.

Let us look at the other side of the coin.

This is the first civil-rights bill to pass this Congress in 82 years. It was passed solely because the Senate debated the issue in an atmosphere of reason.

If this bill is not approved, the next one will be debated in the heat of partisan politics. And neither our country nor any of its parts will benefit.

Our choice is clear.

We can pass reasonable legislation which applies to our whole country now. Or we will find punitive, vengeful legislation passed in the not too distant future.

The bill before us is a positive step forward—constructive and not punitive. The House amendment, even though I believe it is inferior to the Senate version, is a reasonable price to pay in order to remove this question from the debates in the Halls of Congress.

Let us close out this issue now and pass the bill.

SEVERAL SENATORS. Vote! Vote! Vote!

Mr. JAVITS. Mr. President, I shall not detain the Senate for more than a few minutes, but I think it is absolutely necessary that I make a brief statement. I do not believe an adequate record has been made as to the constitutionality of the new jury-trial provision.

I also believe it is necessary to say something on the other side of the coin, in view of the fact that there are some here who will endeavor to overturn what we hope will be done tonight.

For myself, Mr. President, I should like to say that the civil-rights bill does not live up to what I though we would create in the way of our first civil-rights bill in 82 years, but it is an effective step forward in a key area, which is voting rights. The bill does contain a practical solution to the jury-trial amendment, which I consider to be constitutional.

However, I think it is only fair to say that in the days ahead, I shall seek other civil-rights legislation in company with other Senators who are similarly minded, which I believe is essential to our people and our time.

Certainly, I think the next step must encompass the civil rights given to our citizens under the equal protection clause of the Constitution. Whatever still remains to be done along that line, there should at least be full agreement on the bill before us.

This action tonight will represent an advance of law which we as a Nation should make at this time. This proposal to safeguard voting rights should meet all points of view except the point of view of those who would have no civil-rights legislation whatever on the Federal level, and even such persons have conceded the critical importance of protecting the sanctity of the voting right.

While this bill represents only the beginning, it is a good beginning. It is an historic step ahead to demonstrate the recognition by the Congress of a long-neglected duty to enact civil-rights legislation.

Mr. President, as to constitutionality, the bill which we have before us, with the House amendments to the Senate amendments 7 and 15, makes a distinction between civil and criminal contempt. That item has been pointed out as evidence of unconstitutionality, yet that very distinction is made in the Gompers against Bucks Stove and Range case, a leading Supreme Court case.

Second, it is said that a splitting point in the bill is on the ground of punishment or the amount of punishment, which would make the law unconstitutional. I do not believe that is so, because there is no constitutional right to a trial by jury in the Federal courts, and therefore we are considering, in effect, a right created by statute. The citation on that is *Eilenbecker* v. *Plymouth County* (134 U. S. 31).

Third, and very importantly, Mr. President, there has been much talk of double jeopardy. There is no double jeopardy involved in the acceptance of the House amendment, because a jury trial can come only on the request of the defendant himself. Only then can the defendant obtain a jury trial de novo. The fundamental Hornbook law is that double jeopardy is a personal privilege which can be waived. It will be waived when the jury trial is requested. I cite in this regard *Brewster* v. *Swope* (180 F. 2d 984), *Himmelfarb* v. *United States* (175 F. 2d 924), *Brady* v. *United States* (24 F. 2d 397, cert. den. 278 U. S. 603), and *United States* v. *Harriman* (130 F. Supp. 198).

For these reasons, Mr. President, I believe if the bill is enacted into law it will be entirely constitutional, and I think those statements should appear of record in our deliberations.

Finally, Mr. President, as the lowest-ranking Member here, I think, except for the Member sworn in today, I should like to pay my tribute to the indefatigable courage and determination of my own leader, the minority leader on this side [Mr. KNOWLAND] who brought this bill to the calendar and, to use a very ordinary phrase, which is very true in his case, bulled it through to this day. I should like to pay my tribute to the majority leader [Mr. JOHNSON of Texas] who, by the exercise of tactical brilliance, I think rarely seen in the history of our country, brought together the necessary marshaling of forces actually to enact the bill into law. I think the country owes both of these men a debt of very deep gratitude.

I have always had the conviction that civil-rights legislation had to be bipartisan. The majority leader and minority leader have certainly proved it.

SEVERAL SENATORS. Vote! Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas that the Senate agree to the House amendments to Senate amendments Nos. 7 and 15 to H. R. 6127, an act to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States. On this question the yeas and nays have been ordered, and the Clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORE (when his name was called). Mr. President, on this vote I have a pair with the senior Senator from North Carolina [Mr. ERVIN]. If he were

present he would vote "nay." If I were permitted to vote, I would vote "yea." I withhold my vote.

Mr. GREEN (when his name was called). On this vote, I have a pair with the Senator from Alabama [Mr. SPARKMAN]. As I have said before, I asked Senator SPARKMAN to undertake for the Senate Foreign Relations Committee an assignment essential to the welfare and defense of the Nation.

He did so with the understanding that I would give him a live pair.

Were he here he would vote "nay." Were I at liberty to vote, I would vote "yea." I withhold my vote.

Mr. MANSFIELD (when his name was called). On this vote I have a pair with the senior Senator from Oregon [Mr. MORSE]. If the senior Senator from Oregon [Mr. MORSE] were present and voting, he would vote "nay." Were I at liberty to vote, I would vote "yea." I withhold my vote.

Mr. MURRAY (when his name was called). On this vote, I have a pair with the senior Senator from South Carolina [Mr. JOHNSTON]. If the senior Senator from South Carolina [Mr. JOHNSTON] were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

The rollcall was concluded.

The vote was recapitulated.

Mr. DOUGLAS. Mr. President, let me ask whether the clerk announced that the Senator from South Carolina [Mr. JOHNSTON] voted in the affirmative.

The VICE PRESIDENT. The Chair will have the clerk examine the vote.

The Chair is informed that the Senator from South Carolina [Mr. JOHNSTON] is not recorded.

Mr. DOUGLAS. Mr. President, I understood the clerk to state, on the recapitulation of the vote, that the Senator from South Carolina [Mr. JOHNSTON] had voted in the affirmative. I realize that that was not the case and that if he had been present, he would have voted in the negative, although, of course, if the Senator from South Carolina had been present and had voted, I would wish that he had voted in the affirmative.

However, the fact is that the senior Senator from South Carolina did not vote, being absent.

Mr. MANSFIELD. I announce that the Senators from New Mexico [Mr. ANDERSON and Mr. CHAVEZ], the Senator from North Carolina [Mr. ERVIN], the Senator from South Carolina [Mr. JOHNSTON], the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. NEELY], and the Senator from Alabama [Mr. SPARKMAN], are absent on official business.

I further announce that, if present and voting, the Senators from New Mexico [Mr. ANDERSON and Mr. CHAVEZ] and the Senator from West Virginia [Mr. NEELY] would each vote "yea."

Mr. DIRKSEN. I announce that the Senator from New Hampshire [Mr. BRIDGES] and the Senator from Maine [Mr. PAYNE] are absent because of illness.

The Senator from Ohio [Mr. BRICKER], the Senator from Kansas [Mr. CARLSON], and the Senator from Indiana [Mr. JENNER] are necessarily absent.

The Senator from Maryland [Mr. BUTLER], the Senator from Indiana [Mr. CAPEHART], and the Senator from Nevada [Mr. MALONE] are absent on official business.

The Senator from Kentucky [Mr. MORTON] is detained on official business.

If present and voting, the Senator from Ohio [Mr. BRICKER], the Senator from Maryland [Mr. BUTLER], the Senators from Indiana [Mr. CAPEHART and Mr. JENNER], the Senator from Nevada [Mr. MALONE], the Senator from Kentucky [Mr. MORTON], and the Senator from Maine [Mr. PAYNE] would each vote "yea."

The result was announced—yeas 60, nays 15, as follows:

YEAS—60

Aiken	Goldwater	Monroney
Allott	Hayden	Mundt
Barrett	Hennings	Neuberger
Beall	Hickenlooper	O'Mahoney
Bennett	Hruska	Pastore
Bible	Humphrey	Potter
Bush	Ives	Proxmire
Carroll	Jackson	Purtell
Case, N. J.	Javits	Revercomb
Case, S. Dak.	Johnson, Tex.	Saltonstall
Church	Kefauver	Schoeppel
Clark	Kennedy	Smith, Maine
Cooper	Knowland	Smith, N. J.
Cotton	Kuchel	Symington
Curtis	Langer	Thye
Dirksen	Lausche	Watkins
Douglas	Magnuson	Wiley
Dworshak	Martin, Iowa	Williams
Flanders	Martin, Pa.	Yarborough
Frear	McNamara	Young

NAYS—15

Byrd	Holland	Scott
Eastland	Long	Smathers
Ellender	McClellan	Stennis
Fulbright	Robertson	Talmadge
Hill	Russell	Thurmond

NOT VOTING—21

Anderson	Ervin	Mansfield
Bricker	Gore	Morse
Bridges	Green	Morton
Butler	Jenner	Murray
Capehart	Johnston, S. C.	Neely
Carlson	Kerr	Payne
Chavez	Malone	Sparkman

So the motion that the Senate concur in the amendments of the House of Representatives to Senate amendments Nos. 7 and 15 to H. R. 6127 was agreed to.

Mr. JOHNSON of Texas. Mr. President, I move that the vote by which the motion was agreed to be reconsidered.

Mr. KNOWLAND. Mr. President, I move that the motion to reconsider be laid on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from California to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. KNOWLAND. Mr. President, I ask unanimous consent that I may have inserted in the body of the RECORD a memorandum concerning the constitutionality of the provisions concerning trial with and without a jury contained in part V of the civil-rights bill.

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

MEMORANDUM CONCERNING THE CONSTITUTIONALITY OF THE PROVISIONS CONCERNING TRIAL WITH AND WITHOUT A JURY CONTAINED IN PART V OF THE CIVIL-RIGHTS BILL

The contention that the provisions contained in part V of the civil-rights bill now embodied in House Resolution 410 relating to trial with and without a jury in cases of criminal contempt arising under its provisions conflict with the guaranties of the Federal Constitution are completely without merit. The questioned provisions of the bill read as follows:

"Provided further, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however,* That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of 45 days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as nearly as may be to the practice in other criminal cases."

It has long been established in both Federal and State courts that criminal contempts may be tried by the court without a jury, without conflicting with any constitutional guaranty of the right to jury trial in criminal cases. *Eilenbecker* v. *Plymouth County* (134 U. S. 31, 1890); *Gompers* v. *Buck Stove and Range Company* (221 U. S. 418, 1911). Congress itself has repeatedly enacted laws authorizing the United States to seek injunctive relief from the Federal courts while at the same time providing that criminal contempts committed in violation of court orders under such statutes should be tried by the court without a jury, and all such statutes have been held constitutional. Among them are the following:

Title 7 U. S. C., section 216, Packers and Stockyards Act; section 292, Associations of Agricultural Producers Restraining Trade; section 499h (d), Perishable Agriculture Commodities Act, 1930; section 608a (6), Agricultural Adjustment Act.

Title 7 United States Code, section 1600, Federal Seed Act.

Title 12 United States Code, section 1731b, National Housing Act.

Title 15 United States Code, sections 4, 9, Sherman Act; section 25, Clayton Act; section 53, Federal Trade Commission re False Advertising; section 68e, Wool Products Labeling Act; section 69g, Fur Products Labeling Act; section 77t (b), Securities Act of 1933; section 77uuu, Trust Indenture Act; section 78u (e), Securities Exchange Act of 1934; section 79r (f), Public Utilities Holding Company Act; section 80a-34, 35, 51 (e), Investment Co. Act; section 80b-9 (e), Investment Advisors Act; section 522, Associations monopolizing trade in aquatic products; section 715i, Interstate Transportation of Petroleum Products; section 717s, Natural Gas Act; section 1195 (a), Flammable Fabrics Act.

Title 16, United States Code, section 825m, Federal Power Act.

Title 27, United States Code, section 207, Federal Alcohol Administration Act.

Title 29, United States Code, section 160 (j) (1), National Labor Relations Board orders; section 178, National Emergency Strikes; section 217, Fair Labor Standards Act.

Title 33, United States Code, section 519, Bridges Over Navigable Waters; section 921, Longshoremen's and Harbor Workers' Compensation Act.

Title 42, United States Code, section 2280, Atomic Energy Act.

Title 43, United States Code, section 1062, enclosures of public lands.

Title 47, United States Code, section 36, landing submarine cables; section 401 (b) Communications Act of 1934; section 5 (8), 16 (12), 43, Interstate Commerce Act.

Title 49, United States Code, section 322 (b), Federal Motor Carrier Act; section 647 (a), Civil Aeronautics Act; section 916 (b), Water Carriers Act; section 1011, 1017 (b), Freight Forwarders Act.

Title 50, United States Code Appendix 2156, Defense Production Act.

It is equally well established that minor criminal offenses may be tried without a jury. *Callan* v. *Wilson* (127 U. S. 540); *Schick* v. *United States* (195 U. S. 65); *District of Columbia* v. *Colts* (282 U. S. 63); *District of Columbia* v. *Clawans* (300 U. S. 617). *State Ex Rel. Sellars* v. *Parker* ((1924) 87 Fla. 181); *Loeb* v. *Jennings* (133 Ga. 797); *Ex Parte Wooten* ((1884) 62 Miss. 174); *Ex Parte Garner* (246 S. W. 371 (1922)), Texas Criminal Appeals.

Congress has provided for the trial of minor offenses without a jury in the District of Columbia by the enactment of section 11–616 of the District of Columbia Code, which provides: "where the accused would not by force of the Constitution of the United States, be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300 on imprisonment or punishment for the offense may be more than 90 days, the accused shall demand a trial by jury, in which case the trial shall be by jury," and that section has been held to be constitutional. *District of Columbia* v. *Clawans* (300 U. S. 617).

Laws have been enacted in many States to provide for the trial of minor criminal offenses without a jury and none of these laws has been held unconstitutional. Among such States are Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, and Virginia.

The provision in the bill for a trial de novo before a jury upon demand of a defendant in the event the sentence after conviction by the court exceeds a fine of $300 or imprisonment in excess of 45 days is a privilege for the benefit of a defendant and therefore could not violate his personal rights. Furthermore, such a provision for trial de novo before a jury on demand of a defendant has historical precedents, the constitutionality of which has not been questioned. Examples are found in the laws of the following States:

ALABAMA

The Code of Alabama (1940), title 13, sections 326 and 423, provides that a misdemeanor trial in the county court and before a justice of the peace shall be without a jury, and that after conviction the defendant may demand by way of an appeal to the county court and secure as a matter of right a trial de novo before the circuit court with a jury.

ARKANSAS

The Arkansas Statutes (1947) Annotated, sections 44–115 and 44–116, provide that all trials before the police court and the mayor's court "for violation of the bylaws or ordinances of any city or incorporated town shall be before the mayor [police judge] without the intervention of a jury." These sections also provide that after conviction the defendant may demand and secure a trial de novo before a jury in the circuit court.

The provisions of the bill with respect to trial are, therefore, entirely consistent with constitutional principles and with legislative and judicial precedent.

Mr. JOHNSON of Texas. Mr. President, we must have order. We are going to transact a lot of public business before we finish this evening, and if Senators will give their attention and the Senate will remain in order, we will be able to do so.

Mr. MANSFIELD. Mr. President——

Mr. JOHNSON of Texas. I yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, the vote this evening was epochal in the annals of the Senate and of the country. We have completed legislating on one of the most important bills ever to come before the Senate of the United States. We have acted in a spirit of reason and logic. We have acted without rancor. We have acted with a minimum of emotion. I think the credit for the performance which this body has undertaken in the past two months should go to the distinguished minority leader, the senior Senator from California [Mr. KNOWLAND] a man of great integrity, a fair-minded man, a reasonable man. Also sharing in that credit is the distinguished majority leader, the senior Senator from Texas [Mr. JOHNSON], who has indicated, if there was ever any doubt in anyone's mind, that he is a political strategist of the highest order. He has been able to bring reason and understanding to divergent groups on this side, just as the minority leader has been able to do the same on the other side. In my opinion, the Senate of the United States and the United States of America can well be proud of the action which was taken in this body this evening; and I sincerely hope that the recognition, which is the just due of the distinguished minority leader and the distinguished majority leader, will be given to them not only in the press of the country today, but in the history books of the country in the future.

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

Mr. MANSFIELD. I yield to the distinguished senior Senator from Massachusetts.

Mr. SALTONSTALL. Mr. President, from this side of the aisle I want to join with the distinguished Senator from Montana in what he has just said. I have always been proud to be a Member of this body. I have been prouder than ever to have been a Member the past few weeks. During that period of time I have watched our colleagues debate a matter that means much to every citizen, particularly to those in certain sections of this country. Yet, at all times the debate has been conducted without rancor, with great sincerity, and with great care to discuss the main question, the settlement of which meant so much to all of us, without undertaking to bring into the debate extraneous issues. That has been possible because of the leadership on both sides of the aisle.

I do not know of a time since I have been a Member of this body when Members on both sides of the aisle have to a greater extent turned to their leaders to give them guidance and help wherever they could. So the majority leader and the minority leader both deserve much commendation for the way in which this debate has proceeded. At the same time, I think every Member of this body deserves commendation when we consider the depth of the problem, what its solution means to so many people, and the spirit in which it has been discussed during the past few weeks. I am proud to join with my colleague from Montana in his most appropriate expressions.

Mr. MANSFIELD. Mr. President, I may say that while the House spent 2 days in considering this measure, the Senate of the United States spent 2 months. The Senate refined this measure, removed from it the bugs and the gimmicks, and brought into being a bill which is enforceable. There were great expectations that there would be a filibuster. There has been no filbuster. A record has been set. Every Senator has had an opportunity to speak freely and as long as he wanted to. I think that we have a right on this great evening in the history of our country to be proud of the record of the Senate of the United States.

Mr. SMITH of New Jersey. Mr. President, I should like to identify myself with the remarks just made by the Senator from Montana and the Senator from Massachusetts. I have been a Member of this body for 13 years, and I feel that what has happened tonight is the greatest event in the entire time I have been here. I go further than that: I feel that we are on the road to one of the biggest forward steps since the Civil War, in that after a long debate, marked by a spirit of amity and friendship and affection on both sides of the aisle, there has been evolved a measure of paramount importance to the future of our country. I want to do all I can to join with the others in saying that we owe that result to our two leaders, the majority leader, the Senator from Texas [Mr. JOHNSON] and the minority leader, the Senator from California [Mr. KNOWLAND]. It is a great event in my life to have them here at this time, since there have been previous occasions when we were unable to deal with such a matter because we did not have the spirit that has been shown at this time in this debate. It has been a wonderful debate. The passage of the bill is a great victory for civil rights in the United States of America.

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

Mr. SMITH of New Jersey. I yield.

Mr. HUMPHREY. I should like to say this evening that the bill which has just been passed as a result of the vote of the Senate is a good, effective, meaningful piece of legislation. If its enforcement is conducted in the same spirit of reason and reasonableness that has characterized its consideration and passage, this legislation will mean a better America. I have read many press reports about the tactics and the strategy which have been used in bringing about the passage of this measure.

Mr. President, the truth is that it takes a good deal of legislative skill and procedural knowledge to guide any piece of proposed legislation so highly controversial as this through the two Houses of Congress. It also takes something else. It takes more than cleverness. It takes more than tactics. It takes more than being smart. It takes a sense of conviction, and a deep respect for one's fellow man.

When the history of this period is written, I hope it will be forgotten that skill and strategy, and cleverness and legislative maneuvering were required to put the measure through the two Houses of Congress. I hope it will be remembered that there were men and women in both Houses of Congress who deeply believed in the purposes for which the legislation is designed. Because of that belief and that conviction they found the perseverance and strength

to be able to see that the legislation was finally consummated.

As a Member of the Senate I have long looked forward to the day when we could say that Congress passed legislation which assures civil rights to all the people of this land. That day has arrived. I wish to say to my friends who were in opposition to the bill that those of us who supported it admire and respect the temperance and the reasonableness of their arguments. I know of many a Senator who restrained himself, and many a Senator who has literally taken his political life in his hands and placed it in jeopardy. I believe the future will underscore the fact that those Senators did what was right. By their reasonableness, by their good faith, in the days to come they will be enriched in spirit and in political strength because of the manner in which they conducted themselves. The Senate, during the weeks of debate on the bill, has fulfilled the promise of representative government. I am proud to have been a Member of the Senate during this historic period.

ESTABLISHING OF DATE OF 2D SESSION OF 85TH CONGRESS

Mr. JOHNSON of Texas. Mr. President, I ask the Chair to lay before the Senate House Joint Resolution 453.

The VICE PRESIDENT laid before the Senate the joint resolution (H. J. Res. 453) to establish the date of the 2d regular session of the 85th Congress, which was read the first time by its title, and the second time at length, as follows:

Resolved, etc., That the 2d regular session of the 85th Congress shall begin at noon on Tuesday, January 7, 1958.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent for the immediate consideration of the joint resolution.

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was considered, ordered to a third reading, read the third time, and passed.

LET US BUILD SCHOOLS

Mr. McNAMARA. Mr. President, I feel it necessary to end this session of Congress as I began it—with a few remarks on the vital need for Federal assistance for school construction.

On January 7, I introduced on this floor the first bill of the 85th Congress—a bill proposing a $2 billion, 2-year emergency Federal program to assist States to build schools.

I said at the time, as I have since, that I was not insisting on my bill or my particular formula.

But I was insisting on Congressional action—already far too long delayed—to meet the shocking shortage of classrooms throughout the country.

Today, nearly 8 months later, the 1st session of the 85th Congress is about to end.

Before the final adjournment bell, we will have our usual few hours of self-congratulation over our modest accomplishments—and then we will go home.

But next week, Mr. President, another bell will ring.

That is the bell summoning some 39 million children to the Nation's elementary schools.

Their ranks have been swelled by roughly a million since the same bell rang last year.

What will they find this year, Mr. President, as they embark on another year of schooling?

Will they find that during the summer months, the builders have been constructing new monuments to education in the form of modern, uncrowded schoolhouses?

In some areas they will find these new buildings—in areas where the school districts are moderately wealthy or where the tight-money market has not yet quite closed its stranglehold on the economy.

But in far too many areas, they will find the same antiquated facilities, firetraps, and outgrown structures where the children will be stacked like cordwood in the classrooms.

No matter how good the teachers—or how spirited the will to learn—the serious overcrowding of classrooms cannot fail to have a negative effect on the quality of education.

In a great many sections of the country, the children have been—and will be again—on half-day school sessions.

This is a very serious drawback to the quality of education at any school level.

But many of the children just beginning their education next week—in kindergarten and the first few grades—will start out going only half days.

This is the really criminal part of Congress' failure to meet the crisis.

These children just starting school are in their formative years. They are supposed to be learning study and social habits that will stay with them throughout their school years and into adult life beyond.

By launching them into education on an abbreviated and crippled schedule we are doing them a tremendous amount of harm that may never be undone.

As we leave for our recess, I hope that the thought of these crowded schools will plague every Member of this Congress—and give him many uneasy moments until we meet here again next year.

A few statistics to keep in mind while they are glad-handing constituents in the coming months ahead are these:

Our refusal to act in the field of Federal aid for school construction means that the new school year will begin with a shortage of 159,000 classrooms—at the very least.

The school population has grown 5½ million in the past 5 years and it is expected to rise another 6 million in the next 5 years.

At the current rate of building, the classroom deficit will have grown to at least 179,000 by that time. And this does not include replacing obsolescent and destroyed schools.

These are weighty figures to ponder.

But high figures are not strangers to the Senate.

Just a few days ago, we voted around $3 billion for mutual security. We voted some $34 billion for national defense and almost $1 billion for public-works projects.

These are worthy undertakings. They will help us remain a strong and secure Nation.

Yes, we even voted nearly $100 million so that the United States Information Agency can tell the rest of the world what a great Nation we are.

What will USIA tell the world about America's schools? I don't envy the propagandists the job of answering that question.

Will they tell the world that America is the richest nation on earth—yet it is content to let its children learn the three R's in overcrowded, antiquated, and understaffed classrooms?

Will they tell the world that America can pass out $3 billion to other nations—and not spend one dollar to replace the firetraps that too often pass for schools?

Will USIA tell the world that we can spend nearly $34 billion for defense—and not one penny on our potentially greatest weapon—the education of our children and proper development of their brainpower?

And how will USIA explain our underpaid force of teachers—a force now understaffed by 135,000?

Foreigners often believe that the American mind is a bit odd—and they may be right, at that.

The Senate leaders were content this year—as in 1956—to let the House take the initiative on the school program.

What happened this year in the House? The bill was defeated by a vote of 208 to 203. Just three votes meant the difference between victory for the children and defeat.

I do not intend to pass on the motives of the Members of the House who could easily have salvaged victory from defeat.

I can, however, comment on the man who has displayed such a shocking lack of leadership in this field—the man who easily could have provided the necessary three votes and many more.

That man is the President of the United States.

I think we have all learned a great deal about him this year as a result of his activities on the budget, civil rights—and Federal aid for school construction.

We have learned not to rely on anything he says because when the time comes for action he will say something different—or nothing at all.

But while we can heap some well-earned abuse on the President, we as the Senate cannot ignore our responsibility.

After all, Congress must pass the laws.

Our lack of action should weigh heavily upon us.

It is growing late now, Mr. President, but it is not too late for the 85th Congress to meet its responsibility to the children of America.

We can do that when we meet here again next January—and I urge my colleagues to think about this during adjournment. We will not long continue to be the most powerful Nation in the world if we continue our neglect of our future leaders.

WILLIAM HOWARD TAFT

Mr. LAUSCHE. Mr. President, in view of the fact that the Congress will not be in session on September 15, I wish to comment briefly on the career of one of Ohio's great citizens, William Howard Taft, who was born on September 15, 1857.

Ohio has been the birthplace of several Presidents and its citizens have pointed with pride to the contributions to our national history made by William Howard Taft, both during his term as 27th President of these United States and during his fine service on the Supreme Court of the United States.

Successfully following his chosen profession of law, Taft was early recognized as a capable and efficient lawyer. As the prosecuting attorney of Hamilton County, as a judge on the State supreme court at the age of 32, as Solicitor General of the United States, and as a Federal circuit judge, the recognition of his judicial abilities was ably demonstrated.

His readiness to serve his country, and his ability to grasp new responsibilities was shown by his appointment to be president of the Philippine Commission, under President Theodore Roosevelt. His successful leadership in establishing democratic principles in the Philippines brought him personal acclaim and the admiration of the citizens of the Philippines.

In recognition of his talents, President Roosevelt named Taft as Secretary of War in his Cabinet and in 1909, the people elected him to the highest office in the land, the Presidency.

As President, Taft gave the Nation a conservative and sound administration. Legislation to control monopolies was enacted and the Department of Labor was established. His administration was one of peace and prosperity.

In 1921, he again was called to serve his country as Chief Justice of the United States Supreme Court and in this office he found the climactic satisfaction of a mind devoted to the legal profession and dedicated to public service.

Citizens of Ohio, of all political persuasions are mindful of President Taft's life of service and along with the illustrious name of the late Senator Robert Taft, will long be remembered in Ohio as a name synonymous of public service and dedication to the common welfare of our beloved country.

It is my sincere hope that this centennial anniversary of President Taft's birth will be fittingly remembered by the citizens, not only of Ohio, but by all Americans.

MUTUAL SECURITY APPROPRIATIONS, 1958—CONFERENCE REPORT

Mr. JOHNSON of Texas. Mr. President, the distinguished Senator from Arizona [Mr. HAYDEN] has waited for some time to call up the conference report on the mutual security appropriation bill. I wish to congratulate him on his diligence and great effort to produce effective appropriation bills, and to curtail expenditures in our Government. I hope the report may be considered at this time, and that it may be adopted.

Mr. HAYDEN. Mr. President, I submit a 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. 9302) making appropriations for mutual security for the fiscal year ending June 30, 1958, and for other purposes. I ask unanimous consent for the present consideration of the report.

The VICE PRESIDENT. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of August 30, 1957, p. 16743, CONGRESSIONAL RECORD.)

The VICE PRESIDENT. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. CASE of South Dakota. Mr. President, some weeks ago I watched with some interest the panel discussion by Mrs. Clare Boothe Luce and Edward R. Murrow following Mr. Murrow's television interview with Tito.

Having served in the House of Representatives with Mrs. Luce, I wrote her my opinion of what I thought was a brilliant analysis of the Tito interview. Subsequently she wrote me and enclosed a copy of a letter which she had sent to the New York Times. That letter was published in the New York Times of Sunday, July 28, 1957. It is a very scintillating analysis of the Tito interview. Because of its application to our foreign aid policy and our relations with Yugoslavia, I ask unanimous consent that the letter of Mrs. Luce be printed in the RECORD at this point as a part of my remarks.

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

TITO'S POLICIES ASSESSED: THREAT TO SOVIET EMPIRE SEEN IN IDEOLOGICAL DIFFERENCES

(NOTE.—The writer of the following letter, playwright and former Member of Congress, served until recently as United States Ambassador to Italy.)

To the EDITOR OF THE NEW YORK TIMES:

On June 30 I participated in the panel discussion which followed Edward R. Murrow's televised interview with Tito.

Since that time a steady stream of letters has crossed my desk, many commending the points I sought to make in the interview, some contending that any optimistic view of Tito's regime or any attempt to justify United States policy toward Yugoslavia constituted a complete endorsement of his dictatorship.

Nothing I said was meant to justify the persecution of Roman Catholicism in Yugoslavia, and of such leaders as Cardinal Stepinac, or Tito's suppression of free speech and the imprisonment of Djilas, which continue throughout history to be very black marks against Tito.

Rather, I sought to isolate those elements in Tito's policies which can give all freemen some hope that the Soviet imperium is breaking up, and that communism itself as an ideology is doomed to failure for the very simple reason that, put into practice, it must continuously lose out, especially in economic competition with free countries.

DIFFERENCES ABOUT COMMUNISM

As the interview unfolded, while Tito continued to play down the size of the ideological differences between communism in Yugoslavia and in the Soviet Union, it became more and more evident that they are not only big, they are tremendous, and that if Tito himself did not play them down he might be inviting a serious rupture with Moscow on the grounds of ideological heresies. For they are not only differences of a practical order between two Communist nations. They are theoretical differences about communism itself.

It also became evident during the interview that Tito was equally aware that if his heresies were to be too openly embraced and too swiftly put into action by the eastern satellites they could lead Poland, Czechoslovakia, and Rumania into open conflict with the Soviet Union, a conflict which would result either in their sharing the tragic fate of Hungary or in opening a third world war.

In the panel discussion that followed the interview, I sought to define Tito's ideological heresies:

First, the right of a Communist country to national independence from Moscow. It is the exercise of this right by any nation under Kremlin control that has come to be called Titoism. Tito's contention, that Communist states should be equal and sovereign, flies, if not in the face of classic Marxism, certainly in the face of Lenin communism, as interpreted by the Kremlin's ideological exegetes.

SATELLITES' INDEPENDENCE

Tito first raised it in 1948, when he insisted that he and the leaders he chose would run Yugoslavia and kicked all Russian stooges out of his country. Since that time Tito has been more or less continually raising the question not only of the independence of Yugoslavia but of all the satellites.

Speaking of recent events in Poland, Tito said, "I think Poland is striving to go along its own path. * * * Since the time when Gomulka came into power, Poland has succeeded in settling its internal problem * * * [this] has a positive influence on neighboring countries."

Tito then made it clear that what he feared during the Hungarian revolution was not that Hungary should acquire independence, but that the struggle if carried too far too fast (which happened) must result in Soviet armed intervention (which happened).

He repeatedly stressed that, while he was firmly for the independence of all the satellites, they must make haste slowly, since there was a real risk of a third world war if complete independence were sought too rapidly, and especially if the independence movement openly included the desire to get rid of not only the Soviet politicians but of communism as well, which happened in Hungary.

AGREEMENT WITH MAO'S VIEWS

His insistence on his own independence and the eventual independence of his satellite neighbors is the first great heresy of Tito. This heresy threatens Moscow with the breakup of its western empire.

Moreover, the interview made it plain that Tito is encouraging and applauding expressions of this same heresy in the Far East. Referring to Mao Tse-tung's recent speech, which struck a distinctly Titoist note or two, Tito said, "Mao Tse-tung said many things which could be classed as new. * * * I am pleased that our views * * * are to a great extent identical."

The second hersey of Tito is the assertion of the theoretical right of an independent Communist nation to create not only its own foreign policies but its own political and economic institutions. This right is, of course, the inescapable corollary of the right to national independence. But it strikes at the very heart of the Marx-Lenin dogma that communism must develop everywhere, in every nation, according to the party line as given by Moscow.

Consequently Titoism threatens to disrupt not only the physical control of the Soviet Union over the satellites, but its ideological control over Communist parties within every nation, including the capitalist nations. The denial of the Kremlin's teaching and the Kremlin's authority to teach is, by the standards of all Communists up to now, a heresy of a major order.

The last, and perhaps in the long run the most dangerous, heresy of Tito is the new emphasis he is giving to the decentralization of economic and political processes within his country.

In the practical application of his theoretical right to develop socialism according to the specific needs of his country Tito has already created economic and political institutions unique in the Communist world.

Collectivization of the farms was abandoned some years ago. And, "already a few years ago," said Tito, "we have passed to a * * * wide decentralization of government in the economic as well as the administrative field. One of the most pronounced characteristics of our system is the handing over of the factories to the workers' self-government. Then the creation of the communes * * * a new internal administrative organization."

TENET OF DEMOCRACY

These processes Tito defends as a new form of socialism. But whatever name Tito chooses to call these processes of decentralization, the Kremlin itself cannot be deceived: decentralization of political and economic power is the major tenet of political and economic democracy in capitalistic western countries.

Tito has far to go before he ranks as more than a very lukewarm fellow-traveler of capitalism. He will never, in his own time, willingly become less than a complete dictator.

But the real question decentralization raises is that Tito's present long-range aim, the diffusion of political power and economic wealth—is in fact if not in theory the very aim of what President Eisenhower calls "people's capitalism."

Both American idealism and American pragmatism should dictate to the United States to be patient with Tito when he insists on describing this slow Yugoslav evolution toward western-style sovereign political and economic democracy as communism. A rose by any other name will smell as sweet.

CLARE BOOTHE LUCE.

RIDGEFIELD, CONN., *July 19, 1957.*

Mr. JOHNSON of Texas. Mr. President, I should like to appeal to Members of the Senate to let us complete action on the conference report on the mutual security appropriation bill. I should like to ask for the yeas and nays on the conference report, so that Members will know that we will vote on it very shortly. I now ask for the yeas and nays.

The yeas and nays were ordered.

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

Mr. JOHNSON of Texas. I yield to the Senator from Massachusetts.

Mr. SALTONSTALL. I wish to ask the Senator from Arizona a very brief question. Amendment No. 17 in the conference report on the mutual security appropriation bill refers to section 102 of the bill, having to do with publicity and propaganda. It is my understanding there was no intent on the part of the conferees in redrafting the section to change the basic law concerning publicity and propaganda in the mutual security program. Is that correct?

Mr. HAYDEN. That is correct. The basic law on this subject, known as the Dworshak amendment, was adopted to the Mutual Security Act of 1952.

The conference report which referred to the Dworshak amendment contained a paragraph which I ask unanimous consent to have placed in the RECORD at this point.

Without objection, the paragraph was ordered to be printed in the RECORD, as follows:

The committee of conference recognized the desirability of preventing any use of funds for propaganda in support of the mutual security program. At the same time there should not be any interference with the supplying of full information to the Congress and to the public concerning the operations of the mutual security program. The committee of conference believes that it is possible for those responsible for the administration of the Mutual Security Act to maintain a sharp distinction between propaganda and the supplying of information as to the results attained under the program, and that this section of the conference agreement should not interfere with the recognized procedures for keeping the public and the Congress informed.

Mr. HAYDEN. The new section 102 underlines the purpose of the Dworshak amendment that no funds shall be used for propaganda within the United States. It is not intended to prohibit and it does not prohibit the President or the International Cooperation Administration or the Departments of State and Defense from giving the American people information about the operations of those agencies or the uses to which they are putting the money appropriated for the mutual security program or what the American people are getting for their money.

Mr. SMATHERS. Mr. President, will the Senator from Texas yield?

Mr. JOHNSON of Texas. I yield to the Senator from Florida.

Mr. SMATHERS. I should like to ask the Senator from Arizona a question. I notice from the report, amendment No. 14 eliminates the appropriation of $20 million by the Senate for the Latin American Economic Development Fund. As to amendment No. 12 it is stated, "The conferees are agreed that not less than $20 million of this appropriation shall be for Latin America." Was it the feeling of the conferees that the $20 million which was stricken in amendment No. 14 would be taken from the special assistance fund, as provided in section 400 (a)?

Mr. HAYDEN. Thereby even more than $20 million would be available, whereas originally not more than $20 million would be available.

Mr. SMATHERS. In view of the action of the conferees, is it the belief of the conferees and of the Senator that the $20 million can be used in the same fashion as originally contemplated by the provisions of section 400 (b)?

Mr. HAYDEN. Yes.

Mr. SMATHERS. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a statement I have prepared in connection with this amendment.

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

STATEMENT BY SENATOR SMATHERS

I cannot help but express a keen sense of disappointment over the conference report on the foreign aid appropriations bill, though I recognize that our Senate conferees fought valiantly for the measure as passed by the Senate.

In the mutual security authorization bill, I was successful in getting the Senate Foreign Relations Committee to recommend and the Senate to adopt an amendment which I proposed setting up a Special Economic Development Fund for Latin America in the amount of $25 million. The Senate Appropriations Committee recommended an appropriation of $20 million and the Senate agreed to the recommendation by giving it overwhelming support. The funds under this program were to be utilized for the purpose of promoting health, education, sanitation, and land resettlement projects in Latin America on a 90 percent loan basis. It was no give away or handout proposal. Last year the Congress provided $15 million for this purpose and the good will engendered by the program which was started is inestimable. It was a program which the Latin Americans long sought from its good neighbor, the United States. It was a program which made it possible for our Latin American friends to maintain their own self-respect.

The House, on the other hand, though it accepted the authorization measure, failed to appropriate any funds for this worthwhile constructive program. Though recognizing that the House was operating under an atmosphere of economy, I cannot help but believe that they failed to fully realize the full beneficial effect of this program in our relations with Latin America. Knowing of the many friends which Latin America has in the House of Representatives, I am still hopeful that in a future supplemental appropriations bill they will see fit to correct what I believe to be an unintentional and harmful mistake with respect to our relations with our good neighbors to the south.

From my understanding of the conference report, some ground was held by our conferees. I would now like to ask the distinguished chairman if I am correct in the understanding that under the special assistance program, that the conferees were in full agreement that no less than $20 million of the $226 million appropriated are to be earmarked for Latin America?

With this understanding, though I have serious reservations with respect to other items in the foreign-aid program, I will reluctantly support the conference report.

Since hope springs eternal, I trust that I am not being too optimistic in entertaining the hope that at a later date when supplemental appropriations are being considered, that both the Senate and the House will see fit to appropriate sufficient moneys to continue the program which I proposed and had adopted last year designed solely for the purpose of further improving our good neighbor relations and increased trade with Latin America.

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

Mr. JOHNSON of Texas. I yield to the Senator from Pennsylvania.

Mr. CLARK. Will the Senator from Arizona agree with me that the colloquy between us with respect to section 102 yesterday still represents the legislative history with respect to section 102, having to do with the right of the ICA to continue to inform the American people with respect to their programs?

Mr. HAYDEN. I stated that yesterday. I repeated it this evening. That understanding is correct.

Mr. SMITH of New Jersey. Mr. President, in connection with the mutual security program, I want to take this opportunity to pay a tribute to my colleagues in the Senate. As my friends know, I have been deeply interested in our foreign policy ever since I came to the Senate 13 years ago and I have been particularly interested in helping as best I could, in the development of our so-called foreign aid program. I was one of those who worked continuously with the study we had made last year of the new approach to the mutual security program and was most hopeful that the reports of the investigators whom we chose from among the most expert in the country would be accepted as a basis for the new approach. The results of these studies and the independent studies that the President had made gave us what might be called a new look on our mutual security program. There was no difference of opinion by any of those who participated in the studies as to the need to continue the program and especially the need for the support of our military aid and defense assistance for our allies in various parts of the world.

Also it was felt that from the standpoint of the underdeveloped countries we should provide for a long-range revolving loan fund to enable those countries to secure their economic stability and to aid them in developing their own freedom, independence, and self-determination so that they could remain among the nations dedicated to freedom. This is a critical issue of our foreign policy and I believe is the strongest supporting pillar of the President's whole program.

Reviewing the action of the Senate, I call attention to the fact that the President originally asked the $3.8 billion. The Senate reported a bill authorizing $3.6 billion. The Senate vote on this authorization bill was 57 to 25. The Senate brought the House appropriation bill in conference up to $3.3 billion and finally in the Appropriations Committee, the Senate restored $500 million of the House slash of $800 million bringing the appropriation up to $3.025 billion. The Senate vote on this appropriation was 62 to 25. We have now witnessed the most unfortunate development, namely the unwillingness of the House to go above $2.7 billion for the final appropriation for fiscal 1958. This is a devastating defeat not only for the President but for the safety of America. However, I want to take this opportunity to pay a tribute to our Senate leadership—our majority leader, the Honorable LYNDON B. JOHNSON and our minority leader, the Honorable WILLIAM F. KNOWLAND. Their work was one of the finest evidences of bipartisan teamwork and last ditch fighting in support of the administration and the security of our country.

The only conclusion I can possibly draw from this development is that there are those in the House and especially on the House Appropriations Committee who are determined to destroy the mutual security program. The matter needs our immediate attention and at the beginning of next year we must press the fight vigorously to present to the American people the issue involved in these unfortunate developments this year.

Mr. HAYDEN. Mr. President, I move that the Senate insist on its amendment numbered 15.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Arizona.

The motion was agreed to.

Mr. HAYDEN. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a table which reflects the action of the two Houses on the mutual security appropriation bill, as well as the final amounts agreed to in conference.

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

Mutual security program, fiscal year 1958

[In thousands of dollars]

	Appropriation, 1957	1958 authorization				1958 appropriation				Final appropriation compared with—			
		Request	Senate	House	Conference	Estimate	House	Senate	Conference	1957 appropriation	1958 estimate	House	Senate
MUTUAL DEFENSE ASSISTANCE													
Military assistance:													
Appropriation	2,017,500	1,900,000	[1] 1,800,000	1,500,000	1,600,000	1,600,000	1,250,000	1,475,000	1,340,000	−677,500	−260,000	+90,000	−135,000
Unobligated and unreserved balance	195,500	[2]	[2]	[2]	[2]	538,800	538,800	538,800	538,800	+343,300			
Total, military assistance	2,213,000	1,900,000	1,800,000	1,500,000	1,600,000	2,138,800	1,788,800	2,013,800	1,878,800	−334,200	−260,000	+90,000	−135,000
Defense support:													
Appropriation	1,161,700	900,000	[3] 800,000	600,000	750,000	750,000	585,000	689,000	689,000	−472,700	−61,000	+104,000	
Unobligated balance							36,000	36,000	36,000	+36,000	+36,000		
Total, defense support	1,161,700	900,000	800,000	600,000	750,000	750,000	621,000	725,000	725,000	−436,700	−25,000	+104,000	
Total, mutual defense assistance	3,374,700	2,800,000	2,600,000	2,100,000	2,350,000	2,888,800	2,409,800	2,738,800	2,603,800	−770,900	−285,000	+194,000	+135,000
ECONOMIC AND TECHNICAL COOPERATION													
Development assistance:													
Appropriation	250,000									−250,000			
Unobligated balance		[2]	[2]	[2]	[2]	52,000	52,000	52,000	52,000	+52,000			
Total, development assistance	250,000					52,000	52,000	52,000	52,000	−198,000			
Development loan fund		500,000	[4] 500,000	500,000	[5] 500,000	500,000	300,000	400,000	300,000	+300,000	−200,000		−100,000
Technical cooperation:													
General authorization:													
Appropriation	135,000	151,900	151,900	151,900	[6] 151,900	151,900	113,000	114,900	113,000	−22,000	−38,900		−1,900
Unobligated balance							12,000	12,000	12,000	+12,000	+12,000		
Total, general authorization	135,000	151,900	151,900	151,900	151,900	151,900	125,000	126,900	125,000	−10,000	−26,900		−1,900
United Nations program	15,500	15,500	15,500	15,500	15,500	15,500	15,500	15,500	15,500				
Organization of American States	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500				
Total, technical cooperation	152,000	168,900	168,900	168,900	168,900	168,900	142,000	143,900	142,000	−10,000	−26,900		−1,900
Total, economic and technical cooperation	402,000	668,900	668,900	668,900	668,900	720,900	494,000	595,900	494,000	+92,000	−226,900		−101,900

[1] Also authorized $1,500,000,000 for fiscal year 1959.
[2] Unobligated balances authorized to be continued available.
[3] Also authorized $710,000,000 for fiscal year 1959.
[4] Also authorized additional $750,000,000 borrowing authority for each of fiscal years 1959 and 1960.
[5] In addition, $625,000,000 authorized in fiscal year 1959 on no-year basis.
[6] Authorized to remain available until expended.

Mutual security program, fiscal year 1958—Continued

[In thousands of dollars]

	Appropriation, 1957	1958 authorization				1958 appropriation				Final appropriation compared with—			
		Request	Senate	House	Conference	Estimate	House	Senate	Conference	1957 appropriation	1958 estimate	House	Senate
OTHER PROGRAMS													
Special assistance, general authorization	----------	300,000	250,000	250,000	250,000	250,000	175,000	225,000	225,000	+225,000	−25,000	+50,000	----------
Special assistance, Latin America	----------	----------	25,000	25,000	25,000	25,000	----------	20,000	----------	----------	−25,000	----------	−20,000
Special Presidential fund	100,000	----------	----------	----------	----------	----------	----------	----------	----------	−100,000	----------	----------	----------
Joint control areas	12,200	11,500	11,500	11,500	11,500	11,500	11,500	11,500	11,500	−700	----------	----------	----------
Intergovernmental Committee for European Migration	12,500	(1)	(1)	(1)	(1)	12,500	12,500	12,500	12,500	----------	----------	----------	----------
United Nations refugee fund	1,900	2,233	2,233	2,233	2,233	2,233	2,233	2,233	2,233	+333	----------	----------	----------
Escapee program	6,000	5,500	5,500	5,500	5,500	5,500	5,500	5,500	5,500	−500	----------	----------	----------
United Nations Relief and Works Agency: Unobligated balance	45,300	(2)	(2)	(2)	(2)	23,800	23,800	23,800	23,800	−21,500	----------	----------	----------
United Nations children's fund	10,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	11,000	+1,000	----------	----------	----------
North Atlantic Treaty Organization	----------	(1)	(1)	(1)	(1)	2,700	1,500	1,500	1,500	+1,500	−1,200	----------	----------
Ocean freight	2,500	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	−300	----------	----------	----------
Control Act expenses	1,175	1,300	1,000	1,000	1,000	1,000	1,000	1,000	1,000	−175	----------	----------	----------
Administrative expenses:													
International Cooperation Administration	29,018	35,000	33,000	32,500	32,750	32,750	32,750	32,750	32,750	+3,732	----------	----------	----------
State Department	4,577	(1)	(1)	(1)	(1)	4,577	4,577	4,577	4,577	----------	----------	----------	----------
Atoms for peace:													
Appropriation	5,500	7,000	7,000	7,000	7,000	7,000	----------	----------	----------	−5,500	−7,000	----------	----------
Unobligated balance	----------	----------	----------	----------	----------	----------	4,450	4,450	4,450	+4,450	+4,450	----------	----------
Total, atoms for peace	5,500	7,000	7,000	7,000	7,000	7,000	4,450	4,450	4,450	−1,050	−2,550	----------	----------
Total, other programs	230,670	375,733	348,433	347,933	348,183	391,760	288,010	358,010	338,010	+107,340	−53,750	+50,000	−20,000
Total, mutual security:													
Appropriation	3,766,570	3,844,633	3,617,333	3,116,833	3,367,083	3,386,860	2,524,760	3,025,660	2,768,760	−997,810	−618,100	+244,000	−256,900
Unobligated balances	240,800	614,600	614,600	614,600	614,600	614,600	667,050	667,050	667,050	+426,250	+52,450	----------	----------
Total	4,007,370	4,459,233	4,231,933	3,731,433	3,981,683	4,001,460	3,191,810	3,692,710	3,435,810	−571,560	−565,650	+244,000	−256,900
Add continuing authorizations	----------	19,777	19,777	19,777	19,777	----------	----------	----------	----------	----------	----------	----------	----------
Comparable totals	----------	4,479,010	4,251,710	3,751,210	4,001,460	----------	----------	----------	----------	----------	----------	----------	----------

[2] Unobligated balances authorized to be coutinued available.

[1] Continuing authorizations already in law: For ICEM and NATO, unlimited; for State Department administrative expenses, not to exceed $7,000,000 per annum.

Mr. HAYDEN. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a summary table showing the budget estimates for 1958, the amounts passed by the House, the amounts passed by the Senate, the amount provided by the public law finally enacted, and the differences between the budget estimates and the public law.

The budget estimates or appropriation requests total $64 billion plus, the public law or the amount enacted total $59 billion, a reduction from the estimates in the amount of approximately $5 billion. This constitutes a reduction of 7.7 percent. There is also included a table which is designed to reconcile the amounts in the January budget of new obligational authority with the budget estimates considered by the two Committees on Appropriations.

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

Table of appropriation bills, 1958—85th Cong., 1st sess.

	Budget estimate (1)	Passed by House (2)	Passed by Senate (3)	Public law (4)	Difference (col. 1 minus col. 4)	Percent of reduction
Agriculture	$3,965,446,617	$3,692,889,757	$3,668,972,157	$3,666,543,757	−$298,902,860	7.5
Commerce	871,513,000	653,685,060	613,584,290	597,790,225	−273,722,775	31.4
Defense	36,128,000,000	33,562,725,000	34,534,229,000	33,759,850,000	−2,368,150,000	6.6
District of Columbia	25,504,450	22,504,450	23,004,450	22,504,450	−3,000,000	11.8
General Government	20,921,870	16,021,370	16,010,370	16,010,370	−4,911,500	23.5
Independent offices	5,923,195,000	5,385,201,700	5,378,594,800	5,373,877,800	−549,317,200	9.3
Interior	515,189,700	454,395,700	457,152,600	456,189,600	−59,000,100	11.5
Labor-Health, Education, and Welfare	2,981,277,581	2,846,831,581	2,885,290,781	2,871,182,781	−110,094,800	3.7
Legislative	108,271,443	78,370,285	104,844,660	104,844,660	−3,426,783	3.2
Mutual security	3,386,860,000	2,524,760,000	3,025,660,000	2,768,760,000	−618,100,000	18.2
Public works	876,453,000	814,813,023	884,151,323	858,094,323	−18,358,677	2.1
State, Justice, Judiciary	665,649,802	563,799,793	563,085,293	562,891,293	−102,758,509	15.4
Treasury-Post Office	3,965,291,000	3,884,927,000	3,884,927,000	3,884,927,000	−80,364,000	2.0
Additional Post Office, 1958	149,500,000	133,000,000	133,000,000	133,000,000	−16,500,000	11.0
Supplemental, 1958	1,973,767,827	1,581,590,587	1,824,001,547	1,734,011,947	−239,755,880	12.1
Atomic Energy Commission	2,491,625,000	2,299,718,500	2,323,632,500	2,323,632,500	−167,992,500	6.7
Total	64,048,466,290	58,515,233,806	60,320,140,771	59,134,110,706	−4,914,355,584	7.7

NOTE.—Does not include permanent authorizations estimated in budget at $8,028,790,630.

FISCAL YEAR 1958

Reconciliation of January budget figure for new obligational authority of $73.3 billion with budget estimates of appropriations of $64 billion

[In billions]

(1)	(2)	(3)	(4)
Budget estimates for appropriations submitted to Appropriations Committees			$64.0
Permanent appropriations requiring no action by Congress			+8.0
Items included in budget document for new obligational authority not submitted to Appropriations Committees for appropriations:			
Mutual Security Program:			
January budget	$4.400		
Message of Aug. 14	−3.387		
		$1.013	
Department of Agriculture:			
Regular items	.254		
Debt receipt items	.509		
		.763	
Housing legislation (debt receipt item)		1.025	
Military public works		.457	
School construction		.451	
Defense Department		.136	
Veterans' Administration		.100	
St. Lawrence seaway (debt receipt item)		.035	
Allowance for contingencies and miscellaneous items not submitted (net)		.675	
			+4.6
Total			76.6
Deduct: Post office amounts included in budget estimate of appropriations but not included in new obligational figure in budget			−3.3
January budget figure of new obligational authority			73.3

The VICE PRESIDENT. The question is on agreeing to the conference report.

Mr. RUSSELL. Mr. President, the yeas and nays have been ordered.

The VICE PRESIDENT. On this question the yeas and nays have been ordered, and the Secretary will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD. I announce that the Senators from New Mexico [Mr. ANDERSON and Mr. CHAVEZ], the Senator from North Carolina [Mr. ERVIN], the Senator from South Carolina [Mr. JOHNSTON], the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. NEELY], and the Senator from Alabama [Mr. SPARKMAN] are absent on official business.

On this vote, the Senator from New Mexico [Mr. CHAVEZ] is paired with the Senator from South Carolina [Mr. JOHNSTON]. If present and voting, the Senator from New Mexico would vote "yea" and the Senator from South Carolina would vote "nay."

The Senator from Oklahoma [Mr. KERR] is paired with the Senator from Alabama [Mr. SPARKMAN]. If present and voting, the Senator from Oklahoma would vote "nay" and the Senator from Alabama would vote "yea."

I further announce that if present and voting, the Senator from West Virginia [Mr. NEELY] would vote "yea."

Mr. DIRKSEN. I announce that the Senator from New Hampshire [Mr. BRIDGES] and the Senator from Maine [Mr. PAYNE] are absent because of illness.

The Senator from Ohio [Mr. BRICKER], the Senator from Kansas [Mr. CARLSON], and the Senator from Indiana [Mr. JENNER] are necessarily absent.

The Senator from Maryland [Mr. BUTLER], the Senator from Indiana [Mr. CAPEHART], and the Senator from Nevada [Mr. MALONE] are absent on official business.

The Senator from Vermont [Mr. FLANDERS] and the Senator from Kentucky [Mr. MORTON] are detained on official business.

If present and voting, the Senator from Vermont [Mr. FLANDERS] and the Senator from Kentucky [Mr. MORTON] would each vote "yea."

On this vote the Senator from Maryland [Mr. BUTLER] is paired with the Senator from Ohio [Mr. BRICKER]. If present and voting, the Senator from Maryland would vote "yea" and the Senator from Ohio would vote "nay."

On this vote the Senator from Indiana [Mr. CAPEHART] is paired with the Senator from Nevada [Mr. MALONE]. If present and voting, the Senator from Indiana would vote "yea" and the Senator from Nevada would vote "nay."

Also, on this vote the Senator from Maine [Mr. PAYNE] is paired with the Senator from Indiana [Mr. JENNER]. If present and voting, the Senator from Maine would vote "yea" and the Senator from Indiana would vote "nay."

The result was announced—yeas 59, nays 19, as follows:

YEAS—59

Aiken	Hill	Neuberger
Allott	Holland	O'Mahoney
Beall	Humphrey	Pastore
Bennett	Ives	Potter
Bush	Jackson	Proxmire
Carroll	Javits	Purtell
Case, N. J.	Johnson, Tex.	Revercomb
Case, S. Dak.	Kefauver	Saltonstall
Church	Kennedy	Schoeppel
Clark	Knowland	Scott
Cooper	Kuchel	Smathers
Cotton	Lausche	Smith, Maine
Dirksen	Magnuson	Smith, N. J.
Douglas	Mansfield	Symington
Fulbright	Martin, Iowa	Thye
Gore	Martin, Pa.	Watkins
Green	McNamara	Wiley
Hayden	Monroney	Williams
Hennings	Mundt	Yarborough
Hickenlooper	Murray	

NAYS—19

Barrett	Frear	Russell
Bible	Goldwater	Stennis
Byrd	Hruska	Talmadge
Curtis	Langer	Thurmond
Dworshak	Long	Young
Eastland	McClellan	
Ellender	Robertson	

NOT VOTING—18

Anderson	Chavez	Malone
Bricker	Ervin	Morse
Bridges	Flanders	Morton
Butler	Jenner	Neely
Capehart	Johnston, S. C.	Payne
Carlson	Kerr	Sparkman

So the report was agreed to.

Mr. HAYDEN. Mr. President, I move that the Senate insist upon its amendment numbered 15.

The motion was agreed to.

Mr. THYE. Mr. President, this completes the consideration of the appropriation bill, and I should like to be recognized in order to pay tribute to the chairman, the Senator from Arizona [Mr. HAYDEN]. The chairman has been present at practically all the committee hearings and committee sessions. It is difficult to understand how he was able to devote so much time and to carry through in such a manner as he has during the lengthy hearings which were conducted and which were necessary in the development of the appropriation bills.

I simply want to invite attention of this Senate to the splendid service to his country the Senator from Arizona [Mr. HAYDEN], as chairman of the Appropriations Committee, has rendered.

REDUCTION IN APPROPRIATION BELOW THE BUDGET REQUESTS

Mr. JOHNSON of Texas. Mr. President, now that the Senate has acted upon the last of the appropriation bills, it is possible to get a picture of the accomplishments this year.

All of us, I believe, recall the statement by the Secretary of Treasury concerning the budget. The then Secretary said it would have to be cut to avoid a hair-curling depression.

I have before me figures which have been prepared by my staff. They show that when all the bills are taken into account, this Congress has reduced the President's budget by $5,927,495,584—9.1 percent.

I hope that is enough to avoid having our hair curled by former Secretary Humphrey. But in any event it is gratifying. It represents a substantial saving from the appropriations which were requested.

I ask unanimous consent that the table prepared by my staff be printed in the RECORD as part of my remarks.

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

Budget estimates:	
Regular bills submitted	$56,046,713,463
Post Office supplemental	149,500,000
Mutual security	4,400,000,000
Supplemental	1,973,767,827
Atomic energy	2,491,625,000
Total	65,061,606,290

Appropriations made:	
Regular bills enacted	$52,174,706,259
Post Office supplemental	133,000,000
Mutual security	2,768,760,000
Supplemental	1,734,011,947
Atomic energy	2,323,632,500
Total	59,134,110,706
Total reduction from estimates	5,927,495,584
Percentage reduction	9.1

THE NEW AIR FORCE ACADEMY CHAPEL

Mr. FLANDERS. I have before me a drawing which shows the new chapel to be built at the Air Force Academy in Colorado Springs, Colo. It is a strange creation. I exhibit it to my colleagues.

I have written a letter to the Secretary of the Air Force on that subject, which I now read:

AUGUST 28, 1957.

Hon. JAMES H. DOUGLAS,
Secretary of the Air Force,
Washington, D. C.

DEAR MR. SECRETARY: I have been astonished to find that the properly criticized design for the chapel at the Air Force Academy at Colorado Springs has been appropriated for in the supplemental appropriation bill. As a member of the Defense Subcommittee of the Appropriations Committee I had an opportunity to look over the designs for the Academy 2 years ago and in my judgment they seemed satisfactory for their purposes throughout except for this chapel.

A chapel building for the Air Force should inspire reverence and the spirit of worship. There isn't a scintilla of reverence or worship in this building. It is just something dreamed up by the architects to be as different as possible from any proper house of worship.

A chapel for worship does not have to be a classical structure. It does not have to be Romanesque. It does not have to be Gothic. It does not have to be Renaissance. It does not have to be Baroque. It does not have to be Georgian. It can be as plain and simple as a Quaker meetinghouse. It can be as modern as is the rest of the design of the Academy.

Any of these things it can be. But it cannot be the antithesis of reverence and worship. The proposed structure is a deliberate insult to God Almighty. I hope you will take a look at it yourself and pass judgment upon it.

Please stop it.

Sincerely yours,

RALPH E. FLANDERS.

Mr. ALLOTT. I should like to associate myself with the remarks of the Senator from Vermont [Mr. FLANDERS], on his letter to the Secretary of the Air Force respecting the Air Force Academy.

Despite the opinions of many Members of Congress, and many, many other people throughout the length and breadth of the United States, 2 years ago with respect to the construction of a chapel at the Air Force Academy, we are now faced with a design of that chapel which, I would say, in even modest language, is more atrocious than the first. I do not know what concept of worship the architects of the structure may have. I know that this chapel design resembles nothing that has ever been seen or dreamed of in the minds of sane men. It is my sincere hope that somewhere along the way the Secretary of the Air Force, and members of the Armed Services Committee and the Appropriations Committee will see fit to take another look at the designs for the Air Force Academy near Colorado Springs, particularly the so-called chapel bearing in mind the need for an edifice for worship which will more nearly approximate the ideas, the ideals, the concepts and the customs of this country.

Mr. STENNIS. Mr. President, will the Senator yield to me?

Mr. ALLOTT. I am happy to yield to the Senator from Mississippi.

Mr. STENNIS. Mr. President, I wish to commend the Senator from Colorado for the remarks he has made with reference to the Air Force Academy chapel which is being constructed in the Senator's home State. This afternoon I saw a representation of what the chapel will be if built. I served on the subcommittee of the Committee on Armed Services which approved the authorization for the chapel. We thought it would be more a cathedral than it would be a chapel, since they were asking $3,000,000 to build it, as I recall.

I was so shocked when I saw the representation this afternoon that I intend to protest to the Air Force. If the Air Force does not withhold action and have new plans prepared, I shall feel compelled to introduce a resolution to cancel the authorization for the chapel until it can be further considered.

I thank the Senator.

Mr. ALLOTT. I appreciate the remarks of the Senator from Mississippi.

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

Mr. ALLOTT. I yield to the able Senator from Virginia.

Mr. ROBERTSON. Mr. President, I am quite familiar with the subject which has been discussed. We now have serving the third Secretary of the Air Force since this project was started.

When the project was begun the first Secretary of the Air Force to consider it assured me the chapel would not be built along the lines now indicated.

The second Secretary of the Air Force to serve assured me that the chapel would not be built in this manner.

We now have a report on the design, as the Senator from Colorado has said, which is worse than the array of wigwams, or whatever one might call the design, and it is planned to build the chapel along those lines. It is planned to build it of a combination of glass and aluminum.

As the Senator from Vermont [Mr. FLANDERS] has stated, never in this country or abroad in any civilized land has anybody ever attempted to worship any known God in a building of such a character.

In spite of all the protests we have made for 3 consecutive years, the Chicago architects have been determined to go ahead with this chapel, and the third Secretary of the Air Force to consider it, we understand, has now O. K.'d the design, although it is going to be the most expensive church in the most expensive school this Nation has ever built.

The entire project is going to cost about twice what we had contemplated, and the initial cost of the project is more than all we have spent in its entire history on the United States Military Academy at West Point.

Mr. O'MAHONEY and Mr. NEUBERGER addressed the chair.

Mr. ALLOTT. I yield first to the Senator from Wyoming.

Mr. O'MAHONEY. Mr. President, I ask the Senator from Colorado to yield to me for the purpose of presenting a conference report.

Mr. ALLOTT. I shall be glad to yield to the Senator from Wyoming, with the understanding that I may retain the floor after the conference report is acted upon.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield to me for a moment?

Mr. ALLOTT. I am happy to yield to the Senator from Texas.

Mr. JOHNSON of Texas. Mr. President, we have an important conference report to consider. We are going to ask for the yeas and nays as soon as the conference report is called up. I should like all Senators to be on notice that it is a conference report relating to S. 2377, the bill providing procedures for the production of Government records.

When we conclude action on the conference report, we shall take up S. 2792, the immigration bill which recently passed the Senate, and to which the House has added some amendments. We will wish to ask concurrence in the House amendments.

I hope we will be able to have the yea-and-nay vote as soon as possible, so that Senators who may not be interested in participating in the other discussions can answer to their names when the roll is called, and afterward we can have consideration of some noncontroversial bills and discussion of other matters.

Mr. ALLOTT. Mr. President, I desire to conclude in 30 seconds, if I may, and then I shall yield for the presentation of the conference report.

I consider the design of the chapel offensive to the inherent religious beliefs of the American people. It is my sincere hope that enough pressure will be brought to get this whole matter reconsidered, so that all Americans may then feel that this chapel is really a house of God.

I yield the floor.

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

Mr. ALLOTT. I have yielded the floor.

PROCEDURES FOR THE PRODUCTION OF GOVERNMENT RECORDS IN CRIMINAL CASES—CONFERENCE REPORT

Mr. O'MAHONEY. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2377) to amend chapter 223, title 18, United States Code, to provide for the production of statements and reports of witnesses. I ask unanimous consent for the present consideration of the report.

The VICE PRESIDENT. The report will be read for the information of the Senate.

The legislative clerk read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2377) to amend chapter 223, title 18, United States Code, to provide for the production of statements and reports of witnesses, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

"That chapter 223 of title 18, United States Code, is amended by adding a new section 3500 which shall read as follows:

"'§ 3500. Demands for production of statements and reports of witnesses

"'(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

"'(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

"'(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

"'(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

"'(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

"'(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

"'(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.'

"The analysis of such chapter is amended by adding at the end thereof the following:

"'3500. Demands for production of statements and reports of witnesses.'"

And the House agree to the same.

The VICE PRESIDENT. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. O'MAHONEY. Mr. President, the conference report has been unanimously signed. The conferees of the Senate and of the House all agreed to the report.

The purpose of the bill is to protect the files of the Government against unwarranted disclosure and at the same time to preserve due process of law for defendants in criminal cases. There was no objection to the measure in the conference. We completed the discussion in less than an hour. I believe this is a very excellent piece of legislation.

Mr. KNOWLAND. Mr. President, I ask for the yeas and nays on agreeing to the conference report.

Mr. JOHNSON of Texas. Mr. President, I ask for the yeas and nays.

The VICE PRESIDENT. The yeas and nays have been requested. Is there a sufficient second?

The yeas and nays were ordered.

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

Mr. JOHNSON of Texas. Mr. President, have the yeas and nays been ordered?

The VICE PRESIDENT. The yeas and nays have been ordered.

Mr. O'MAHONEY. Mr. President, I yield to the Senator from West Virginia [Mr. REVERCOMB].

Mr. REVERCOMB. I appreciate the Senator's yielding to me so that I may ask a question.

Mr. O'MAHONEY. Mr. President, may we have order in the Chamber?

The VICE PRESIDENT. The Senate will be in order.

Mr. REVERCOMB. I thank the Senator very much.

It is extremely important, I believe, that we know, Mr. President, what changes were made in the conference relating to the bill which was passed by the Senate on this subject. I should appreciate it if the Senator from Wyoming would state what changes were made in the bill as it now comes back for consideration by the Senate.

Mr. O'MAHONEY. Mr. President, I am very happy to respond to that inquiry. The conference report is based upon the bill which was passed by the Senate. The House conferees agreed to substitute the principal text of the Senate report.

There were two views with respect to the language which was contained in the Senate bill. There was some fear upon the part of the Department of Justice that the Senate bill would create a greater latitude for the examination of irrelevant reports of agents. The language which was devised by the conferees has cleared up the doubts of the Department of Justice and the doubts which were expressed upon the floor of the Senate during the debate last Monday night.

The second matter had to do with the definition of the statements that were involved in the procedures for production. Instead of reciting it in the body of the bill, we wrote a new subsection on definitions. Perhaps it would be well for me to read the subsection, which is very brief:

(e) The term "statement," as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

That is the new language which was added in the definitions for the bill. In subsection (a) there was no reference at all to the Federal Rules of Criminal Procedure or to the contents of subsection (b), (c), and (d).

Mr. REVERCOMB. Mr. President, will the Senator from Wyoming yield for a question?

Mr. O'MAHONEY. I yield.

Mr. REVERCOMB. When the bill was before the Senate, quite a discussion occurred as to the difference between "records" and "recordings." Is the definition which has been read by the Senator from Wyoming sufficiently comprehensive to deal with the records of the Federal Bureau of Investigation?

Mr. O'MAHONEY. It deals only with those records which relate to the testimony of a Government witness, and when the subject matter is testimony in a particular case in which a motion is made for the production of such records. They must be relevant. They must be competent. If there is any doubt about that on the part of the Government, the Government may ask that the records be presented to the trial judge, for his examination in chambers.

Mr. REVERCOMB. Will the Senator from Wyoming yield for another question?

Mr. O'MAHONEY. Certainly.

Mr. REVERCOMB. Then I gather from the statement the Senator from Wyoming has made that the word "record", as used, means the record pertinent to the testimony of the witness.

Mr. O'MAHONEY. The word "record" appears in the title. In the definition we speak of—

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

Instead of the noun "record," we have the verb "record" in the past tense, namely, "recorded," and also in the present tense.

Mr. REVERCOMB. Mr. President, will the Senator from Wyoming yield further to me?

Mr. O'MAHONEY. I yield.

Mr. REVERCOMB. Does the definition of "records" which have been made or which must be produced, include memoranda made by an agent of the Government or any other statement which may have been obtained and signed?

Mr. O'MAHONEY. I think it would include a memorandum made by an agent of the Government of an oral statement made to him by a Government witness, but not by a third party.

Mr. JAVITS. Mr. President, will the Senator from Wyoming yield to me?

Mr. O'MAHONEY. I am happy to yield to the junior Senator from New York.

Mr. JAVITS. As a practical matter, then, what has been done with the so-called records provision is to tie it down to those cases in which the agent actually purports to make a substantially verbatim recital of an oral statement that the witness has made to him—not the agent's own comments or a recording of his own ideas, but a substantially verbatim recital of an oral statement which the witness has made to him, and as transcribed by him; is that correct?

Mr. O'MAHONEY. Precisely.

Mr. JAVITS. I note from the report that the reference to the Rules of Criminal Procedure has been eliminated. Does that leave the matter as follows: That when the Government has the document defined as a statement, and when it is in its possession, and has been made by a Government agent, then, no matter how it is produced—whether produced pursuant to the Rules of Criminal Procedure or produced pursuant to the rather precise rule in the decision in the Jencks case, or for any other reason—if it is that kind of a statement, the court acquires, with respect to that statement, rights which are specified in this measure; is that correct?

Mr. O'MAHONEY. So long as it is a relevant and competent statement and deals with the testimony of the Government witness.

Mr. JAVITS. That is to say, in the case of a Government witness who has testified.

Mr. O'MAHONEY. Exactly.

Mr. JAVITS. Then the words, as the Senator from Wyoming has read them, must apply; is that correct?

Mr. O'MAHONEY. Yes; and I think it should be made clear that all the procedure must occur after the Government witness produced by the United States has testified, and not before.

Mr. JAVITS. Yes; but the amendment contains the safeguard provided by the amendment submitted by the Senator from Nebraska [Mr. HRUSKA], namely, that in the interests of justice, there may be an adjournment.

Mr. O'MAHONEY. I am happy to say that both the amendment proposed by the Senator from Nebraska [Mr. HRUSKA] on the floor of the Senate—which I accepted during the debate—and the amendment submitted by the junior Senator from New York [Mr. JAVITS]—which I also accepted—are retained in the conference report.

Mr. JAVITS. One final question, which I think will button this up: If the Government chooses not to deliver the information, then the court has rather complete powers with respect to either declaring a mistrial or striking out the evidence, as the interests of justice may dictate, subject to appeals.

Mr. O'MAHONEY. That is correct.

Mr. JAVITS. All that is retained in the conference report.

Mr. O'MAHONEY. Yes; and all that goes up on appeal, if the defendant asks for it.

Mr. JAVITS. I thank the Senator from Wyoming.

Mr. MUNDT. Mr. President, will the Senator from Wyoming yield to me?

Mr. O'MAHONEY. I yield.

Mr. MUNDT. I realize that the conference committee, operating under the pressure of time, has not had time to submit the report in the way in which it normally would be done—namely, by having a statement by the managers on the part of the House, and by having a printed report. I realize that there is a report, but that it was prepared on a duplicating machine.

I wonder whether the Senator from Wyoming intends to incorporate that copy of the report in the RECORD, preceding the taking of the vote this evening.

Mr. O'MAHONEY. If I correctly understand the question the Senator from South Dakota asks—and my doubt regarding it arises only because of the difficulty of hearing what the Senator from South Dakota has said, inasmuch as while he has been asking the question, other Senators have been talking—his question can be answered, I believe, by a brief reading of the provision.

Let it be understood that we are trying to define what is meant by the term "statement" in the body of the measure.

First, it is—

a written statement made by said witness and signed or otherwise adopted or approved by him.

In addition to such statements, we have oral statements; and the type of oral statements referred to is defined in the second clause, which reads as follows:

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

The VICE PRESIDENT. Will the Senator from South Dakota repeat his inquiry?

Mr. MUNDT. Yes, Mr. President. I do not think the Senator from Wyoming quite understood my inquiry, although I am grateful for the information provided in his reply.

My question is this: In view of the fact that the conference report has come to us so late, so that the statement of the managers on the part of the House, which normally is printed, could not be sent to the Government Printing Office and printed in time for our inspection at this time, I believe the Senator from Wyoming has referred to a duplicated statement of the report, as signed by the conferees.

Mr. O'MAHONEY. The written statement by the managers on the part of the House was not in my hands. It was not presented to me. It was presented in the House of Representatives. It is not here.

But I am stating to the Senate the understanding of all the conferees, both those of the House and those of the Senate.

Mr. MUNDT. I think a statement by the managers on the part of the House will appear in today's issue of the CONGRESSIONAL RECORD, as a part of the action taken by the House. Is that correct.

Mr. O'MAHONEY. I think that is correct. I am expecting that to happen.

Mr. CLARK. Mr. President, will the Senator from Wyoming yield to me?

Mr. O'MAHONEY. I yield to the Senator from Pennsylvania.

Mr. CLARK. As I understand the conference report, as explained to the Senate by the able Senator from Wyoming, who has worked so hard and so long to get a satisfactory report in this situation——

Mr. O'MAHONEY. It was hammered out on the anvil of hard work.

Mr. CLARK. Yes. As I understand, the elimination of the reference to the Federal rules, in the redraft presented by the conference committee, does not indicate, and is not intended in any way to indicate, that this measure is intended to amount to a change in any way of the Federal Rules of Criminal Procedure.

Mr. O'MAHONEY. We are not dealing with the Federal Rules of Criminal Procedure. We are dealing only with the proceedures to be followed in the production of these reports.

Mr. CLARK. As I understand, the Senate is to vote on the conference report without having the benefit of any managers' written report as to what was decided in the conference. Therefore, I, for one, at least—and I think all my colleagues, too, must do likewise—must vote on this measure without having studied such a conference report. Therefore, the legislative history as regards the vote to be taken in the Senate, when the Senate votes on the report—and let me say that I shall vote for the report—will show that when the Senate votes on it, it will do so without having adopted, approved, or in any way considered the statement of the managers on the part of the House, which will be filed later on.

I should like to state——

Mr. O'MAHONEY. Mr. President, let me say this to the Senator from Pennsylvania, in order to keep the record straight: It is not the custom of conferees on the part of the Senate to prepare a written report. It is the custom of the conferees on the part of the House

to file a statement of the views of the House managers.

Mr. CLARK. Will the Senator yield?

Mr. O'MAHONEY. Yes.

Mr. CLARK. I quite agree with the Senator from Wyoming. My only point is that those of us who are about to vote for this measure—and I shall vote for it—will vote for it on the understanding of what it contains, as stated by the distinguished Senator from Wyoming. For myself, I have some doubts as to whether this measure is constitutional; but I shall vote for it with the conviction that if it is unconstitutional, if it violates due process, we can leave that to the courts.

Mr. KEFAUVER. Will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. KEFAUVER. Let me inquire of the chairman of the subcommittee and the chairman of the conference committee whether the word "records" includes photostats of documents and pictures, all of which are very important in the presentation of a criminal case, and just where they fall within this definition?

Mr. O'MAHONEY. We are not dealing with records in the sense of the question asked by the Senator from Tennessee. We are dealing only with records which are included in the definition here, statements by the witness, which have been approved by him or signed by him or otherwise approved by him, and then oral statements which have been recorded—oral statements made by the witness to an agent of the Government. This is tied directly to statements made by a Government witness to an agent of the Government after the witness has testified, and not to any other records of the FBI or of any other Government bureau.

Mr. KEFAUVER. As I understood one part of Judge Brennan's opinion—and there is some language that might be considered in conflict—could be interpreted as justifying a requirement, for instance, that certain photostats of records or of pictures be submitted for examination by the defendant or his counsel. What happened in that regard?

Mr. O'MAHONEY. I do not recall any language in the decision of Justice Brennan that deals with that. If the pictures have anything to do with the statement of the witness—with either the written statement or the oral statement—of course that would be part of it; but whatever is produced must be related to the evidence of the witness who has testified before the court in the criminal case.

Mr. KEFAUVER. I did not mean that his opinion specified pictures or photostats; but I thought that the general, broad statements of his opinion might include that kind of documentary evidence.

Mr. O'MAHONEY. I will say to my friend from Tennessee that the language submitted by the conference report covers every statement that was made in the opinion.

Mr. KEFAUVER. Very well; I think that is sufficient. I thank the Senator from Wyoming.

Mr. DIRKSEN. Mr. President——

Mr. O'MAHONEY. I yield to the Senator from Illinois, who was one of the conferees.

Mr. DIRKSEN. Mr. President, I want to be recorded as being in support of the general conclusion of this matter, and, having heretofore ventilated the anxiety of the Department of Justice concerning it, to state that the revised text has the concurrence of the Department of Justice.

Mr. COOPER. Mr. President——

Mr. O'MAHONEY. I yield to the Senator from Kentucky.

Mr. COOPER. I do not desire to delay the vote on the conference report, but I want to say that the conference report does not say "due process." It will be remembered that when the Senate bill showed two lines of approach, there was an effort made by quite a number of courts to secure clarification. Yet, at the same time we were assured that a bill would be written or passed by the Senate which included "due process."

Mr. O'MAHONEY. Mr. President, I am confident that this bill does not invade "due process." I would not have signed the report if I had any conception that it had that effect.

Mr. COOPER. I am certain of that, but I should like to ask a specific question or two with relation to the legislative history, because in the debate on the floor other language was offered which was rejected by the Senate, upon the thesis that it did invade due process. Now there is new language in the bill regarding records which will be produced upon the request of a defendant, which differs from the language of the bill which was passed by the Senate. I have read the conference report, and it says, as I recall, that statements signed by the witness, and approved and adopted, or approved and adopted, shall be produced, and, second, that stenographic, mechanical, or electrical recordings——

Mr. O'MAHONEY. Or other recordings.

Mr. COOPER. Of statements made by a witness, which are in essence verbatim statements, and which are made contemporaneously at the time of the oral statement, shall be admitted. I want to ask the distinguished Senator if, in his opinion, the conference report limits or narrows in any way the holding of the Jencks case as to the totality of the statements of a witness which must be produced.

Mr. O'MAHONEY. In that part of the opinion of the majority of four of the Supreme Court in the Jencks case, which referred to the case of Gordon against the United States, and which defined the purpose of the production of the statements or the records, that part of the decision is completely sustained by this bill.

Mr. COOPER. I say that because I have great respect for the desire of the FBI to protect its records, and I said in the debate on the floor, when the Senate passed this bill, that we all wanted to assist so far as possible in that purpose. But, I say, overriding that aim is the objective and the right of every defendant to have due process. Whether it is the FBI, whether it is any other law agency, we know that due process must be accorded a defendant. I accept the statement of the distinguished Senator that, in his opinion—and I know that he is familiar with the Jencks case from one end to the other—the conference report does not limit the production of the records in such a way as to invade due process to a defendant.

Mr. O'MAHONEY. I am confident that it does not.

The VICE PRESIDENT. The question is on agreeing to the conference report. The yeas and nays have been ordered, and the Clerk will call the roll.

The Chief Clerk called the roll.

Mr. MANSFIELD. I announce that the Senators from New Mexico [Mr. ANDERSON and Mr. CHAVEZ], the Senator from North Carolina [Mr. ERVIN], the Senator from Rhode Island [Mr. GREEN], the Senator from South Carolina [Mr. JOHNSTON], the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. MORSE], the Senator from Montana [Mr. MURRAY], the Senator from West Virginia [Mr. NEELY], and the Senator from Alabama [Mr. SPARKMAN] are absent on official business.

I further announce that if present and voting, the Senator from New Mexico [Mr. CHAVEZ], the Senator from North Carolina [Mr. ERVIN], the Senator from Rhode Island [Mr. GREEN], the Senator from South Carolina [Mr. JOHNSTON], the Senator from Oklahoma [Mr. KERR], the Senator from Montana [Mr. MURRAY], the Senator from West Virginia [Mr. NEELY], and the Senator from Alabama [Mr. SPARKMAN] would each vote "yea."

Mr. DIRKSEN. I announce that the Senator from New Hampshire [Mr. BRIDGES] and the Senator from Maine [Mr. PAYNE] are absent because of illness.

The Senator from Ohio [Mr. BRICKER], the Senator from Kansas [Mr. CARLSON], and the Senator from Indiana [Mr. JENNER] are necessarily absent.

The Senator from Maryland [Mr. BUTLER], the Senator from Indiana [Mr. CAPEHART], and the Senator from Nevada [Mr. MALONE] are absent on official business.

The Senator from Vermont [Mr. FLANDERS] and the Senator from Kentucky [Mr. MARTIN] are absent on official business.

If present and voting, the Senator from Ohio [Mr. BRICKER], the Senator from Maryland [Mr. BUTLER], the Senators from Indiana [Mr. CAPEHART and Mr. JENNER], the Senator from Nevada [Mr. MALONE], the Senator from Vermont [Mr. FLANDERS], the Senator from Kentucky [Mr. MARTIN], and the Senator from Maine [Mr. PAYNE] would each vote "yea."

The result was announced—yeas 74, nays 2, as follows:

YEAS—74

Aiken	Beall	Bush
Allott	Bennett	Byrd
Barrett	Bible	Carroll

Case, N. J.	Humphrey	Proxmire
Case, S. Dak.	Ives	Purtell
Church	Jackson	Revercomb
Clark	Javits	Robertson
Cooper	Johnson, Tex.	Russell
Cotton	Kennedy	Saltonstall
Curtis	Knowland	Schoeppel
Dirksen	Kuchel	Scott
Douglas	Lausche	Smathers
Dworshak	Long	Smith, Maine
Eastland	Magnuson	Smith, N. J.
Ellender	Mansfield	Stennis
Frear	Martin, Iowa	Symington
Fulbright	Martin, Pa.	Talmadge
Goldwater	McClellan	Thurmond
Gore	McNamara	Thye
Hayden	Monroney	Watkins
Hennings	Mundt	Wiley
Hickenlooper	Neuberger	Williams
Hill	O'Mahoney	Yarborough
Holland	Pastore	Young
Hruska	Potter	

NAYS—2

Kefauver	Langer

NOT VOTING—20

Anderson	Ervin	Morse
Bricker	Flanders	Morton
Bridges	Green	Murray
Butler	Jenner	Neely
Capehart	Johnston, S. C.	Payne
Carlson	Kerr	Sparkman
Chavez	Malone	

So the report was agreed to.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate reconsider the vote by which the conference report was agreed to.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of executive business, to consider the nominations on the Executive Calendar.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate proceeded to consideration of executive business.

EXECUTIVE REPORTS OF A COMMITTEE

The following favorable reports of nominations were submitted:

By Mr. MONRONEY, from the Committee on Post Office and Civil Service:

John W. Loughnane, to be postmaster at Belgrade, Mont.; and

R. Ray Heath, to be postmaster at Stillwater, Okla.

The VICE PRESIDENT. If there be no further reports of committees, the nominations on the calendar will be stated.

POSTMASTERS

The Chief Clerk proceeded to read sundry nominations of postmasters.

Mr. JOHNSON of Texas. Mr. President, among the list of postmaster nominations, I ask unanimous consent that the nomination of Martin T. Southard to be postmaster at Stokesdale, N. C., be returned to the Committee on Post Office and Civil Service.

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

Mr. JOHNSON of Texas. Mr. President, in the case of all the other postmaster nominations, I ask that they be considered en bloc.

The VICE PRESIDENT. Without objection, the remaining postmaster nominations will be considered en bloc; and, without objection, they are confirmed.

IN THE ARMY

The Chief Clerk proceeded to read sundry nominations in the Army.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Army nominations be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations in the Army will be considered en bloc; and, without objection, they are confirmed.

IN THE AIR FORCE

The Chief Clerk proceeded to read sundry nominations in the Air Force.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the nominations in the Air Force be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

NOMINATIONS PLACED ON THE VICE PRESIDENT'S DESK

The Chief Clerk proceeded to read sundry Armed Services nominations placed on the Vice President's desk.

Mr. JOHNSON of Texas. I ask unanimous consent that these nominations be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations are considered en bloc; and, without objection, they are confirmed.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the President be notified forthwith of the confirmation of these nominations.

The VICE PRESIDENT. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

Mr. JOHNSON of Texas. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

TRANSFER OF AMERICAN SHIPPING TO FOREIGN REGISTRY

Mr. WILLIAMS. Mr. President on March 14, 1957, Congressman ZELENKO, of New York, raised a rather interesting question concerning the manner in which the Maritime Administration is permitting ships under American flags to be transferred to foreign registry, thereby resulting in a substantial windfall to the companies which had previously purchased these same ships at a greatly reduced price on the basis that they would be kept under the American flag.

The particular case to which he had reference on that date was their decision approving Mr. Onassis' transfer of 14 ships from American registry to foreign registry, thereby resulting in approximately $20 million windfall profit, the net proceeds of which were then used to establish a trust fund for his children.

Later I shall ask to incorporate in the body of the RECORD the Maritime Administration's report on this transaction along with a chart showing the original cost of the 14 ships involved to the Government and the net price for which they were sold by the Government at the end of the war.

This report will show the average price received by the Government for the tankers as being about $1½ million each and about $470,000 each for the two cargo ships.

The Maritime Administration in the same report confirms that the value of these ships when transferred to a foreign flag automatically increases based upon today's valuations to $3,400,000 each for the tankers and $1,500,000 each for the Liberty dry-cargo vessels.

This means that the permission granted by the Maritime Administration to Mr. Onassis to transfer these ships from American flag to foreign registry resulted in more than doubling their valuation as compared to the original cost of 10 years ago, or a windfall of approximately $20 million.

The Maritime Administration points out that in turn for this favorable concession the Onassis group have agreed to have constructed in this country three new tankers of not less than 198,450 deadweight tons with the proviso that should they not live up to this latter contract to construct these three ships they would pay a forfeit of approximately $8 million.

Even if they forfeit this last agreement the company still stands to win $12 million by the agreement. The company cannot lose; the American taxpayers can.

Last year Congress rejected the request of certain companies for permission to transfer their ships from American registry to foreign registry on the basis that the resulting windfall profits were not warranted. The ships had been sold at a greatly reduced price in order to keep them under American flag and the whole purpose of this policy would be defeated by making exemptions. If the ships were to be sold promiscuously under foreign registry then the American taxpayers should have reaped the benefits resulting from the greater world valuation. The Maritime Administration by executive decisions is granting these requests which were denied by Congressional action. Congress should give this new policy of the Maritime Administration their careful scrutiny.

At this point I ask unanimous consent to have incorporated in the RECORD as a part of my remarks the report of the Maritime Administration which shows hows Mr. Onassis, the Greek shipowner, created a trust fund for his children with the $20 million windfall profit resulting from these maritime rulings.

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

DEPARTMENT OF COMMERCE,
MARITIME ADMINISTRATION,
Washington, D. C., April 9, 1957.

Hon. JOHN J. WILLIAMS,
United States Senate,
Washington, D. C.

DEAR SENATOR WILLIAMS: The receipt is acknowledged of your letter of March 25, 1957 enclosing a copy of an article which appeared in the Wilmington Morning News of March 15, 1957, concerning a proposed arrangement between the Maritime Administration and Mr. Aristoteles Onassis involving the construction of new tankers. In connection therewith you request a complete report on the transaction, with particular reference to certain phases thereof, as listed in your letter.

On December 10, 1956, the Maritime Administrator granted approval in principle, pursuant to sections 9 and 37 of the Shipping Act, 1916, as amended of the transfer to Panamanian or Liberian ownership and Panamanian or Liberian registry and flag of 11 United States flag T–2 tankers, the tanker *Olympic Games,* and 2 Liberty dry-cargo ships, in consideration for the construction in the United States by United States Petroleum Carriers, Inc., or any United States affiliate or subsidiary thereof, for United States documentation and operation, of 3 new tankers aggregating not less than 198,450 deadweight tons, as follows: One to be 100,000 deadweight tons or more, with trial speed of 18.5 knots and service speed of 17.5 knots; and two of the *World Glory* type to be of 46,000 deadweight tons or more, with speed of 16.9 knots or more.

The above approval in principle was subject to the terms and conditions set forth in part I, paragraph B and part III, paragraph A of the notice of policy setting forth the Maritime Administration's foreign transfer policy, effective November 5, 1956 (copy attached).

On January 25, 1957, the Maritime Administration formalized the approval granted in principle on December 10, 1956, of the trade-out-and-build proposal described above, by the execution of appropriate contracts with respect to the new ships, and also with respect to the vessels to be transferred to Liberian registry and flag. The Maritime Administration's transfer orders, in evidence of its approval pursuant to sections 9 and 37 of the Shipping Act, 1916, as amended, have been issued for 12 of the vessels—the remaining 2 orders, covering 2 Liberty dry-cargo vessels, are to be issued upon payment of the mortgage indebtedness due the Maritime Administration with respect to each ship. Attached is copy of executed contract No. MA–1439 dated January 25, 1957, between the Department of Commerce, Maritime Administration, and Victory Carriers, Inc., with respect to the construction of the three new tankers, namely builder's hulls Nos. 1671, 1672 and 1681. This contract contains the essence of the Maritime Administration's approval of the trade-out-and-build program of Victory Carriers, Inc. Your attention is called to paragraph 2 of said contract, which provides for the payment of liquidated damages to the Maritime Administration, in the event the new ships are not constructed and documented under United States laws within the time limit prescribed.

Listed hereunder are the answers to your specific points of inquiry concerning the subject proposal:

1. The name of the company, a list of the officers or directors, and the amount of actual paid-in capital by the stockholders.

A. The name of the corporation which has agreed to construct the three new vessels for United States documentation is Victory Carriers, Inc., which is a Delaware corporation with an authorized capital of 2,000 shares of no par value stock, all of which has been issued and is presently outstanding and is owned by United States Petroleum Carriers, Inc. The officers and directors of Victory Carriers, Inc., are: Granville Conway, president and director; Nicolas Cokkinis, vice president and director; Peter Spalding, vice president; Thomas R. Lincoln, vice president; Charles S. Cunningham, director; John C. Griswold, director; Edmond J. Moran, director.

United States Petroleum Carriers, Inc., is a Delaware corporation with an authorized capital of 1,000 shares of no par value stock, all of which has been issued and is presently outstanding. Seven hundred and fifty shares of the stock are held by Grace National Bank of New York, as trustee of the trust established under agreement dated August 10, 1956, between Aristoteles S. Onassis, an Argentine citizen, and said bank (referred to as the trustee of the Onassis trust). The remaining 250 shares are owned by Sociedad Industrial Maritima Financiera Ariona, Panama, S. A., a Panamanian corporation. The latter corporation is owned or controlled by Mr. Aristoteles S. Onassis and Messrs. N. Konialides, an Argentine citizen, and C. Konialides, a Uruguyan citizen.

2. The total expected cost of the tankers, broken down per ship:

A. On December 28, 1956, the Maritime Administration was furnished with an executed copy of construction contract dated December 13, 1956, by and between Bethlehem Steel Co. and Victory Carriers, Inc., which provides for the construction at Quincy, Mass., of 2 steel, single screw, steam turbine propelled, bulk oil tankers, builder's hulls Nos. 1671 and 1672, and 1 steel, twin screw, steam turbine propelled, bulk oil tanker, builder's hull No. 1681, the total of maximum designed deadweights of such vessels to be about 198,450 tons.

As of March 8, 1957, Victory Carriers, Inc, had already paid $1,795,500 on account of the construction of these ships.

Under the construction contract the construction cost is $51,300,000, the contract price for the three vessels to be constructed. The construction contract also provides for the completion and delivery of the vessels as follows:

Hull No. 1671, on or before August 31, 1959.

Hull No. 1672, on or before January 31, 1960.

Hull No. 1681, on or before June 30, 1960, which dates are subject to the force majeure clause.

3. The extent of the Government financing, either in the form of construction differential, subsidy, or Government guaranties of mortgages.

(a) The interest rate involved in the guaranteed mortgage and the terms of payment.

A. There has been no financial assistance granted by the Maritime Administration in connection with the construction of the three new tankers by Victory Carriers, Inc., either in the form of construction differential subsidy, or insured mortgage guaranty, or other forms of Government aid.

4. The name of each tanker, Liberty ship, or other ship which the Maritime Administration has authorized transferred from American flag to foreign flag.

A. The names, owners, and types of United States-flag vessels approved for transfer to Liberian registry and flag without change in United States citizen ownership, in connection with the new construction, are as follows:

United States, Petroleum Carriers, Inc., *Arickaree,* T–2 tanker; *Battle Rock,* T–2 tanker; *Camp Namanu,* T–2 tanker; *Fort Bridger,* T–2 tanker; *Lake George,* T–2 tanker; *Stony Point,* T–2 tanker.

Victory Carriers, Inc., *Heywood Broun,* Liberty cargo; *Lewis Emery Jr.,* Liberty cargo.

Western Tankers, Inc., *McKittrich Hills,* T–2 tanker; *Montebello Hills,* T–2 tanker; *William A. M. Burden,* T–2 tanker; *Olympic Games,* tanker.

Trafalgar Steamship Corp., *Federal,* T–2 tanker; *Republic,* T–2 tanker.

4a. With the name of each tanker or other type of ship include information as to the date this ship was constructed, the total construction cost, the date the ship was sold to Mr. Onassis or his company, and the net amount after all allowances received by the Government for such ship.

A. See attachment 2.

4b. The estimated valuation of each of these ships if placed under foreign flag and eligible for resale in world markets.

A. Under foreign registry the estimated valuation on a restricted basis, of the 14 vessels will be: $3,400,000 for each T–2 tanker, and the *Olympic Games,* and $1,500,000 for each of the Liberty dry cargo vessels. However, these ships are not eligible for resale except with prior Maritime Administration approval.

5. If Mr. Onassis is merely transferring these tankers and Liberty ships to a foreign flag company of his own, then I want this information:

A. On January 29, 1957, the Maritime Administrator approved, in principle only, the transfer of the above-listed vessels, after their documentation under Liberian flag, to a Liberian corporation or corporations to be formed. The Maritime Administrator's approval in principle contemplated that the president and a majority of the directors of the said corporation or corporations would be citizens of the United States, that 75 percent of the stock in said corporation or corporations would be owned by a trustee for the benefit of the children (United States citizens) of Mr. A. S. Onassis, and that the trustee so appointed for the children would be an individual or corporation acceptable to the Maritime Administration.

5a. The amount of money involved in the transfer and the names of the companies being transferred from and to.

A. The approval granted in principle on January 29, 1957, as referred to above, has not yet been formalized and the amount of purchase price or other monetary consideration involved in the proposed transfer of ownership, as well as the name or names of the Liberian purchasers or transferees, has not yet been filed with the Maritime Administration.

5b. After being transferred to one of his foreign flag companies would he need any further permission from the Maritime Administration if he desired to sell them in the world market?

A. The Maritime Administration has statutory control, under section 37 of the Shipping Act, 1916, as amended, so long as the present emergency exists, of the transfer to foreign ownership of the Liberian vessels. Pursuant to the terms of its formal approval of any transfer of these vessels to Liberian ownership, the Maritime Administration has contractual control over any subsequent changes in ownership of the vessels involved for the balance of the 20-year life of the ships, or for the duration of the national emergency, whichever is the longer period.

5c. The same information as to world market valuation as indicated in question 4b.

A. The answer to your question 5c would appear to be the same as the answer given to your question 4b.

Sincerely yours,

CLARENCE G. MORSE,
Maritime Administrator.

Statement showing date of construction, construction cost, sales price, and other data with respect to certain vessels now owned by United States Petroleum Carriers or Victory Carriers, Inc., or United States affiliated companies

Name of ship and company to which sold by USMC	Type	Date of construction	Construction cost	Date of title transfer	Statutory sales price	Class allowance	Net sales price
American Marine Corp.:[1]							
Battle Rock	T–2 tanker	Mar. 30, 1944	$3,210,851	Mar. 29, 1948	$1,601,211.86	$23,218.00	$1,577,993.86
Camp Namanu	do	May 26, 1944	2,819,618	Mar. 26, 1948	1,617,822.50	39,538.00	1,578,284.50
Stony Point	do	Apr. 18, 1943	4,065,683	Apr. 14, 1948	1,505,352.00	23,150.00	1,482,202.00
(Now owned by U. S. Petroleum Carriers.)							
American Republics Corp.:[2]							
Federal	do	Dec. 10, 1944	3,132,554	May 4, 1948	1,674,701.24	95,051.18	1,579,650.06
Republic	do	July 31, 1944	3,325,139	Apr. 30, 1948	1,626,404.85	58,306.00	1,568,098.85
(Now owned by Trafalgar Steamship Corp.)							
Pacific Tankers, Inc. (now Western Tankers, Inc.):							
McKittrick Hills	do	Dec. 15, 1944	3,083,473	Mar. 16, 1948	1,690,094.67	38,140.00	1,651,954.67
Montebello Hills	do	Nov. 22, 1944	3,170,005	Feb. 27, 1948	1,687,692.28	26,770.00	1,660,922.28
United States Petroleum Carriers:							
Arickaree	do	Mar. 11, 1943	4,770,279	Apr. 2, 1948	1,505,352.00	66,474.00	1,438,878.00
Fort Bridger	do	July 29, 1944	4,083,653	Feb. 26, 1948	1,601,490.36	19,090.25	1,582,400.11
Lake George	do	Sept. 18, 1943	2,778,490	Mar. 18, 1948	1,550,549.35	116,978.00	1,433,571.35
Victory Carriers, Inc.:							
Lewis Emery, Jr	Liberty dry-cargo (EC2–S–C1)	Oct. 25, 1943	1,685,682	Feb. 26, 1951	544,506.00	74,725.00	469,781.00
Heywood Broun	do	Sept. 15, 1943	1,642,115	Feb. 24, 1951	544,506.00	73,474.00	471,032.00
Union Sulphur Co.,[1] *Wm. A. M. Burden* (now owned by Western Tankers, Inc.).	T–2 tanker	May 7, 1943	4,019,376	Mar. 2, 1948	1,505,352.00	86,238.50	1,419,113.50
Western Tankers, Inc.,[2] *Olympic Games*	Tanker of 18,151 deadweight tons	[3]	[4]				

[1] These companies not affiliated with any of the so-called Onassis companies.
[2] This vessel was built in the United States for foreign-flag ownership, operation, for 1 of the foreign corporations of the Onassis group. In 1950, this vessel was documented under United States laws, pursuant to a condition of the approval granted by the Maritime Administration of the transfer to foreign ownership and registry of the damaged T–2 tanker *Herman F. Whiton.*
[3] 1948, Sparrows Point, Md.
[4] No data, see footnote 2.

LET THE LADY HOLD UP HER HEAD

Mr. NEUBERGER. Mr. President, on the day that we are scheduled to act on the conference report which reflects the enlightened immigration proposals of the junior Senator from Massachusetts [Mr. KENNEDY], I should like to make available to my colleagues an eminent address on our national immigration policies which Senator KENNEDY delivered to the Washington chapter of the American Jewish Committee on June 4, 1957. The title of this able essay is "Let the Lady Hold Up Her Head," which symbolizes the desire of the Senator from Massachusetts to bring into living reality the great humanitarian promise inherent in the Statue of Liberty, which commands the entrance to New York Harbor. I am pleased to be a cosponsor of Senator KENNEDY's bill (S. 2792).

I believe that any openminded citizen reading this address by Senator KENNEDY will come to realize that every one of us, except for fullblooded American Indians, is either an immigrant or the descendant of immigrants. Therefore, as the Senator from Massachusetts emphasizes, "our policy should be generous; it should be fair; it should be flexible." I ask unanimous consent that the address by Senator KENNEDY be printed in the body of the RECORD.

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

LET THE LADY HOLD UP HER HEAD—REFLECTIONS ON AMERICAN IMMIGRATION POLICY

(By Senator JOHN F. KENNEDY, of Massachusetts)

I've heard it said that one of the reasons Queen Isabella of Spain was so eager to support Columbus' voyage was to make certain that all the heathens beyond the horizon were converted to her own religion.

The story has it that Luis Santangel, Chancellor of the Spanish Exchequer, was having much difficulty persuading Ferdinand to finance Columbus' explorations, because the King's advisers had told him no gold would be found beyond the seas. So Santangel decided to appeal to other motives. Within earshot of the Queen, who was a devout Catholic, he asked the King: "Does your Grace feel no responsibility to convert the inhabitants beyond the sea of darkness to the true faith?"

"Madre de Dios," exclaimed the Queen. "I had never thought of that. If My Lord, the King, will not give the Italian the money he needs to save those poor lost souls, I will pawn my jewels and finance him myself."

The King who could not bear the thought of the royal jewels in a pawnshop, quickly agreed to advance the money.

Queen Isabella was not alone in her desire. In the years that followed, Sir Walter Raleigh, and later Governor Winthrop, also wanted these shores kept virgin for their own kind of people. But luckily for all of us, history decided differently. Columbus and the English were followed by waves of Germans, Irish, Italians, Slavs. And far from remaining a nation of one creed, this new land became an amalgamation such as had never before been created.

Each wave disliked and distrusted the next. The English said the Irish "kept the Sabbath and everything else they could lay their hands on." The English and the Irish distrusted the German who "worked too hard." The English and the Irish and the Germans disliked the Italians; and the Italians joined their predecessors in disparaging the Slavs. By the time Robert Louis Stevenson made his journey across the new land he found Americans united in only one thing—their distrust of the heathen Chinee whom he himself looked upon with wonder and awe, because "their forefathers," as he pointed out, "watched the stars before mine had begun to keep pigs."

E PLURIBUS UNUM

Fortunately for America, a few pioneers saw the value of accepting all races and faiths. When Roger Williams was expelled from the Puritan colonies, he founded Rhode Island as a polyglot refuge. William Penn made a point of welcoming all comers. In 1654 the first group of Jewish settlers landed in New Amsterdam. And by 1737 the Irish were already celebrating St. Patrick's Day in Boston.

The assimilation of this heterogeneous tide was not an easy accomplishment. As early as the Presidency of John Adams, the alien and sedition laws were passed. The Know-Nothing Party flourished before the Civil War; and for several generations thereafter the Ku Klux Klan rode furiously in the night. But today the Klan is more laughed at than feared. In 1916, one Madison Grant, official of the American Museum of Natural History, wrote a pseudoscientific, violently anti-immigrant book entitled "The Passing of the Great Race." But in 1952, a group of world renowned anthropologists reported unequivocally to UNESCO that there is no basis for ideas of racial purity or superiority.

Today, some few may try to maintain the fiction that they are of purer stock or superior breed, but their pretense is transparent. The Nation got a hearty chuckle when FDR addressed the Daughters of the American Revolution as "fellow immigrants." And Sinclair Lewis described Martin Arrowsmith as "a typical purebred Anglo-Saxon American—which means that he was a union of German, French, Scotch-Irish, perhaps a little Spanish, conceivably a little of the strains lumped together as Jewish, and a great deal of English, which is itself a combination of primitive Britain, Celt, Phoenician, Roman, German, Dane, and Swede."

America today is a product of its immigrants—and a product that is the envy of the world. We recognize that the new amalgamated man, a strictly made-in-America product, is the stronger and fresher because he has borrowed the best strains of many lands.

A STEP BACKWARD

But in spite of this knowledge, our Nation's attitude toward immigrants has changed considerably. If Emma Lazarus were writing today, her famous lines "give me your tired, your poor" would have to be amended to read "as long as they come from northern Europe, are not too tired or too poor or slightly ill, and can document all their activities for the past 2 years."

Our present immigration laws furnish a quota system of national origins with indefensible overtones of racial preference. The laws impose a ridiculous superstructure of regulations that lead to what Dostoevsky cunningly described as "administrative ecstasy." Walt Whitman's songs of the open gate have given way to the mournful strains of Gian Carlo Menotti's The Consul.

President Truman warned when he vetoed the McCarran Act that "the idea behind the discriminatory policy was, to put it baldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. * * * Such a concept is utterly unworthy of our traditions and our ideals." And yet, as we well know, despite the veto,

the law went into effect—ironically on Christmas Eve.

The inequities of this legislation have raised the number of private immigration bills from 100 in the 78th Congress to 2,000 in the 84th. Private immigration bills make up about half of our legislation today.

In my own office I have interceded on behalf of innumerable immigrants who bumped their heads against our barrier of regulations. An Italian immigrant, living with his small children in Massachusetts, could not bring his wife to the United States because she had stolen a pair of shoes in 1913, and a bundle of sticks for her fire in 1939. It took an act of Congress to reunite this family.

IMMIGRATION AND FOREIGN POLICY

As a member of the Foreign Relations Committee I am deeply disturbed by the frustrations and resentments created abroad by our immigration laws. Immigration policy, I maintain, is as integral a part of foreign policy as economic aid or propaganda broadcasts. Nothing is more personal, or translated more easily into terms of human understanding or misunderstanding. The alien rebuffed, the relative of an American citizen sweating out a quota, the refugee languishing in camp—all belie the picture we try to create of America. The foreign observer whom we hope to win to our way of thinking is likely to tell us that what we do speaks so loudly, he cannot hear what we say.

When the restrictive immigration laws of 1924 were drawn up, with their provisions for Japanese exclusion, the Japanese Ambassador warned they would create resentment in that country. Japanese intellectuals, in particular, were sensitive to the implication of racial inferiority inherent in such legislation. Twenty-eight years later, after a brutal, bitter war, a number of experts informed the President's Commission on Immigration and Naturalization that the exclusion clause had indeed contributed to the growth of anti-American feeling in Japan and helped create the climate leading to Pearl Harbor.

On the other hand, immigration policy can also be used as a positive instrument of foreign affairs. The absence of quotas within the Western Hemisphere is an invaluable adjunct to the good-neighbor policy.

Whether we identify immigration policy with foreign policy or not, our friends do—including some of our own partners in NATO, against whom we discriminate. And our enemies so identify it also. In 1948 a number of Italian Americans wrote to relatives in Italy, urging them to vote against the Communists, and describing the American way as the route to abundance. The Reds countered with propaganda blasts pointing out that the Americans were not very willing to share their abundance. In a recent Korean broadcast, Radio Moscow emphasized that the McCarran Act was based on the Nazi theory of racial superiority. It pointed out that a person born of a Japanese mother and a British father was held by the United States to be Japanese for immigration purposes, regardless of where he was born—and that this was true only for orientals.

Consider that the Asia-Pacific Triangle, as it is called, contains 50 percent of the world's population, and America 6 percent. Is it wise foreign policy for 6 percent to hold 50 percent in contempt?

NEEDED: A NEW LOOK AT IMMIGRATION POLICY

In recent years we have undertaken a new look in military policy. I suggest that we also need a new look in immigration policy. In the 84th Congress I introduced a bill to establish a sort of Hoover Commission on immigration and naturalization policy, and I still think some such unemotional, nonpolitical study is necessary. Our immigration laws have devolved into such a tangled mess that nobody quite knows what they are. Yet the inequities and preference quotas they perpetuate are a national disgrace and a handicap abroad.

There are some immediate remedies which could be applied. For instance, the quotas should be based on the 1950 census instead of the 1920 census. This would allow 65,000 more immigrants per year. But we also need immediate revision of the quota system itself—under which England's quota is never filled while that of Greece is mortgaged into the 21st century. These mortgages should be wiped out, and the unused quotas of one country should be available for redistribution to other countries.

With respect to the specific problem of refugees, I am introducing legislation to admit some 89,000 emergency immigration cases. They include wives and children of refugees already admitted under the Refugee Relief Act of 1953. They include a number of aliens who secured assurances of jobs and homes under that act but were caught in the squeeze when the act expired. There is also provision for 20,000 refugees and escapees from communism now residing in Austria and the NATO countries; 4,000 orphans and 5,000 refugees—Jews, Italians, and Greeks expelled from Egypt. I do not pose this as a solution to all the problems of immigration, but only as a quick answer to the most urgent needs. I still hope that Congress in the near future will reexamine our whole immigration policy to adapt it to our role of world leadership.

This new policy should not only amend the unreasoned restrictions of the present law, it should shape immigration to foreign policy. It should provide, for instance, for some measure of flexibility to take care of sudden developments like the expulsion of Jews from Egypt or the revolt in Hungary.

The executive branch, it is true, does have a legal measure of flexibility now in the parole provision; but this was not designed to take care of the kind of emergency situation I have in mind. It has been used only in the case of the Hungarian escapees, and the Attorney General has declined to apply it equally to the Middle East.

A new, enlightened policy of immigration need not throw open the floodgates to a wave of immigrants we could not absorb or would not want for some valid reason of national interest. But we must avoid what the Massachusetts poet John Boyle O'Reilly once called, "organized charity, scrimped and iced, in the name of a cautious, statistical Christ."

Our policy should be generous; it should be fair; it should be flexible. With such a policy we could take up the other problems of the world with clean hands and a clean conscience. And the lady in the harbor could hold up her head as well as her lamp.

OREGON ECONOMIC PROBLEMS—EDITORIAL BY SENATOR NEUBERGER FROM PORTLAND JOURNAL

Mr. NEUBERGER. Mr. President, the Oregon Daily Journal in my home city of Portland has been performing a public service in presenting a wide range of viewpoints and opinions as to how the economic difficulties confronting the State of Oregon may best be corrected and resolved.

Many statistics—as well as actual hardship among numerous people—have demonstrated that Oregon has not been sharing in the so-called nationwide prosperity. For example, average incomes in Oregon were $202 higher than the national average during 1947, but $10 below the national average in 1956.

In keeping with other brief Senate speeches which I have made to call to the attention of my colleagues some of the Federal policies which are urgently needed by our State of Oregon, I ask unanimous consent to have printed in the body of the RECORD a guest editorial which I contributed to the Oregon Daily Journal of August 24, 1957, as one of a series, on this vital topic. The title of this guest editorial is "Oregon Must Let Mind Be Bold, Seek Industries."

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

OREGON MUST LET MIND BE BOLD, SEEK INDUSTRIES

(By RICHARD L. NEUBERGER, U. S. Senator from Oregon)

Every American region heavily reliant on lumber has had to produce some new form of permanent payrolls to take up the slack in saw-timber employment. This happened in New England, in the lake States and in the South. It explains why, for the last 4 years, I have been talking and writing about the growing crisis confronting our State. It tells why average incomes in Oregon were $202 above the national average in 1947 but $10 below in 1956.

Let me emphasize that Oregon is not gripped by depression. The whole country still responds to the vast $44 billion which the Government is pumping into the economy for armaments. But Oregon is a long way from sharing in the nationwide boom.

I should like to describe some of the things which a number of us have been attempting to do about this grave and urgent situation:

The administration's tight-credit policy has choked off new housing starts. Oregon lumber is geared to the housing market. After all, a home buyer must pay $8,760 in interest alone if he purchases a $15,000 house at 5 percent. To try to stimulate housing production, I joined with nine other Senators in a bipartisan plea directly to the President to lower FHA downpayments. We also have opposed the constant increase in interest rates.

Pulp mills could assure greater stability of employment in timber communities. That is why I risked political criticism to urge, as early as 1955, that subalpine stumpage be made available for this purpose. In British Columbia, for example, lumber production has risen 38 percent since 1939, but pulp has soared 180 percent. I have asked the Forest Service to determine the feasibility of small, community-financed pulp plants. Its technicians have informed me that mills with a daily capacity as small as 25 tons might be operated successfully in Oregon.

Low-cost power is the key to payrolls. That explains why we have fought for projects like John Day, Hells Canyon, and the Canadian storage. I have favored Federal dams not for political reasons, but because the Bonneville industrial rate of 2.1 mills a kilowatt-hour has never been matched by private utilities. With modern steam plants generating for 3.5 mills in the Ohio Valley, how can 6-mill private power bring new factories to distant Oregon?

If we develop further supplies of low-cost Columbia River power, much of that energy should be used primarily to create new industrial payrolls. That is why I have introduced an amendment to the preference clause to give industry a higher priority than household use when new power comes on the line.

High freight rates are throttling our ability to sell Oregon goods and produce in the major markets of the East. We have introduced legislation to repeal the 3 percent Federal freight tax. We also are seeking abandonment of the Pittsburgh-plus system of ratemaking, which discourages

processing of raw materials in the Western States.

Only a small segment of Oregon agriculture qualifies for Federal price-support payments. We have worked for the two-price plan for wheat, for broadening of Public Law 480 to sell surplus Oregon fruits and grain abroad, for including row crops in soil-bank benefits, and for a basin account to underwrite irrigation projects like that on the Crooked River with a portion of power revenues. This would help to give Oregon farmers a measure of equality with those who raise favored commodities such as corn or tobacco.

There are other avenues of encouragement too numerous to cite here. Oregon, I think, must heed the vigorous wisdom of Justices Holmes and Brandeis when together they wrote: "If we would guide by the light of reason, we must let the mind be bold."

AMENDMENTS OF IMMIGRATION AND NATIONALITY ACT

Mr. JOHNSON of Texas. Mr. President, I ask that the Chair lay before the Senate the message from the House of Representatives on Senate bill 2792.

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 2792) to amend the Immigration and Nationality Act, and for other purposes, which were, on page 2, line 10, strike out "years." " and insert "years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this act." "; on page 3, line 22, strike out "this" and insert "the Immigration and Nationality"; on page 3, after line 22, insert:

(c) Any visa which has been or shall be issued to an eligible orphan under this section or under any other immigration law to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business.

(d) The Attorney General may, pursuant to such terms and conditions as he may by regulations prescribe, adjust the status to that of an alien lawfully admitted for permanent residence, as of the date of his arrival in the United States, in the case of an alien who was paroled into the United States under section 212 (d) (5) of the Immigration and Nationality Act if such alien at the time of his arrival in the United States was an eligible orphan as defined in section 5 of the Refugee Relief Act of 1953, as amended, and was, or thereafter has been, adopted by a United States citizen and spouse in a court of proper jurisdiction.

On page 4, line 7, after "residence" insert "(1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and (2)"; on page 4, line 25, strike out "prescribe." and insert "prescribe: *Provided*, That the Attorney General shall promptly make a detailed report to the Congress in any case in which the provisions of this section are applied: *Provided further*, That no visa shall be issued under the authority of this section after June 30, 1959."; on page 7, line 1, strike out "sections" and insert "section"; on page 7, line 15, strike out "241)." and insert "241), nor shall any person acquiring exchange visitor status subsequent to the enactment of that Act, and who has not received a waiver pursuant thereto, be eligible for adjustment of status under this section."; on page 8, line 2, strike out all after "are" down through and including "Act—" in line 3, and insert "terminated effective July 1, 1957—"; on page 9, line 1, strike out "adopted" and insert "adoptive"; on page 10, line 5, strike out all after "provisions," down through and including "Act," in line 8; on page 10, line 11, after "If" insert ", after consultation with the Secretary of State,"; on page 10, line 13, after "character," insert "that he is admissible for permanent residence under the Immigration and Nationality Act,"; on page 12, line 4, strike out "allotted" and insert "allotted,"; on page 12, line 6, strike out "Act" and insert "Act,"; on page 12, strike out lines 13 and 14; on page 12, line 15, strike out "(4)" and insert "(3)"; on page 12, line 23, after "alien" insert ", as described in this section,"; and on page 14, after line 3, insert:

SEC. 16. In the administration of section 301 (b) of the Immigration and Nationality Act, absences from the United States of less than twelve months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence.

Mr. JOHNSON of Texas. Mr. President, this is the immigration bill, which recently was passed by the Senate. It is an important piece of legislation in which I am deeply interested, and to which I have given much time and attention.

I call the message to the attention of the Senator from Massachusetts [Mr. KENNEDY], who has been handling the bill.

Mr. KENNEDY. Mr. President, the amendments which the House added improve the bill. They are all of a technical and clarifying nature. All of them improve the bill. I believe that is the opinion also of the Senator from Mississippi [Mr. EASTLAND], the chairman of the committee.

I am hopeful that the Senate will concur in the House amendments. I so move.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Massachusetts.

The motion was agreed to.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate reconsider the vote by which the report was agreed to.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Montana.

The motion to lay on the table was agreed to.

ORDER FOR CALL OF THE CALENDAR TOMORROW

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that it be in order on tomorrow, after the morning business, at a time to be announced, to call up bills on the calendar which are cleared for action but which have not been called up by motion.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

INVESTIGATION OF ANTITRUST AND ANTIMONOPOLY LAWS

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Order No. 1095, Senate Resolution 166.

I will say to Senators, so far as I am aware, there will be no rollcalls tonight. If anything controversial comes up, I will ask that it go over until tomorrow. There are 8 or 10 bills we would like to call. We have had them cleared by the majority and the minority policy groups. If a controversy develops, I will ask that they go over until tomorrow. Any Senator who desires may retire from the Chamber. I thank them for their cooperation.

The VICE PRESIDENT. The resolution will be stated by title.

The LEGISLATIVE CLERK. A resolution (S. Res. 166) amending Senate Resolution 57, 85th Congress, authorizing an investigation of antitrust and antimonopoly laws and their administration.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the resolution.

Mr. JOHNSON of Texas. Mr. President, I should like to inform the Senate that this is a resolution to continue the investigation of antitrust and antimonopoly laws. The minority leader has approved taking up the resolution by motion. It was held up on the last calendar call. Since then a study of the resolution has been made, and it has been included for action. I hope the Senate will adopt it.

The VICE PRESIDENT. The question is on agreeing to the resolution.

The resolution (S. Res. 166) was agreed to, as follows:

Resolved, That Senate Resolution 57, 85th Congress, agreed to January 30, 1957 (authorizing an investigation of antitrust and antimonopoly laws and their administration), is hereby amended by striking out "$225,000" and inserting in lieu thereof "$275,000."

ELECTION OF TWO COUNTY COMMITTEES IN CERTAIN COUNTIES UNDER SOIL CONSERVATION AND DOMESTIC ALLOTMENT ACT

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to consideration of Calendar No. 1063, H. R. 8508.

The VICE PRESIDENT. The clerk will state the bill by title.

The LEGISLATIVE CLERK. A bill (H. R. 8508) to provide that there shall be two

county committees elected under the Soil Conservation and Domestic Allotment Act for certain counties.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a brief explanation of the bill.

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

The Soil Conservation and Domestic Allotment Act provides for the election of one county committee in each county, to be utilized in administering that act and other agricultural programs. For many years, without any apparent authority, two county committees have been elected in each of the four counties named in the bill. Due to geographic location, number of farms, and other factors, other agricultural agencies and the county governments, as well as the committees here concerned, have operated two offices in each of these counties; and this method of administration has worked out very well. Recently it was brought to the attention of the Department that this method was not in accordance with law, and the State committees have now been notified that only one committee should be elected.

This bill would provide for two county committees in each of the four counties and thereby maintain the existing arrangement, which is the result of a need for two offices and which has worked very well.

The VICE PRESIDENT. The bill is open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

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

ADDITIONAL OFFICE SPACE IN HOME DISTRICTS FOR CONGRESSMEN, DELEGATES, AND RESIDENT COMMISSIONERS

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1147.

The VICE PRESIDENT. The clerk will state the bill by title.

The LEGISLATIVE CLERK. A bill (H. R. 9282) to provide additional office space in home districts of Congressmen, Delegates, and Resident Commissioners.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

The VICE PRESIDENT. The bill is open to amendment.

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

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

TELEPHONE AND TELEGRAPH SERVICE FURNISHED MEMBERS OF THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1148, H. R. 9406.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 9406) to amend the act of June 23, 1949, to provide that telephone and telegraph service furnished Members of the House of Representatives shall be computed on a biennial rather than an annual basis.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

The VICE PRESIDENT. The bill is open to amendment.

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

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

PRINTING AS HOUSE DOCUMENT MATERIAL RELATING TO CENTRAL VALLEY PROJECT, CALIF.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1149, House Concurrent Resolution 176.

The VICE PRESIDENT. The concurrent resolution will be stated.

The LEGISLATIVE CLERK. A concurrent resolution (H. Con. Res. 176) authorizing the printing as a House document of certain material relating to the Central Valley project of California, and providing for additional copies.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the concurrent resolution was considered and agreed to.

PRINTING OF HOUSE DOCUMENT

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1150, House Concurrent Resolution 188.

The VICE PRESIDENT. The concurrent resolution will be stated.

The LEGISLATIVE CLERK. A concurrent resolution (H. Con. Res. 188) authorizing the printing as a House document of the document entitled "Congress and the Monopoly Problem: 56 Years of Antitrust Development, 1900–1956."

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the concurrent resolution was considered and agreed to.

SUBSISTENCE ALLOWANCE FOR GRAND AND PETIT JURORS

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1152, H. R. 3370.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 3370) to amend section 1871 of title 28, United States Code, to increase the mileage and subsistence allowances of grand and petit jurors.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to, and the Senate proceeded to consider the bill.

The VICE PRESIDENT. The bill is open to amendment.

If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

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

TARIFF TREATMENT OF ISTLE OR TAMPICO FIBER

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 882, H. R. 7096.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 7096) to amend paragraph 1684 of the Tariff Act of 1930 with respect to istle or Tampico fiber.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

Mr. BEALL. Mr. President, I have an amendment——

Mr. CASE of South Dakota. Mr. President, reserving the right to object, may I ask that the amendments be read?

Mr. BEALL. I ask the clerk to read the amendment.

The VICE PRESIDENT. The clerk will state the committee amendments.

Mr. JOHNSON of Texas. Mr. President, may we have order in the Chamber?

The VICE PRESIDENT. The committee amendments will be stated.

Mr. CASE of South Dakota. Mr. President, reserving the right to object to the consideration of the bill, and not knowing what the amendment——

Mr. JOHNSON of Texas. Mr. President, I ask that the bill go over. I ask the Senator from Maryland to confer with the Senator from South Dakota to see if he can clear the bill.

The VICE PRESIDENT. The bill will go over.

Mr. CASE of South Dakota subsequently said: Mr. President, I wish to say I had objected to the consideration of Calendar No. 882 for the reason that it dealt with the tariff. I had heard that there was a possibility that an amendment would be offered to put mica on the free list. I do not know whether that was a committee amendment or not. I understand the amendment proposed to be offered by the Senator from Maryland [Mr. BEALL] referred to putting wool on the free list. I would have objected to the consideration if it meant putting wool on the free list. Therefore, I respectfully request that Order No. 882, dealing with the Tariff Act, not be passed on a consent call.

Mr. JOHNSON of Texas. We are not passing anything on the Consent Calendar. Bills are being called up by motion. The fact that the Senator from South Dakota wants time to study it is sufficient to have the bill go over. I ask that the

bill go over so that the Senator from South Dakota may discuss it with the Senator from Maryland.

The VICE PRESIDENT. The bill will be passed over.

INCREASE IN SALARIES OF CERTAIN EXECUTIVES OF THE ATOMIC ENERGY COMMISSION

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1185, H. R. 8994.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 8994 to amend the Atomic Energy Act of 1954, as amended, to increase the salaries of certain executives of the Atomic Energy Commission, and for other purposes.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. JOHNSON of Texas. Mr. President, the Senator from Washington [Mr. JACKSON] has a brief explanation to make of the bill.

Mr. JACKSON. Mr. President, the bill has the unanimous approval of the Joint Committee on Atomic Energy. It passed the House of Representatives unanimously. It will equalize salaries of all officials and top executives of the Atomic Energy Commission with those of other executives in the executive branch and in the independent agencies.

I ask unanimous consent that I may include in the RECORD at this point a statement on the bill.

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

STATEMENT BY SENATOR JACKSON

The purpose of this bill, as set forth in the report of the Joint Committee on Atomic Energy (S. Rept. No. 790) is to equalize the salaries of the Commissioners and top executives of the Atomic Energy Commission with those of other executives in the executive branch and in the independent agencies.

Last year Congress enacted the Federal Executive Pay Act of 1956. That act raised the salaries of executives generally in the executive branch and in the independent agencies, and it is the purpose of this bill to provide equal treatment for the executives of the Atomic Energy Commission.

The background of this bill is set forth in the committee report, Senate Report No. 790.

Last year the Joint Committee unanimously recommended a salary bill for AEC executives, contingent upon passage of the Federal Executive Pay Act, but that act passed late in the session, and the AEC salary bill was not considered by the Congress. This year the Joint Committee again considered the question and has recommended unanimously this legislation to bring the AEC executives up to the same salary levels as those of other executives.

This bill raises the salary of the Chairman of the Commission from $20,000 per annum to $22,500 per annum, which is on the same level as the Under Secretary of State and the Deputy Secretary of Defense. Prior to the Federal Executive Pay Act of 1956, the Chairman of the Commission was on the same level with those other offices, but he is now receiving a lesser salary. The purpose of this bill is to equalize this situation.

Other salaries of AEC executives are raised as follows:

The other four Commissioners of the Atomic Energy Commission, from $18,000 to $22,000; the General Manager, who is the chief executive officer, from $20,000 to $22,000; the division directors from $16,000 to $19,000; and the General Counsel from $16,000 to $19,500. The bill also establishes the position of Deputy General Manager at a maximum salary of $20,500; three Assistant General Managers or their equivalent at maximum salary of $20,000; and a maximum of six other Executive Manager positions at a salary not to exceed $19,000 per annum.

Thus the bill affects only the Commissioners and top executives in the AEC. The Joint Committee has studied this bill carefully, and all of these increases are consistent with the provisions of the Federal Executive Pay Act as applicable to other agencies, and are only intended to provide fair and equal treatment to AEC executives.

The executives of the Atomic Energy Commission are responsible for administering our entire atomic-energy program for both military and peaceful purposes. Just last week, the Congress authorized and appropriated more than $2 billion to run this program during the next fiscal year. If we are to have a well-run program, I think it is important that we have good executives to direct that program. The total investment of the taxpayers of our country in atomic energy is now more than $17 billion.

Only this month Dr. Tom Johnson, Director of the Division of Research, left the AEC to go with private industry. I am sure that many other executives in the Commission have received similar attractive financial offers to leave the AEC and go with private industry.

Also, late this year or early in 1958 the Commission will move to a new headquarters building near Germantown, Md., about 30 miles outside of Washington, D. C. It is a real possibility that they will lose many of their employees, including some of the top executives. In order to try to prevent this loss, and to equalize the salaries of AEC executives with executives in other agencies of the Federal Government, I urge the Senate to enact S. 2672, in accordance with the unanimous recommendation of the members of the Joint Committee.

The VICE PRESIDENT. The bill is open to amendment.

If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

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

CONVEYANCE OF LAKE OR BAYOU TO CITY OF COUNCIL BLUFFS

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of H. R. 8928, and that the Senate proceed to its consideration.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 8928) to amend the act of June 9, 1880, entitled "An act to grant to the corporate authorities of the city of Council Bluffs, in the State of Iowa, for public uses, a certain lake or bayou situated near said city."

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

Mr. PURTELL. Mr. President, what is the calendar number?

Mr. JOHNSON of Texas. It is not on the calendar. The bill just came over from the House.

The VICE PRESIDENT. Without objection, the Committee on Interior and Insular Affairs is discharged from the further consideration of the bill.

Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

CONTINUATION OF PROVISIONS OF TITLE II OF THE FIRST WAR POWERS ACT OF 1941

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1186, H. R. 7536. I announce that this will be the last bill we shall take up tonight.

The VICE PRESIDENT. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 7536) to amend the act of January 12, 1951, as amended, to continue in effect the provisions of title II of the First War Powers Act of 1941.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

Mr. WATKINS. Mr. President, reserving the right to object——

Mr. JOHNSON of Texas. Mr. President, I moved that the Senate proceed to the consideration of Calendar 1186, H. R. 7539. It was a motion, not a unanimous consent request.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. O'MAHONEY. Mr. President, this bill has been unanimously approved by the Committee on the Judiciary. It is an essential bill. The act which it extends expired on the 30th of June 1957. The Defense Department needs an extension of the act, as set forth in the report. Otherwise, there would be large claims against the United States if this relief were not granted.

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

Mr. O'MAHONEY. I yield.

Mr. THYE. I wish to say the bill has been approved by the Calendar Committee, and I believe that every objection to and every question about the bill have been cleared.

Mr. O'MAHONEY. Mr. President, I ask unanimous consent that there may be printed in the RECORD a statement explaining the bill, together with letters from various departments affected, setting forth their interpretations.

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

This bill extends authority first conferred upon the President by the Congress at the outset of World War II. It was reactivated during the Korean conflict. It is essentially emergency legislation which has survived the periods of its creation and re-creation. The authority which it confers has been redele-

gated by the President to several agencies of the Government, among them the Departments of Defense, Army, Navy, Air Force, commerce, Agriculture and Interior, the Atomic Energy Commission, the Government Printing Office, the General Services Administration, the Tennessee Valley Authority, the Federal Civil Defense Administrator, and the National Advisory Committee for Aeronautics. Under this authority these executive departments and agencies are empowered to amend or modify Government contracts without additional consideration, where, for example, an actual or threatened loss on a defense contract will impair the productive capacity of a contractor whose continued existence is necessary to the national defense. Officials likewise may make advance payments on contracts to be executed in the future or to extend delivery or completion dates in certain cases. Mistakes and ambiguities in contracts may be rectified and indemnity payments may be guaranteed for otherwise noninsurable risks. Oral agreements may be formalized. These are certainly extraordinary powers and their extension at a time when the United States is not engaged in any conflict should be permitted only upon a detailed showing of their necessity. Time, and the press of other matters, however, has not permitted such a detailed examination. However, the committee has secured certain commitments from the principal departments and agencies engaged in the use of this authority with respect to its use. It has been agreed, for example, that it will not be used for the purpose of avoiding competitive bidding. It has also been agreed that it will not be used as authorization for the waiver of any bid, payment, performance, or other bonds required by law. It is further agreed that it would not be used as authorization for the making of any progress payments, nor for the formalization of any informal commitment except where exigencies of time have made immediate formalization of the agreement impracticable. It also has been agreed that this authority shall not be used to increase the contract price beyond the lowest competitve bid previously submitted where the competitive bids were disregarded and contracts entered into by negotiation. These commitments do not, by all means, cover all the adverse possibilities which are inherent in the continued extension of this authority. However, such adverse possibilities as remain must be balanced against the need of the departments of Government to make arrangements vital to the national defense in periods of international uncertainty.

The committee sought to bring as nearly into balance, ac possible, in the time remaining, the needs of the executive departments and the necessity for protection against possible abuses of authority.

While I would have preferred to examine this authority in detail by full and complete hearings, I recognize, as did the committee, that such a procedure late in the Congressional session was simply not possible. Consequently, the committee has chosen this course of extending the authority with certain commitments as the best avenue remaining by which to accomplish the desired ends of both the Senate and the executive departments.

UNITED STATES
ATOMIC ENERGY COMMISSION,
Washington, D. C., August 27, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, United States Senate.

DEAR SENATOR EASTLAND: In your letter of August 26, 1957, you explained that if the Senate Judiciary Committee reported H. R. 7536, a bill to extend title II of the First War Powers Act, with an amendment, the bill might not be enacted this year. You also stated that if the principal agencies exercising the authority granted by this act agreed to apply such authority only to contracts entered into on or before June 30, 1957, the committee would report the bill without amendment.

The proposed limitation on the application of this authority would have the effect of preventing the Commission from using the authority of title II of the First War Powers Act when entering into contracts after June 30, 1957; in amending or modifying such contracts; and in making advances under such contracts.

This authority has been exercised only in a limited number of situations by the Commission because of other special authority available to the Commission. For example, the President may, pursuant to section 162 of the Atomic Energy Act of 1954, exempt the Commission from the provisions of law relating to contracts when he has determined that such action is essential in the interest of the common defense and security. In addition, authority to make advance payments under many contracts is provided in the Atomic Energy Act of 1954, and additional authority to indemnify contractors against nuclear hazards is contained in H. R. 7383, which has been enacted by the Congress and sent to the President.

In view of the fact that the other authority mentioned above that is available to the Commission appears adequate for most of the contingencies that may arise, we have no objection to limiting the application of title II of the First War Powers Act as desired by the Senate Committee on the Judiciary.

The Bureau of the Budget has informed us that there is no objection to the submission of these comments.

Sincerely yours,

K. E. FIELDS,
General Manager.

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., August 27, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: This is to advise you in response to your letter of August 26, that in the event H. R. 7536, to extend the authority of title II of the First War Powers Act, is approved in the present session of Congress, the Tennessee Valley Authority will use the authority granted thereunder only with respect to contracts entered into on or before June 30, 1957.

Sincerely yours,

HERBERT D. VOGEL,
Chairman of the Board.

GENERAL SERVICES ADMINISTRATION,
Washington, D. C., August 28, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: Your letter of August 26, 1957, advised us that your committee had voted to report H. R. 7536, a bill to extend the authority of title II of the First War Powers Act, on condition that the principal departments and agencies to which this authority has been delegated would agree in writing to restrict their use of that authority.

If H. R. 7536 is passed, this agency will not use title II of the First War Powers Act as authority for (1) negotiating contracts in order to avoid competitive bidding; (2) making progress payments; (3) waiving performance, payment, bid, or other bonds; (4) entering into informal commitments to be finalized at a subsequent date, except when a transaction is of such extreme urgency that there is not time for preparation of the formal contract; or (5) amending without consideration contracts entered into by negotiation after rejection of all bids (under section 302 (c) (13) of the Federal Property and Administrative Services Act of 1949) so as to increase the contract price above the amount of the low bid received.

We will also be prepared to report to your committee at the next session of Congress concerning all contracts entered into pursuant to the authority provided in title II.

I hope that these commitments will be satisfactory, and that H. R. 7536 may be enacted before the adjournment of the Congress, as we consider it most important that the title II authority be available for use in a limited number of cases arising out of our defense activities.

Sincerely yours,

FRANKLIN G. FLOETE,
Administrator.

NATIONAL ADVISORY COMMITTEE
FOR AERONAUTICS,
Washington, D. C., August 27, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: In accordance with your letter dated August 26, 1957, the National Advisory Committee for Aeronautics agrees that the authority of title II of the First War Powers Act, delegated to NACA by Executive Orders No. 10210 and 10216, dated February 2, 1951, and February 23, 1951, respectively, will be applied only to contracts entered into on or before June 30, 1957.

The authority under title II was last used by NACA on July 30, 1956.

Sincerely yours,

J. F. VICTORY, *Acting Director.*

DEPARTMENT OF AGRICULTURE,
Washington, August 27, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, United States Senate.

DEAR SENATOR EASTLAND: This is in reference to your letter of August 26, regarding H. R. 7356, a bill to extend the authority of title II of the First War Powers Act and the committee's agreement to report this bill upon the express condition that the principal departments and agencies to whom this authority has been delegated agree in writing to apply such authority only to contracts entered into on or before June 30, 1957.

This Department agrees to apply the authority of title II of the First War Powers Act only to contracts entered into on or before June 30, 1957.

Sincerely yours,

E. T. BENSON, *Secretary.*

UNITED STATES GOVERNMENT
PRINTING OFFICE,
Washington, D. C., August 28, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: Receipt is acknowledged of your August 26 letter concerning the action of the Committee on the Judiciary on H. R. 7536.

I have been hopeful that the War Powers Act would be extended allowing the Government Printing Office to negotiate contracts when and if necessary subject, of course, to the review of the Congressional Joint Committee on Printing which approves all of our contracts.

Our use of the authority was under stringent control and has been held to the barest minimum to meet needs of the Government which could not be otherwise satisfied.

We have no contracts in force on or before June 30, 1957, which would require an extension of the authority.

In view of the presentation made by you in your August 26 letter, we agree to not use

the authority for contracting after June 30, 1957.

Very truly yours,
RAYMOND BLATTENBERGER,
Public Printer.

GENERAL COUNSEL,
DEPARTMENT OF DEFENSE,
August 27, 1957.

Hon. JAMES O. EASTLAND,
Senate Office Building,
Washington, D. C.

DEAR SENATOR EASTLAND: This letter is written in reply to yours of August 26, 1957, with respect to H. R. 7536, in which you stated that your committee at its meeting August 26, 1957, agreed to report favorably H. R. 7536 upon certain conditions.

The Secretary of Defense has requested that I advise you that the Department of Defense undertakes that the military departments will not use title II of the First War Powers Act, if extended by H. R. 7536, as the authority for any of the following actions:

1. For negotiation of contracts without formal competitive bidding or for the elimination of formal advertising requirements in connection with the letting of contracts;

2. For authorizing the waiver of any bid, payment, performance, or other bonds required by other laws;

3. For authorizing the making of any progress payment;

4. For increasing (in case after rejection of all competitive bids a contract has been entered into by negotiation under the authority of 10 U. S. C. 2304 (a) (15)) the amount of the contract price in such a case to a figure higher than the lowest competitive bid among those rejected;

5. For the formalization of informal commitments made hereafter, except in the case where exigencies of time requirements make formalization at the time impracticable.

I am sure you understand that in making the above undertakings we do not mean to indicate that the Department of Defense has in fact been following these practices, but we understand the desire of your committee to have these positive assurances.

We greatly appreciate the willingness of your committee to consider this means of meeting the situation created by the imminent adjournment of Congress. We shall, of course, keep careful records of any use at all of the authority under title II in the event that H. R. 7536 is passed and shall be prepared to report to you fully at the next session of Congress as to such use.

We shall send you for the information of yourself and your associates a separate memorandum which will indicate some of the most important situations which occasionally arise and which can be dealt with in the interests of defense under title II but which otherwise may be impossible to meet under other authority.

Sincerely,
ROBERT DECHERT,
General Counsel, Department of Defense.

The VICE PRESIDENT. The bill is open to amendment.

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

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

JOINT COMMITTEE TO INVESTIGATE MATTERS PERTAINING TO GROWTH AND EXPANSION OF THE DISTRICT OF COLUMBIA

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the amendment of the Senate numbered 1 to the concurrent resolution (H. Con. Res. 172) to establish a joint Congressional committee to investigate matters pertaining to the growth and expansion of the District of Columbia and its metropolitan area, which was, in line 3 of the Senate matter, strike out all after the word "Senate," and insert "to be appointed by the chairman of such committee, and three members of the Committee on the District of Columbia of the House of Representatives, to be appointed by the Speaker of the House of Representatives.

Mr. BIBLE. Mr. President, I move that the Senate agree to the amendment of the House to the amendment of the Senate numbered 1.

The VICE PRESIDENT. The question is on agreement to the motion of the Senator from Nevada.

The motion was agreed to.

ORDER FOR ADJOURNMENT TO 9 A. M. TOMORROW

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that when the Senate concludes its deliberations today it stand in adjournment until 9 o'clock tomorrow morning.

Mr. WATKINS. Mr. President, reserving the right to object——

Mr. JOHNSON of Texas. I am not making a motion. I am asking that the order be entered.

Mr. WATKINS. I hope the Senator will, because I would like to get home and get cleaned up. Why not make the hour 10 o'clock?

Mr. JOHNSON of Texas. I may say to the Senator from Utah that when the Senate convenes at 9 o'clock, there will be a morning hour, and he may come in at his convenience.

Mr. WATKINS. There is certain proposed legislation in which I am interested, and which I should like to have taken care of.

Mr. JOHNSON of Texas. The Senator from Utah always takes care of legislation he is interested in. I do not know of any Senator who does a better job in the Senate in doing that. When the Senate convenes there will be a prayer, then there will be a morning hour. The Senator from Utah rarely occupies much of the Senate's time in the morning hour. There will be a number of insertions in the RECORD, a number of brief speeches, some for world consumption, some for national consumption, and some for home consumption. By the time that is completed, the Senator from Utah may get here and join us, so we may complete our business and go home.

Mr. President, I will revise my request. The Senator from Utah has made a good suggestion. I ask unanimous consent that when the Senate adjourns today, it adjourn to convene at 9 o'clock today. [Laughter.]

The VICE PRESIDENT. Is there objection? Without objection, it is so ordered.

CONVEYANCE OF CERTAIN LAND BY THE SECRETARY OF THE ARMY TO THE COUNTY OF LOS ANGELES, CALIF.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1135, H. R. 230. This is a very important bill and it concerns the State of California, from which the Vice President and the minority leader come, and I am vitally interested in it myself. I should like to have the minority leader give a brief explanation of the bill.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 230) to require the Secretary of the Army to convey to the county of Los Angeles, Calif., certain portions of a tract of land heretofore conditionally conveyed to such county.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. KNOWLAND. Mr. President, this bill was unanimously reported from the Committee on Armed Services. The purpose of the bill is to require the Secretary of the Army to convey to the county of Los Angeles, Calif., all right, title, and interest of the United States in and to certain portions of a tract of land heretofore conditionally conveyed to such county. This is one of a series of relinquishments of residual rights of the United States in portions of this property.

The PRESIDING OFFICER. The bill is open to amendment.

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

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

Mr. KNOWLAND. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. WATKINS. I move to lay that motion on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Utah to lay on the table the motion of the Senator from California.

The motion to lay on the table was agreed to.

CHESAPEAKE AND OHIO CANAL NATIONAL HISTORICAL PARK

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1179, S. 77.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 77) to establish the Chesapeake and Ohio Canal National Historical Park and to provide for the administration and maintenance of a parkway in the State of Maryland, and for other purposes, which had been reported from the Committee on Interior and Insular Affairs, with amendments, on page 3, line 3, after the words "in the", to insert "provisions of the"; on page 4, line 9, after the word "parkway", to strike out "connection, by way of" and insert "approximately twenty-five miles, traversing generally"; in line 11, after the word "Hill" to strike out "Ridge"; in line 12, after the numerals "51", to strike out "and"; in line 13, after the word "and", to insert "extending to", and on page 5, line 13, after

the word "thereof", to insert a colon and "*And provided further*, That designation of lands for Chesapeake and Ohio Canal National Historical Park purposes shall not debar, or limit, or abridge its use for such works as Congress may in the future authorize for improvement and extension of navigation, or for flood control, or irrigation, or drainage, or for the development of hydroelectric power or other purposes."

So as to make the bill read:

Be it enacted, etc., That (a) there is hereby established the Chesapeake and Ohio Canal National Historical Park, for the purpose of preserving and interpreting certain property in the State of Maryland for the benefit and inspiration of the people. The park, as initially established, shall comprise that particular property in Federal ownership containing not to exceed 4,800 acres, and situated along the line of the Chesapeake and Ohio Canal between the terminus of the George Washington Memorial Parkway, above the Great Falls of the Potomac River and a point within or in the vicinity of the city of Cumberland, Md., as may be determined by the Secretary of the Interior. The park may comprise such additional lands as may be acquired pursuant to subsection (b) hereof: *Provided*, That the total area of such park, including land already in Federal ownership, shall not exceed 15,000 acres.

(b) The Secretary of the Interior is hereby authorized to acquire in such manner as he may consider to be in the public interest such lands and interests in lands in the State of Maryland in the vicinity of the canal and existing Government canal property as he deems desirable for the purposes of the said park.

(c) Subject to the purposes and general requirements of this act, the Secretary of the Interior is authorized to cooperate with the State of Maryland, with its political subdivisions and with other Federal agencies, in promoting such land use or development programs, through cooperative agreements or leases for terms not to exceed 50 years, as will further the objectives for the park and of the State of Maryland concerning wildlife propagation, wilderness conservation, public recreation, and related purposes.

(d) The authority granted in the act of September 22, 1950 (64 Stat. 905), to effect land exchanges for the purposes of the proposed Chesapeake and Ohio Canal Parkway and in the provisions of the act of August 1, 1953 (67 Stat. 359), to grant easements for rights-of-way through, over, or under lands along the line of the Chesapeake and Ohio Canal is hereby continued and may hereafter be exercised by the Secretary of the Interior with respect to lands included in the Chesapeake and Ohio Canal National Historical Park. The Secretary is authorized also to convey such Chesapeake and Ohio Canal lands within and in the vicinity of Cumberland, Md., which are not included in the Chesapeake and Ohio Canal National Historical Park in exchange for other land or interests therein of approximately equal value that are authorized by this act to be acquired for the park.

Notwithstanding section 1 (a) of the act of May 29, 1930 (46 Stat. 482, 483), that portion of the Chesapeake and Ohio Canal between the terminus of the George Washington Memorial Parkway above Great Falls and Point of Rocks, in the State of Maryland, shall hereafter be part of the Chesapeake and Ohio Canal National Historical Park.

(e) Any funds that may be available for purposes of administration of the Chesapeake and Ohio Canal property above the Great Falls terminus of the George Washington Memorial Parkway may hereafter be used by the Secretary for the purposes of the Chesapeake and Ohio Canal National Historical Park.

SEC. 2. (a) In accordance with the purposes of this act and to facilitate access to and enjoyment by the public of the scenic and recreational values of the Chesapeake and Ohio Canal National Historical Park and the Potomac River Valley, there is hereby authorized to be established, without regard to the maximum acreage limitation prescribed in section 1, of this act, a scenic parkway approximately 25 miles, traversing generally Town Hill and other suitable terrain, between Maryland Route 51 in the general vicinity of Paw Paw, W. Va., and extending to the existing Long Ridge Road near Woodmont, Md., such parkway connection to be a part of the aforesaid Chesapeake and Ohio Canal National Historical Park.

(b) The Secretary of the Interior is authorized to accept on behalf of the United States, donations of land and interests in lands for purposes of the parkway provided for in section 2 (a) of this act. The right-of-way for such parkway shall be of such width as to comprise not more than an average of 100 acres per mile for its length.

SEC. 3. (a) Within 5 years after the approval of this act, the Secretary of the Interior shall file with the National Archives a map showing the lands within the maximum authorized acreages prescribed in subsections 1 (a) and 2 (b) of this act which are to comprise the Chesapeake and Ohio Canal National Historical Park and Parkway, respectively: *Provided*, That the filing of such map shall not affect the authority of the Secretary subsequently to acquire, in accordance with subsections 1 (b) and 2 (b), non-Federal lands within the boundaries of the park and parkway as depicted on said map. Such historical park and parkway shall be administered under the general laws and requirements governing areas of the national park system in such manner as to preserve the historic, scenic, and recreational values and features thereof: *And provided further*, That designation of lands for Chesapeake and Ohio Canal National Historical Park purposes shall not debar, or limit, or abridge its use for such works as Congress may in the future authorize for improvement and extension of navigation, or for flood control, or irrigation, or drainage, or for the development of hydroelectric power or other purposes.

(b) The enactment of this act shall not affect adversely any valid rights heretofore existing within the areas hereby established as the Chesapeake and Ohio Canal National Historical Park and Parkway.

The amendments were agreed to.

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

STATEMENT BY SENATOR RUSSELL

Mr. RUSSELL. Mr. President, sometimes I make mistakes of which I never have knowledge, but when I do make them and have them called to my attention, I am always glad to correct them.

On Tuesday, August 27, I made a lapsus lingua which caused me to be rather critical of my distinguished friend from Illinois [Mr. DIRKSEN]. I found I was entirely at fault. I arise for the purpose of correcting my mistake and apologizing to the Senator from Illinois. In undertaking to withdraw a quorum call, which already had been withdrawn, I inadvertently said I asked to withdraw the call for the yeas and nays. It was purely a slip of the tongue. I was not undertaking to withdraw the yeas and nays, which had been requested by the Senator from California and sufficiently seconded. If I had been aware of the fact that I had made the error, I certainly should not have spoken in the same sharpness to my distinguished friend from Illinois.

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

Mr. RUSSELL. I yield.

Mr. DIRKSEN. The statement of the Senator is only further testimony of the graciousness, spirit of fairness, and the honorable dealing of my distinguished friend from Georgia. I am deeply grateful to him.

Mr. RUSSELL. I do not deserve the compliment.

MARTIN WUNDERLICH CO.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1187, H. R. 2654, a bill for the relief of the Martin Wunderlich Co.

The VICE PRESIDENT. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 2654) for the relief of the Martin Wunderlich Co.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent to have printed in the RECORD a statement of purpose of the bill.

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

The purpose of the proposed legislation is to pay the Martin Wunderlich Co., a partnership, of Omaha, Nebr., the sum of $111,539.59 in full settlement of all claims against the United States arising out of the company's contract with the Bureau of Reclamation for the construction of the Vallecito Dam on the Pine River in Colorado.

It is understood that this sum is not to be added to the costs allocable to water users, in accordance with the desires of the Department of Interior.

The Martin Wunderlich Co., a partnership, entered into a contract with the Bureau of Reclamation on March 14, 1938, for the construction of the Vallecito Dam on the Pine River in Colorado and completed this work to the satisfaction of the Bureau in 1941. During performance various disputes arose, the principal one concerning the amount of equitable adjustment due on acount of a change under the contract known as change order No. 3. The contracting officer and, on appeal, the Department head, allowed an increase of $44,208.85 on account of the said change.

The contract contained an article which provided that all disputes involving questions of fact were to be decided by the contracting officer with a right of appeal to the head of the Department whose decision was stated to be final and conclusive upon the parties. The language of that article was as follows:

"Article 15. Disputes: Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the head of the Department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed."

The company would not accept this amount because it would not reimburse the company for its costs. (Ultimately the claimant did accept that amount when it was clear that acceptance would not prejudice its claim for a larger amount awarded it in a Court of Claims judgment.)

The case was promptly filed in the Court of Claims which held that the decision of the contract officer and the head of the Department was arbitrary, capricious, and grossly erroneous. Thus it was found that the Wunderlich claim was soundly based and in its judgment entered on June 5, 1950, the Court of Claims ruled that the plaintiff was entitled to recover $164,760.83 on the contested claim and $7,541.40 on the uncontested claim. The Government appealed to the Supreme Court which granted certiorari, and on November 26, 1951, reversed the decision of the Court of Claims, not upon the merits of the claim but upon the ground that the ruling of the Department could not be rejected "in the absence of fraud or such gross mistake as would necessarily imply bad faith, or a failure to exercise an honest judgment."

The issue, therefore, is whether the Wunderlich claimant should be denied its extra costs because, although the Court of Claims held that the action of the Department was "arbitrary, capricious, and grossly erroneous" it was not asserted to be fraudulent or in bad faith. This committee is of the opinion that in these circumstances, since Congress promptly amended the law so as to eliminate fraud or bad faith as a necessary element in a claim for an award, the effect upon the claimant is unduly harsh.

Shortly after the Supreme Court rendered its decision in 1951, several bills were introduced in both Houses of Congress to overcome the effect of the decision and cure the manifestly unjust situation. One bill, S. 2487, passed the Senate during the 82d Congress, but reached the House too late for action during that session. During the 83d Congress S. 24 was passed by both Houses and became Public Law 356. This law restored the earlier standards of judicial review, and permits the Court of Claims to set aside administrative decisions on the ground of fraud, including arbitrary or capricious action, and requires that administrative decisions must also be supported by substantial evidence. In the report of the House committee on S. 24, House Report 1380, 83d Congress, second session, the following observation was made concerning the need for corrective legislation:

"After extensive hearings it has been concluded that it is neither to the interests of the Government nor to the interests of any of the industry groups that are engaged in the performance of Government contracts to repose in Government officials such unbridled power of finally determining either disputed questions of law or disputed questions of fact arising under Government contracts, nor is the situation presently created by the Wunderlich decision consonant with tradition that everyone should have his day in court and that contracts should be mutually enforceable."

In the majority opinion of the Supreme Court reversing the decision of the Court of Claims in the Wunderlich case it was stated that "if the standard of fraud that we adhere to is too limited, that is a matter for Congress."

It is, therefore, apparent that the Supreme Court was well aware of the inflexibility of the narrowness of the grounds for review which were fixed by its decision.

It is contended that the Wunderlich Co. should not be entitled to the relief which H. R. 3274 asks, for the reason that its case has been finally disposed of by the decision of the Supreme Court in reversing the findings of the Court of Claims in its favor, prior to the passage of Public Law 356, which was approved on May 11, 1954 (68 Stat. 81); and further, because this law covered only "any suit now filed or to be filed."

It is noted that inasmuch as the language of Public Law 356 reads exactly upon the decision reached by the Court of Claims in the Wunderlich case, the claimant's problem falls squarely within that area of difficulty which the said public law sought to remedy.

In the aforementioned House report on S. 24, the House committee states:

"Many of the contracts upon which present disputes are pending were entered into prior to the time that the Wunderlich case was decided, and at a time when the persons involved therein understood that judicial review was available to them on a less restricted basis than that of fraud. The committee believes that all such persons should receive the protection which would be afforded by this proposed legislation, but it does not believe that it would be practicable to reopen cases which have heretofore been decided by the courts."

The reason for this limitation against retroactivity was apparently based upon the fear that if the bill were made retroactive it would bring about a flood of cases. The attorneys who represented the Wunderlich Co. in the courts testified at hearings held in connection with Public Law 356 but made no attempt to have the bill made retroactive so as to apply to the Wunderlich claim. Specifically, one of the attorneys testified that he was aware that the proposed legislation would not apply to the Wunderlich Co. and stated "I think possibly Mr. Wunderlich should ask for specific relief later."

The committee notes that in the legislative history of S. 24, the House committee struck all after the enacting clause and rewrote the bill, specifically using the language "any suit now filed or to be filed." The committee further notes that the House Judiciary Committee has, in this session of Congress, approved this and one other bill directly relating to the circumstances disclosed in the Wunderlich decision, and two other bills indirectly bearing upon this decision. The committee draws the following conclusions from this situation: (1) that although the House committee originally insisted upon having no retroactive provision in Public Law 356, that the House committee now feels that the equities involved in these cases are sufficient to warrant private relief; (2) the fear, that passage of S. 24 with a retroactive provision would bring about a large number of like claims, was groundless, in view of the limited number of private claim bills of this type filed in this and the preceding Congresses.

The Department of the Interior is opposed to the enactment of this bill unless the Congress decides first that the standards laid down by Public Law 356 shall be applied in a case which had been finally adjudicated before it became law, and, secondly, that those standards, including the burden of proof which they impliedly require a claimant to bear, are met in this case.

The Department of Justice is opposed to the enactment of this bill.

The amount of this claim is for the moneys determined by the Court of Claims to be due the claimant less the money which the claimant has already received from the Government.

After careful consideration of the foregoing facts, particularly in view of the fact that the Court of Claims found the moneys to be due the claimant on the precise grounds set out in Public Law 356, and further in view of the obvious inequity of this situation with regard to the claimant and the very limited number of other persons similarly situated, the committee recommends that this bill be favorably considered.

Attached hereto and made a part hereof is the report of the Department of the Interior, the Justice Department, House Report No. 1380, of the 83d Congress, and other pertinent material.

The VICE PRESIDENT. The question is on the third reading and passage of the bill.

The bill (H. R. 2654) was ordered to a third reading, read the third time, and passed.

Mr. JOHNSON of Texas. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Montana to lay on the table the motion of the Senator from Texas to reconsider.

The motion to lay on the table was agreed to.

LEASING OF SPACE FOR FEDERAL AGENCIES

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1180, S. 2533.

The VICE PRESIDENT. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 2533) to amend the Federal Property and Administrative Services Act of 1949, to authorize the Administrator of General Services to lease space for Federal agencies for periods not exceeding 15 years, and for other purposes.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. JOHNSON of Texas. Mr. President, I desire to have this bill the unfinished business. We shall not act on it tonight. We shall call the calendar tomorrow and attempt to clear up all bills on it.

PROPOSED LEGISLATION TO INCREASE ANNUITIES FOR CIVIL SERVICE RETIREES AND WIDOWS

Mr. SMATHERS. Mr. President, there is pending on the Senate Calendar proposed legislation to provide an increase in the annuities for our civil-service retirees and their widows. Proposed legislation is also pending on the House side, and though not as liberal as the proposed legislation reported out by the Senate Post Office and Civil Service Committee, would grant a 10-percent increase.

I strongly urge that action be taken to bring one or the other of the measures up for consideration, for I sincerely hope to be able to vote for an increase in benefits for those deserving senior citizens before the session ends.

We in the Congress have, in my opinion, a moral responsibility to these retirees who have spent the best part of their lives faithfully serving their Government. We know that they purchased their annuities with 100-cent dollars and that they are now being paid back in dollars which have decreased to 49 cents

in value. Today many of them are finding it difficult to even exist due to the high cost of living. They were the victims of galloping inflation, and continue to be the victims of creeping inflation. Now, in their advanced years, many of them are sick and disabled and look to the Government which they have served well to render justice in the twilight years of their lives.

The economic plight in which many of these retirees now find themselves is a desperate one indeed. It is one which we in the Congress cannot and should not ignore. I am hopeful, therefore, that there is yet time to work out the parliamentary situation so that this Congress can adjourn sine die with a feeling of satisfaction and comfort that justice has been done to this deserving class of our citizens.

SUMMARY OF PROGRESS MADE IN HEARINGS BY SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

Mr. KEFAUVER. Mr. President, I wish to make at this time a limited summary of the progress made in the hearings on the steel industry which have been conducted by the Subcommittee on Antitrust and Monopoly. At the very outset I wish to make it clear that what I have to say here represents my own personal interpretation and is not in the nature of a committee report, which will come later when the hearings on the steel industry have been completed. Owing to the press of business in the closing days of this session, it has not been possible for us to fulfill our original objective, which was to complete the hearings on the steel industry before Congress adjourned. It is our intention to resume the hearings some time early in October. Following the completion of our hearings on the steel industry it is our intention to make an inquiry into administered prices in the farm machinery industry.

In our hearings on the steel industry we have been concerned with three principal issues:

First. What is the cost of the recent price increases?

Second. Have these price increases exceeded the wage increase?

Third. How effective is competition in the steel industry in protecting the public interest?

As to the first, it is important to distinguish between the cost of the price increase to the steel-consuming industries from the ultimate cost to the consumer. The representative of the United Steelworkers Union pointed out that by the time an increase in the price of steel reaches the consumer in the form of consumer goods, it has been pyramided by the markups of successive manufacturers and distributors so that the ultimate cost to the consumer is substantially greater than the immediate cost to steel buyers.

But leaving this consideration aside, we have made a detailed, product-by-product, market-by-market tabulation of just the cost of the price increase to direct buyers of steel. To put it another way, this represents the increased gross revenue received by the steel industry as a result of the price increase. Our estimate of the annual cost of the $6-a-ton increase in the price of carbon steel on July 1 of this year is $460 million. This is an underestimate, however, since it does not include alloy steel—which was also increased in price—or tinplate—which had its price increased 2 months earlier. When allowance is made for alloy steel and tinplate, the total is increased to $540 million.

But this estimate is limited to the price increase occurring last month. There have been other price increases in the steel industry during the last 12 months. In August 1956, following the strike, the price was increased by $8.50 a ton. Then throughout the year there has been a series of increases in the so-called extras, which are charges for particular specifications as to size, dimensions, quality, and so forth. In its issue of July 8 of this year, the trade journal, Steel, estimated that the cost of these increases during the period December 1956 to March 1957, together with a few increases in base prices amounted to an average of $5 a ton. Thus, if we add to the $6 increase of last July, the $8.50 increase of the previous August and this $5 increase in extras, we arrive at a total average increase in the price of steel during the last 12 months of $19.50 a ton. If a $6-a-ton increase represents an increase in total costs to steel buyers of around $500 million, a price increase of $19.50 means a total increased cost of $1.6 billion. Inasmuch as the United States Steel Corp. accounts for approximately 30 percent of the industry, its increased revenues as a result of these price increases should be in the neighborhood of $500 million per year.

The arithmetic employed by both the United States Steel Corp. and the United Steelworkers Union is extremely simple. What is involved is a multiplication of the number of man-hours required to produce a ton of finished steel times the amount by which wages per man-hour were increased under the provisions of the second year of the wage contract. As to the former, three separate methods of estimation all arrive at roughly the same figure of around 15½ man-hours per ton of finished steel for the first half of 1957. These estimates are based upon figures issued by the American Iron and Steel Institute or supplied by the corporation itself. However, there is substantial disagreement on the other factor, the amount of the wage increase per man-hour. United States Steel holds that the figure is 21 cents; the union that it is only 16.4 cents. When each is multiplied by the factor of 15.5 man-hours per ton of finished steel, the increase in costs range from $3.25 per ton—according to the company's wage estimate—to $2.54 per ton—according to the union's estimate.

But whether one uses the steel company's estimate or that of the union, it is obvious that there is a substantial gap between the $6 price increase and the amount by which its wage costs were increased—the gap ranging from $2.75 to $3.50 per ton.

United States Steel contends that in addition to the wage increase, increases in prices were also necessitated by increases in materials, equipment and services which it has to purchase. This the union questions, pointing to the recent decreases in the price of steel scrap and other materials used by the steel industry.

This whole matter of costs and prices requires further investigation. But at this point I wish to make it clear that the extent to which the subcommittee will be able to get at the facts is limited by the refusal of the United States Steel Corp. to provide the subcommittee with its unit cost figures, broken down into materials, labor and the other principal elements of costs. Even though the subcommittee offered to combine these figures with those of other firms so that there would be no disclosure of any single firm, United States Steel persisted in its refusal.

The conclusion that the price increase of July 1957 is substantially in excess of the increase in costs resulting from the wage increase is supported by an analysis of what happened after the price increase of last year, as reflected in profit rates for the first half of this year. Charts were put into the record which indicate that the rate of profit on stockholders' investments, after taxes, for the first 6 months of 1957 was substantially above the levels that would have been anticipated on the basis of the historical relationship between percent of capacity operated and rate of profit. This was true of both the industry as a whole and the United States Steel Corporation alone. These showings strongly suggest that the increase in price following the wage settlement in August 1956 was substantially greater than the increase in costs.

The third and perhaps the most important question of concern to the subcommittee is whether competition in the steel industry is sufficiently effective to constitute an adequate protector of the public interest. The evidence which we have received on this issue bears on concentration and price identity. With respect to the former, the evidence indicates that not only is the steel industry highly concentrated but that the level of concentration has been rising during recent years. Between 1947 and 1954 the four largest companies increased their share of value added by manufacture from 50 to 55 percent in the blast furnace, steel works and rolling mills industry. Perhaps of even greater significance is the commanding position which United States Steel holds among the largest companies. Of the 33 steel products for which total capacity exceeds 500,000 tons, United States Steel has the largest capacity for 25 and the second largest capacity for 6. United States Steel has more than 40 percent of the capacity for 10 products, and more than 30 percent for 17. Moreover, there are 13 products for which United States Steel has both 33 percent or more of the total industry capacity and a lead of at least 10 percentage points over its nearest rival.

As to price identity, evidence was put into the record showing that the price increases made by the other major producers following the lead of United

States Steel on July 1, 1957, were, with few exceptions, exactly the same as the increase by United States Steel.

In addition, the record includes instances of identical bidding in which United States Steel and at least one other major steel producer quoted prices to a Government purchasing agency which were precisely identical. For example, on November 19, 1954, the Springfield Armory at Springfield, Mass., opened bids on alloy steel bars, general purpose. One of the items for which bids were requested bore these specifications: alloy steel bars, FS-8620, HR, as rolled 7/16-inch diameter resulph. .035-.050 grain size 5-8ASTM, shall cold shear without cracking, in 10-12-foot lengths. Pricing on a delivered basis, that is, all transportation charges prepaid to destination—Springfield Armory—the bid of United States Steel per pound was 0.09305 cent. The bid of Bethlehem Steel was 0.09305 cent per pound.

When asked to explain how these identical bids occurred, Mr. Roger Blough, chairman of the board of United States Steel, replied:

My concept is that a price that matches another price is a competitive price. If you don't choose to accept that concept, then, of course, you don't accept it. In the steel industry we know it is so.

Referring to a city where the price of a certain steel product was $5 a ton higher than the price of United States Steel, Mr. Blough stated:

I would say that the buyer * * * in that situation has this choice. He chooses to buy from one company at $5 higher. He chooses to buy from our company at $5 lower. Now if you call that competition and a desirable form of competition, you may have it your way. I say that the buyer has more choice when the other's fellow's price matches our price" (tr., p. 778).

On this question of competition in the steel industry, the central fact is that when United States Steel raises its price, it does so with the almost certain knowledge, based on years of experience, that its so-called competitors will make the same increase. This raises the further question of whether there is any conceivable increase that United States Steel might put into effect which the other producers would not follow. And, if so, how much is it? How high can United States Steel raise its price and be reasonably certain that the other producers will follow along with identical increases?

During the investigation of the steel industry conducted by the Temporary National Economic Committee under the chairmanship of the Senator from Wyoming [Mr. O'MAHONEY], Mr. Eugene Grace, the longtime president of the Bethlehem Steel Corp. was asked, "Do you remember any instances where you didn't follow them—United States Steel—up?" Mr. Grace's answer was "No"—hearings before the TNEC, 76th Congress, 2d session, page 10603.

It is this issue of price leadership by United States Steel to which the subcommittee will devote its principal attention when hearings are resumed in October, at which time the first witness will be the Bethlehem Steel Corp.

In closing, I want to say that the hearings have thus far evoked a widespread response from people throughout the country. Letters have been received from persons in all walks of life—housewives, retired people on pensions, farmers, small businessmen, lawyers, members of the clergy, doctors, professors, schoolteachers, and others. They represent a virtual cross-section of the American populace at the grassroots level.

The majority of these letters are handwritten, and range from angry denunciations of the steel industry to reasoned refutations of its principal arguments. Many contain a moral overtone to the effect that it is simply not right for the managers of big business to raise their prices when by so doing they work such hardship on so many people. There is displayed here a mood and a sense of injustice which corporate managers will do well not to ignore when they are considering the extent of their next price increase.

With the thought that the views which they express might be of general interest to the various committees of Congress that are struggling to cope with this problem of inflation, I now ask unanimous consent to have printed in the RECORD excerpts from a more or less representative group of these letters.

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

From Mr. John S. Campbell, Slater, Mo.:

"Chairman Blough says that you do not understand competitive enterprise and it must be a deep dark mystery. Ask him if he understands why United States Steel stocks are selling for 10 times the 1947 price, while No. 2 corn in Chicago is selling for two-thirds of the 1947 price. Ask him why farmers who produce 60 percent of the Nation's raw material are receiving less than 4 percent of the national income. Ask him what part of the remaining 40 percent is pig iron. There is much about competitive enterprise that the American consumer cannot understand."

From Mr. Fred Sondheim, Forest Hills, Long Island:

"United States Steel has split 6 for 1 in the last 10 years so that the old stock, which used to sell at 100 is equal to 420 at present price of 70. The per share earnings which were $5 to $8 per share on the old stock, are now at the rate of $36 to $40 per share on the old basis. In view of this terrific success, why must United States Steel raise prices continually? Surely they have beat the inflation, better than most of us."

From Dr. Arthur A. Calix, Decatur, Ala.:

"Thank you very much for instigating an investigation of the new price hike in steel prices. We cannot stand any more shrinkage of our dollar."

From Mr. I. Kremen, Palo Alto, Calif.:

"I applaud the intention of the Senate Anti-Monopoly Subcommittee to investigate the recent price increases instituted by the steel industry. I feel this investigation might also well be extended to other industries where, in my opinion, conditions approaching monopoly exist. These lead to suppression of competition and unwarranted and inflationary price increases.

"I feel the dangers of inflation are reaching the critical point and are a serious menace to our country. It seems to me that the causes of inflation are threefold: (1) excessive pricing by some business (2) excessive Federal spending (3) annual wage demands by labor.

"I wish your committee godspeed and good luck in your endeavors."

From Dean Fred J. Holly, department of economics, University of Tennessee, Knoxville, Tenn.:

"I hope that you will give some emphasis in your investigation of the steel industry to the use of 'plow-backs' for financing expansions. As you know, the steel industry uses plow-backs to the almost complete exclusion of external capital sources. Then, the industry stresses the need for price increases to permit further increases in earnings for plow-back purpose. This is a far cry from the theoretical workings of a private enterprise economy. It should be a fruitful field for investigation."

From Mr. H. H. McIntyre, Billings, Mont:

"Just a word to thank you for the excellent work you are doing in your investigation in connection with the terrible inflation we are all experiencing.

* * * * *

"I firmly believe in this highly mechanized age where we are all dependent on the products of steel, that the price of steel alone can materially affect the cost of nearly everything that we use. If this industry could be thoroughly investigated and made to show exactly where they are rigging prices, and such prices could be adjusted properly, we could all get along much better.

"I might cite for example a few years back when the average man made $10 a day, he could buy a very good car for $1,000. All right now that same man makes $20 per day, so he should be able to buy a good car for $2,000, but such is not the case, he must pay at least $3,000 and to buy the same quality he used to buy for $1,000, he must pay $4,000. This difference is too much and I firmly believe if properly investigated, they cannot prove to anyone's satisfaction where it is going except into excessive profits, labor and taxes notwithstanding."

From Mr. Logan B. English, Paris, Ky.:

"Allow me to voice my unreserved approval of the proposed investigation of the steel price raise. I know nothing of the ramifications of the causes and effects attending this hike. But I have a very definite feeling that there is a lot in this matter that is unspeakably reprehensible. Mr. Hood as a representative of United States Steel, has shown a scornful disregard of the President's courteous but urgent request that both management and unions assist in halting inflation. Apparently Mr. Hood has not only done nothing, and intends doing nothing, to help in this matter but will show a callous unconcern in the future of the catastrophic consequences most certainly precipitated. By accepting a hugh salary for himself * * * and for his many fellow executives he has inspired and encouraged the union to come and get 'its take.' * * * I am toughly committed to free enterprise but when management of any sort whatsoever uses free enterprise as a license to injure and jeopardize our whole economy I feel that something very decisive needs to be done.

"Mr. KEFAUVER, I am just a dirt farmer. I have done all right until the last 3 years of these 25 years. Even now we can stand the low prices we get for our products. But we cannot stand these spiraling costs together with low prices. In this respect conditions are worsening rather than improving. What is happening to the farmer most surely will happen to every segment of our economy as grass roots troubles gradually creep through and up our national welfare. So I want to wish you Godspeed as you undertake this difficult job in our national interest."

From Mr. H. A. Lomax, Jr., Orlando, Fla.:

"In your forthcoming investigation of the steel industry I hope you let the chips fall where they may and give them hell. The steel industry deserves a good investigation as they are flagrantly disregarding the public

good and feeding the fires of inflation. This last $6 a ton raise was unnecessary. I hope you recommend wage and price controls.

"We the public (not the union members) are being viciously squeezed between higher prices and higher taxes. I hope you have the backbone to recommend price and wage controls for a period of time until we can stabilize inflation."

From Mr. A. W. Owens, Sr., Rock Hall, Md.:

"You will remember the I. G. Farben cartel that through secret agreements set prices that robbed the people. This is just what the steel companies and oil interests are doing to the Nation today. I am convinced there is collusion and secret agreement in the steel industry and also the oil companies.

"These companies have defied the Government, as witness a short time ago when the Government would not allow a quick writeoff for expansion, they said, if no quick writeoff we will raise the price of steel. Which they did.

"I also think there is collusion between these companies and labor. Labor has defied the antitrust laws."

From Mr. Joseph A. Kondash, Madison, N. J.:

"It was with great interest * * * to discover that the Senate Antimonopoly Committee is considering investigating price fixing and price rigging in the steel industry. Such a timely action is in the public interest and cannot be called partisan in nature since it was only a matter of a few days previous thereto that President Eisenhower had asked business to curb prices to stall any inflationary trend. Said action on the part of United States Steel discloses the monopolistic and dictatorial strata upon which such mammoth corporations operate in utter disregard for the public welfare and demonstrates a purely selfish interest of nest-feathering, in my opinion.

* * * * *

"Come what may, the monopolistic tendencies and mergers that have been taking place must be curbed and large industries must be forced, if they do not acquiesce, to allow competition, whether the industry be heavy or light, large in size or small."

From Mr. R. R. White, Detroit, Mich.:

"Note with interest you are going to investigate steel and copper. It's surely not only high time to investigate, but also to do something definite about it.

"Whenever there is a price change, firms are all the same to a fraction of a cent, and companies cannot guess identical prices."

From Mr. R. V. Zahner, Sewickley, Pa.:

"Though not in the habit of letter writing, I can't resist sending you a note of thanks for what you are doing for the millions in my state of life in investigating the arbitrary and needless increases in the cost of commodities and utilities such as metals, oils, natural gas, etc.

* * * * *

"From such of Blough's remarks as have reached the papers, either he never took any economics courses higher than grammar school, or thinks the public never did. Has he no conception of the vast ramifications of his business, not only with respect to consumers' goods, but also how it affects the cost of capital goods, new plants, etc., in every other industry, hence pyramids and doubles back into consumer prices almost ad infinitum, and is he really naive enough to think that we poor installment buyers will pay only the ton rate of increase for each ounce of steel that is in our paltry purchases?"

From the Reverend Hinson V. Howlett, South Dartmouth, Mass.:

"A release from President Walter P. Reuther, of the UAW, tells of deep satisfaction concerning your plans and those of your Antitrust and Monopoly Subcommittee of the Judiciary Committee of the Senate, to investigate 'price increases in "administered price" industries' including 'petroleum, steel, newsprint, many types of food, automobiles, and farm machinery.'

"Let us, too, rejoice.

"We are grateful for this promised undertaking, that, in our judgment, is so timely. And, we are grateful to President Reuther, and the UAW, for having us on the mailing list—and sending us the glad tidings.

"Would you be so kind as to have your office put us on the mailing list for any releases on the progress of the investigation, and copies of the proceedings of the hearings? (We shall always be grateful to you for the material on the juvenile delinquency investigations.) We should, also, be grateful for references to the CONGRESSIONAL RECORD, where there are speeches that you have made concerning this 'price investigation,' or speeches by others, and any account of the progress of the undertaking.

"Glad that you are so good as to represent so many of us in the Congress, outside of your immediate constituency."

From Mr. Wayne Ulbrecht, Rockford, Ill.:

"Read where you are checking price fixing. Thank God, it's about time someone started checking those companies to protect the buying public.

* * * * *

"Price fixing is all over. Just get someone to start enforcing the law."

From Miss Agnes Morris, Portland, Oreg.:

"Just last week I heard that you are the chairman of the committee to investigate means of halting this inflation. It is heartening that, at least, there is a beginning to attack this destroyer of our economic status.

"Here is the personal angle which we are facing, namely the pensioners and fixed-income groups. We are getting panicky when we shop for food. Here in a Nation where there is surplus, some people do not have enough of proper foods to eat. For no reason at all, except greed, prices rise from anywhere from a cent to 5 and 10 cents on an article. Is this reasonable and patriotic?

* * * * *

"Please do something."

From Mr. Harold Kumm, Vienna, Va.:

"I notice that you intend to look into the operation of administered price industries. In this connection, I believe that you would find a most interesting example in the conduct of the ——— company and its so-called competitors.

* * * * *

"But what does this company do when the President asks industry and labor to hold the price line? Their contribution is a price increase of 14 percent in the price of their leading product.

"This price increase is not presented openly. It is brought about by packing 2 pounds and 10 ounces in a 3-pound box. The price remains the same, but the amount is reduced. This device offers great success with the unwary. This was illustrated yesterday when we asked some friends whether they had noticed the change in weight. They had not. They certainly were surprised when they dug out some of the old boxes and compared them with the new and found that the weight had been changed."

From Mr. Alex Staber, Braddock, Pa:

"I'm sure you have many facts and much information to show that the steel companies continue to increase their profits by constantly increasing the price of steel.

"I am including some information about the cost of producing steel that may have been overlooked by your committee. I am referring to the price of the scrap that is used in making steel.

"At the present moment the price of scrap is between $10 and $20 less a ton than it was a year ago.

"It has been stated that the steel industry would use 40,000,000 tons of scrap in 1957. Of this amount the steel industry itself would return 40 to 50 percent of that amount from its own operations. But the other 20,000,000 tons bought at a saving of at least $10 a ton compared to 1956 would be an extra profit of at least $200,000,000.

"In addition the steel process uses large amounts of copper and aluminum. Copper a year ago was somewhere in the neighborhood of 45 cents a pound and today it is 28 cents a pound. The price of aluminum has also dropped.

"Despite these drops in the price of its raw materials the price of steel has not been cut.

"I am sure your committee can produce excellent results in proving that the steel companies contribute immensely to the inflation through their terrific profits."

From Miss Mary Boyd Ayer, Coronado, Calif.:

"Locally, prices increased immediately after it was announced that the price of steel was going to increase; no one waits until after the price of steel increases to raise prices.

* * * * *

"The steel representative appears to distort the truth as much as Hitler and the Russian leaders. I know what steel has done to inflation and have been personally affected by it since the early 1940's and steel prices have cause my savings to dwindle in value. Naturally the steel representatives would seek to justify his prices.

"Everyone knows that we have another round of inflation ever time there is an increase in steel prices; the steel representative knows it.

"Inflation is a disease, and price raising has become a habit. When is it going to stop?"

From Dr. Robert W. Rosen, market research director of Metalworking magazine:

"Enclosed is a special analysis of the relation between steel wage and price increases which would be of interest to you and Mr. Blair.

"Analysis of the data published by industry spokesmen clearly indicates that—

"1. Rising labor costs exerted only a modest upward push on steel prices;

"2. Increases in steel prices between 1940 and 1956 were 3.6 times larger than that required to cover wage increases;

"3. Labor has benefited far less from price increases than have other factors of production."

From Rabbi Elihu Kasten, Oceanside, N. Y.:

"My warmest congratulations to you on the pertinent facts your committee has revealed.

"I thought you would be interested in the enclosed which has been sent to all clergymen and religious institutions."

(NOTE.—The enclosure to which he refers is a printed copy of Mr. Roger Blough's opening statement to the subcommittee, sent out over the name of Phelps A. Adams, executive director, public relations department, United States Steel Corp.)

INFLATIONARY PRESSURES

Mr. MARTIN of Pennsylvania. Mr. President, in the course of his testimony during the recent hearings before the Finance Committee, William McChesney Martin, Jr., Chairman of the Federal Reserve Board, made a statement which I think deserves the serious attention of every American.

Mr. Martin stated:

We must never forget that the worst kind of slavery is the slavery under borrowed money.

At this point the distinguished chairman of the Finance Committee, the Senator from Virginia [Mr. BYRD], observed:

You have just made one of the wisest statements I have ever heard.

Mr. President, I am in complete agreement with the statement of Mr. Martin and the comment of the Senator from Virginia [Mr. BYRD].

Excessive debt is one of the great dangers confronting our Nation, whether contracted by individuals, corporations, or Government. Debt is particularly damaging to Government. Money borrowed by individuals or corporations for investment in the expansion of productive capacity under private enterprise can earn money, but borrowing to support government spending is lost, so far as earning power is concerned. In addition, governmental debt increases the inflationary pressures which threaten our economic stability.

We are all aware that inflation is sweeping the world. It is stimulated when people feel that their medium of exchange will be lower in value in the future than at present, and that they had better convert their money into articles they can use.

A table prepared by U. S. News & World Report shows the drop in purchasing power of money from 1947 to 1957, in various countries of the world. I ask unanimous consent that it be printed, at this point, as a part of my remarks.

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

Drop in purchasing power of money from 1947 to 1957

	Down (percent)
Switzerland	11
India	18
United States	20
Belgium	22
West Germany	24
Italy	27
Ireland	29
Canada	29
Denmark	30
Netherlands	32
Norway	33
Sweden	34
Spain	38
Britain	38
Mexico	47
Australia	53
Finland	59
France	63
Greece	65
Japan	65
Brazil	72
Chile	94

Mr. MARTIN of Pennsylvania. Mr. President, a share of the blame for the current inflation can be placed on the great expansion that has taken place in the money supply, particularly in the 16 years since 1940.

On June 30, 1892, the money supply per capita was $59.32. At that time currency outside of banks was about 40 percent of the total money supply. Forty years later, or June 30, 1932, the per capita money supply was $161.99, but the currency outside of banks was only 30 percent of the total money supply. On June 29, 1940, the money supply per capita was $292.61, but the currency outside of banks was only about 20 percent of the total money supply. On June 30, 1956, the per capita money supply was $791.40. The demand deposits in 16 years had risen from $31 billion to $104 billion and the currency outside of banks had risen from $6,699,000,000 to $28,284,000,000. The per capita supply of dollars had increased more in 16 years than in the 38 years preceding 1940.

Mr. President, the figures I have given appear in a table furnished by the Board of Governors of the Federal Reserve System, and I ask unanimous consent that this table be printed in the RECORD as a part of my remarks.

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

Money supply

	Total demand deposits (not including U. S. Government deposits)	Currency outside banks	Total money supply	Money supply per capita	Population
	Millions	*Millions*	*Millions*		*Thousands*
June 30, 1892	$2,880	$1,015	$3,895	$59.32	65,666
June 30, 1900	4,420	1,331	5,751	75.58	76,094
June 30, 1932	15,625	4,616	20,241	161.99	124,949
June 29, 1940	31,962	6,699	38,661	292.61	132,122
June 30, 1956	104,744	28,284	133,028	791.40	168,091

Mr. MARTIN of Pennsylvania. Mr. President, right now we should be using everything within our means to check the inflationary spiral. Inflation can destroy the strongest government. It inflicts, severe hardship upon everyone who has savings or a fixed income.

In a recent issue of my hometown newspaper, the Washington, Pa., Observer, there was published a fine editorial entitled "Only This Nation Can End Inflation." I ask unanimous consent that this article be printed in the body of the RECORD at this point in my remarks.

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

ONLY THIS NATION CAN END INFLATION

The dispute over inflation grows with every rise in the price of products.

Just now officials of big steel companies are defending their price increases as necessary and compelled by wage increases.

Labor and some other agencies dispute the claim, saying that the raises are not justified to their full extent by increased costs due to wage increases, or that they are not justified for the reason that the increased wages are balanced by increased production.

Robert C. Tyson, chairman of the finance committee of United States Steel, rejects arguments that the company's profits are big enough to absorb increased costs. He says:

"The records of United States Steel cumulatively and convincingly show that as long as nationwide wage inflation continued at rates exceeding the increases in productivity, price inflation will be compelled."

The public's interest is not so much whether price inflations are justified by wage inflation as in the fact that we have inflation and that it has reached the point where it constantly races ahead of wages and salaries. Americans want to find a way to keep up with inflation.

They do not object to such forms of inflation as raise the cost of living if their incomes are raised to balance inflationary increases in costs. In other words, if benefits are greater than the cost, inflation will not hurt.

But American inflation, as reflected in living costs for many months now, has reached the point where it does not bring proportionately increased buying income. Where it will go from there is something a bit uncertain, but all economists fear that it will lead to sudden deflation. Even Russia is in danger from inflation, but she could control deflation by enslavement of people.

The situation is not peculiar to the United States, but the dangers here are made worse by what is happening in other countries. Virtually all nations are in the throes of over-inflation. France has had to devalue her franc again. American money is less inflated than that of other countries.

And the world economic situation is such that a breakdown in the economy of any of a half dozen or more nations could bring a breakdown the world over.

Perhaps the cure for inflation is to be found in other parts of the world. Perhaps if the economy of France, or Britain, or Italy, Peru, or Argentina, or any of several others, could be straightened out it would help ours and that of the rest of the world.

But this Nation is still the world's economic leader. Other nations base their economy on ours; their money gains or loses its exchange value in relation to ours. We have it in our power to destroy almost any government in the world by manipulations of its monetary values.

Inflationary evils serious enough to wreck the world may come elsewhere, but it would seem that only this Nation has the power to end that inflation. That is, if we do have it.

And this Nation does not have that power unless labor and capital can come to some kind of agreement to end the wage-price-increase spiral which is steadily lifting inflation to the point that each increase in wages and each boost in prices simply adds danger.

This Nation has to find the cure for the cause, and thus end the inflation spiral. Otherwise the entire world may feel the effects of deflation someday.

PANAMA CANAL: TERMINAL LAKE MODERNIZATION PROGRAM DERIVED FROM WORLD WAR II EXPERIENCE

Mr. MARTIN of Iowa. Mr. President, I present, for appropriate reference, and ask unanimous consent to have printed at this point in the RECORD, a special report of the General Board of the Navy to the Secretary of the Navy dated September 30, 1943, which summarizes preliminary naval studies on the terminal lake-third locks plan for the major operational improvement of the Panama Canal and gives its recommendation, together with a preliminary statement of my own.

The VICE PRESIDENT. Without objection, the statement and the report will be appropriately referred and printed in the RECORD.

There being no objection, both the statement and indicated General Board report were referred to the Committee on Interstate and Foreign Commerce, and ordered to be printed in the RECORD, as follows:

PRELIMINARY STATEMENT BY SENATOR MARTIN OF IOWA

In my statement to the Senate in the CONGRESSIONAL RECORD of June 21, 1956, I quoted a previously classified preliminary report prepared at the request of the Secretary of War by Gov. Glen E. Edgerton of the

Panama Canal dated January 17, 1944, relative to proposals for the elimination of the Pedro Miguel locks, which report was supplied at my request by the Assistant Secretary of the Army, Hon. George H. Roderick.

The report of Governor Edgerton approved in principle and recommended to the Secretary of War for thorough investigation a proposal for the major operational improvement of the Panama Canal known as the terminal lake-third locks plan, which had been developed during 1942 and 1943 in the Department of Operation and Maintenance of the Panama Canal as the result of experience in World War II. It warned, however, that sea-level advocates would oppose unjustifiably any expensive change in the present plans on the grounds that it would defer the time when conversion of the existing canal to a sea-level waterway might otherwise be authorized. Moreover, it revealed that the terminal-lake proposal had been transmitted to the Secretary of War by the Secretary of the Navy on September 7, 1943, with a request for study of the subject so that the practicability and advisability of the program might be discussed jointly and the President advised in the premises. The Secretary of the Navy at the same time also submitted the plan to the President.

The 1944 Edgerton report lists some of the key documents concerning the conception and study of the plan in the canal organization and its review in the Department of the Navy.

On my request to the Secretary of the Navy, Hon. Thomas S. Gates, Jr., the Department of the Navy on July 3, 1957, transmitted to me copies of the principal 1943-44 naval documents concerning its initial review and study of terminal lake proposal, which have had their security classification removed.

The essentials of those naval views were summarized in a report by the Chairman of the General Board of the Navy to the Secretary of the Navy dated September 30, 1943, submitted after a visitation in the Canal Zone by a member of the Board and extensive consultations with Panama Canal and naval officials, and experienced canal pilots.

The indicated documents start with submission of the plan on June 17, 1943, to the Department of the Navy and end with an analysis of the indicated Edgerton report under the date of March 18, 1944. Notwithstanding their advisory and preliminary nature, certain information and principles concerning canal problems developed in these documents are fundamental. To that extent, they represent the considered opinions of some of the most distinguished naval officers of the 20th century, who, as members of the General Board or in administrative capacities in the Department of the Navy, participated in the naval review.

Based primarily on practical considerations of navigation and marine operations, the reports fully favored modification of the authorized third locks project to provide a summit-level terminal lake anchorage in the Pacific sector of the canal to serve as a traffic mobilization basin corresponding with that at Gatun in the Atlantic end. The General Board, in its report to the Secretary of the Navy on September 30, 1943, recommended that the Navy Department "strongly endorse the subject plan at the appropriate time."

Furthermore, after considering the relative merits of the types of canal, which has always been a subject of keen controversy for reasons not remotely related to navigation, the report expressed the following conclusion: "The General Board is much impressed by the great preponderance of evidence in favor of the lock type and considers that the opinions presented, supported as they are by experience, fully justify the abandonment of the idea of a sea-level canal across the Isthmus of Panama."

After receipt of the 1944 Edgerton report to the Secretary of War on elimination of the Pedro Miguel locks, previously mentioned, the Secretary of the Navy referred it to the General Board, where it was studied and summarized in a report to the Chairman of the Board dated March 18, 1944. This report reiterated the September 30, 1943, General Board recommendation that the Navy Department strongly support the terminal lake proposal at the appropriate time, which, it prophetically estimated would be "well into the future."

These 1943 and 1944 naval recommendations, it should be emphasized, were made prior to the advent of the atomic bomb, when the controlling considerations in canal planning were capacity, operational, engineering, and economic. Thus, the repeated suggestions by its advocates that the sea level project has had unqualified support in the past of the General Board is not only erroneous but definitely misleading.

Following the military use of the atomic bomb, Panama Canal officials, through administrative channels, sought and secured enactment of Public Law 280, 79th Congress, approved December 28, 1945, authorizing the Governor of the Panama Canal to make a comprehensive review and study of the means for increasing the capacity and security of the Panama Canal to meet the future needs of interoceanic commerce and national defense, including consideration of canals at other locations and a restudy of the authorized third lock project. It is, I believe, significant that this legislation was enacted after the death of President Franklin D. Roosevelt to whom the terminal lake proposal had been submitted in 1943 and who is reported to have been favorably disposed thereto.

The original third lock project, it should be noted, had been suspended in May 1942 after expenditure of $75 million mostly on lock site excavations at Gatun and Miraflores. These excavations, in event of resumption of construction, would be substantial contributions toward completion of the authorized project as improved through adaptation to the principles of the terminal lake proposal.

The hearings prior to the enactment of Public Law 280, 79th Congress, were held on November 15, 1945, in executive session; and maritime interests, including the Navy, were not represented. The only witness was the Governor of the Panama Canal (J. C. Mehaffey), who, it is noted, did not inform the Committee on Merchant Marine and Fisheries about the official views of the Navy.

When questioned by a member of the committee as to whether he approved the terminal lake proposal in principle, Governor Mehaffey stated: "In general, yes; if the third locks were constructed, I believe we would recommend a modifiation of the original project to include the terminal lake." (See Executive Hearings on Panama Canal Facilities before Committee on Merchant Marine and Fisheries, November 15, 1945, p. 9.) This was the second formal approval of the terminal lake proposal by a Governor of the Panama Canal for the major modification of the existing waterway.

Under an extreme interpretation of the security and national defense factors of the statute as paramount and controlling, the report of this governor's inquiry, which was transmitted to the Congress on December 1, 1947, and significantly, without Presidential approval, comment, or recommendation, advocated only the sea-level project for major construction at Panama.

Regardless of the official concurrences in the main premises of the report, security and national defense, that may have been made by certain executive agencies, the extensive and rigorous clarifications of these and other vitally important phases of the canal problem since its submission to the Congress and the subsequent tremendous advances in the destructive powers of modern weapons culminating in the H-bomb, have, in the opinion of many distinguished independent physicists, nuclear warfare engineering, and other experts, served to restore the canal situation to what it was in 1943, when the terminal lake-third locks plan, developed as the result of war experience, was first supported in principle by both Panama Canal and naval authorities and submitted to the President. Thus, the Panama Canal problem consists of a combination of capacity, engineering, marine operational, and constructional planning to secure the best operational canal for the transit of vessels practicable of economic attainment.

Hence, the views of the Department of the Navy, as developed in the September 30, 1943, report of the General Board, constitute a state paper of primary importance.

When judged by its consequences, which have been far reaching, the development of the terminal lake-third locks proposal was one of the great constructive projects to grow out of World War II. Its story forms an important chapter in Isthmian history which emphasizes further that questions of major interoceanic canal policy are not proper matters for exclusive control by ex parte or routine administrative groups, which, in the normal course of events, would expect to benefit from their own recommendations. The United States has had enough of organized drives for predetermined objectives at Panama that have disregarded costs and consequences.

As previously expressed in my statement to the Senate of June 21, 1956, all of these facts add up to indicate the absolute importance for prompt authorization by the Congress to secure an independent inquiry of the entire interoceanic canals problem along the line contemplated in the bipartisan measures now pending in both Houses. A series of crises affecting the operation of the canal, the latest of which are a shortage of water in the summit level coupled with the highest traffic volume in history, stress the necessity for timely legislation before an overwhelming crisis forces hasty action.

REPORT BY THE GENERAL BOARD OF THE NAVY ON THE TERMINAL LAKE-THIRD LOCKS PLAN, SEPTEMBER 30, 1943

From Chairman General Board.
To the Secretary of the Navy.
Subject: Panama Canal, Plan for improvement.
Reference: (a) ComFifteen letter 15 ND/HG/(03) of 17 June 1943, and enclosures.

1. By the fifth endorsement of the reference, the Secretary of the Navy has directed the General Board to study a proposed plan for the improvement of the operating features of the Panama Canal and to make recommendation. The plan and several alternative schemes for its accomplishment are now being considered by the Governor of the Panama Canal and until his investigations are completed neither the Secretary of War nor the Secretary of the Navy will have the benefit of the Governor's expert engineering and operating advice. Therefore, the Board assumes that studies of the subject by the Navy Department are now of a preliminary nature, with the view primarily of determining the Navy's special interest in the project as a whole, to be presented to the War Department when appropriate.

2. It is to be noted that there is now in existence an approved plan for the improvement of the canal, authorized by Congress and referred to hereinafter as the third lock program. The purpose of this program is to increase the capacity of the canal, to permit transit of large naval vessels, and to attain greater security from bombing attack. Work on this program was actually begun in 1940 but was suspended in 1942 in favor

of projects deemed more essential to the successful prosecution of the war.

3. The controlling feature of the subject plan is the creation of a summit level anchorage in Miraflores Lake in order to provide a traffic expansion chamber at the Pacific terminal. By making provision for safe summit level anchorages for vessels as they emerge from the Gaillard Cut, the transit of the cut becomes independent of Pedro Miguel locks which now constitute the bottleneck of the canal. The purpose of the plan is to improve marine operating conditions, reduce accidents, reduce the time of transit, and reduce the wear on piloting personnel. Essential to its accomplishment are the removal of the Pedro Miguel locks and the construction of one or more sets of triple-lift locks on the general site of the Pacific entrance to the canal.

4. This plan is not a new concept but is, rather, an old one backed by the force of operating experience gained during the 29 years that the canal has been in operation. The need for capacious summit-level anchorages at both ends was early recognized but the canal, as it stands today, meets that need at Gatun only. Colonel Sibert, the builder of Gatun locks, wanted to place all Pacific locks in one structure as at Gatun but the Pacific locks had already been started and the change would have involved a delay in the opening of the canal. The President decided against the proposal because a change in plans might have been construed, by the proponents of a sea-level canal, as evidence of the weakness of a lock canal. Prior to this, in 1906, Mr. Stevens had recommended to Congress the combination of all Pacific locks into one structure. Going as far back as 1879, the French Engineer de Lepinay had proposed the creation of a large artificial summit-level lake at each terminal, to be connected with sea level by locks. Years later his proposal was adopted at the Atlantic terminal and took the form of Gatun Lake. But there is no equivalent at the Pacific terminal.

5. The present anchorage space at Gatun supplies a stopover station for both north and southbound vessels and permits unrestricted operation of Gatun locks. At Pedro Miguel there is no comparable anchorage space for ships as they emerge from Gaillard Cut. The Pedro Miguel locks are located squarely in the south end of the cut and they restrict passage through the cut to the capacity of the locks. While northbound traffic can and does enter the cut at lockage intervals, southbound vessels cannot arrive in the cut any faster than they can be received at the Pacific locks. Vessels have to approach the latter locks in a relatively narrow passage; they cannot anchor for they would swing into a rocky bank; they cannot slow too much or they will lose steerageway and drift ashore. The resulting dispatching problem causes delays, at times endangers the canal and ships, and wears out piloting personnel. The situation is aggravated because the canal between Pedro Miguel and Bohio is subject to dense fog. When there is fog in the cut, vessels, after leaving the locks, can only tieup to the north wall at Pedro Miguel. When the north wall is filled to capacity all northbound traffic must stop and Pedro Miguel lockages and Miraflores lockages must cease.

6. The facts presented in the preceding paragraphs have been extracted from the enclosures to the reference. The latter were prepared by the present port captain at Balboa, Comdr. Miles P. DuVal, United States Navy, as a result of his own experience and study, and in collaboration with other canal authorities as well as with the commandant, 15th Naval District. These enclosures present a well-rounded picture of present operating conditions, and their difficulties, together with alternative schemes for solving the major problems. Included therewith is an exhaustive discussion, ably presented, of the marine features of the sea-level type of canal, as compared with the lock type. The General Board is much impressed by the great preponderance of evidence in favor of the lock type an considers that the opinions presented, supported as they are by experience, fully justify the abandonment of the idea of a sea-level canal across the Isthmus of Panama.

7. That part of the third-lock program which has to do with the Pacific terminal locks is closely related to the subject under discussion. Adopted when war began to threaten, the third-lock program is, in principle, an acceptance of the present arrangement of the Pacific locks. Under this program the new and larger locks would be placed at a distance from the present locks in order to disperse the lock structures and lessen the chances of danger from bombing attack. There would be 1 new triple-lift lock at Gatun, 1 new two-lift lock at Miraflores, and a new single-lift lock at Pedro Miguel, the last named located on a new channel which, passing Cerro Paraiso on its south and west sides would connect Miraflores Lake with the entrance to the Gaillard Cut.

8. Suspension of work on this program has taken place at a stage in its completion that affords an opportunity to reexamine its features, some of which appear to introduce additional dangers and complications and others to continue present difficulties. If the program were to be carried through, the bottleneck of Pedro Miguel would be perpetuated and any chance of providing an essential traffic reservoir at Miraflores would be lost. The turns in the new channel (one of which amounts to 47°17′), and its intersection with Gaillard Cut, would become new foci of accidents. It has also been developed that the proposed new Pedro Miguel Lock would be on the worst foundation of all locks. But, fortunately, there has been no excavation along the line of the proposed new channel around Cerro Paraiso and the subject plan does not, therefore, call for the abandonment of any work already completed under the third-lock program. On the other hand, the excavation which has already been accomplished in anticipation of the erection of the new (third) Miraflores two-lift lock is available for use in connection with a set or sets of triple-lift locks as contemplated in the subject plan.

9. All of the schemes suggested as suitable for making effective the subject plan, include provision for maintaining traffic during the reconstruction period. Of the three schemes suggested by Commander DuVal, the papers submitted to the Board indicate preference for scheme C, an arrangement in which the present Miraflores Locks are abandoned, three new sets of triple-lift locks placed near the third lock site, and dispersion obtained by increasing the spacing between the locks. The Bureau of Yards and Docks in its (second) endorsement on the reference presents a fourth scheme which proposes the construction of a single set of triple-lift locks on the present Miraflores site and of two new sets of trip'--lift locks near the third lock site. This plan offers advantages from the standpoint of maintenance of canal traffic at the expense of longer time to complete. Both of these latter schemes utilize the cut already excavated, although neither suggests the extent to which the new sets of locks should be separated from each other in order to attain greater security from bombing attacks.

10. Disability of the canal may be from damage at a single point, or from damage at several points through a large-scale attack. The extent of damage to a group of locks from a single hit is increased when one set of that group has any part of its structure, or operating equipment, in common with another set; this is the present situation, all existing locks being in pairs. It does not follow, however, that immunity from damage can be secured merely by increasing the space between the several sets of locks, or by separating the groups. Each set may be attacked separately and, if not successfully defended, all sets, even though widely separated, may be destroyed by a single large-scale attack. The breaching of all the gates (including the emergency gates), of only one upper lock, regardless of its location with respect to another set, would disable the entire canal by lowering the water level. The Pedro Miguel Locks provide a case in point; although they are located at some distance from Miraflores, the destruction of the gates of one set would render the Gaillard Cut unnavigable. When the restrictions imposed by the size and topography of the Canal Zone are taken fully into account, it seems apparent that the greatest dispersion possible does not render the canal secure against large-scale bombing attacks. The present locks are not dispersed; their security lies in their degree of invulnerability, their defense, and in the precautions taken to prevent surprise.

11. For these fundamental reasons the General Board, although not competent to base its opinions on technical grounds, believes that sound engineering, and safety and facility of marine operation, are the primary considerations to be balanced against questions of dispersion or separation of the locks. Above all, the latter should not be allowed to obscure the necessity for a traffic expansion chamber at the Pacific terminal, the controlling feature of the subject plan. The cut already excavated under the third-lock program establishes the distance between the new and the present Miraflores Lock sites. Assuming that this cut will be utilized, whatever plan is finally adopted, the Board believes that further questions of vulnerability and security from bombing attack should be left to those responsible for the design of the locks, and those charged with the defense of the canal.

12. Appendix A, attached hereto, summarizes the marine advantages claimed for the subject plan, regardless of the particular scheme adopted for its accomplishment. All of these advantages will accrue to the Navy in moving its ships quickly and in large numbers from one ocean to the other as strategic and tactical considerations may dictate. The General Board, itself strongly in favor of the basic idea, has been unable to detect, either in any correspondence, or in conversation, any opposition thereto. A member of the Board, during a recent visit to the Canal Zone, noted the same favorable reaction during all discussions, including those he had with Governor Edgerton. With the canal authorities, including experienced pilots, and the commandant, 15th Naval District, all favorably disposed, the project at present resolves itself into a question of practical ways and means which, as noted earlier herein, are being investigated by the Governor.

13. As a result of its study, the General Board recommends that the Navy Department strongly endorse the subject plan at the appropriate time.

A. J. HEPBURN.

APPENDIX A

MARINE ADVANTAGES OF PROPOSED PLAN FOR IMPROVEMENT OF PANAMA CANAL

Provides safe summit level anchorage for vessels as they emerge from the cut.

Eliminates Pedro Miguel Locks as the bottleneck of the canal.

Makes transit of cut independent of Pedro Miguel Locks.

Simplifies problem of dispatching.

Reduces time of transit.

Increases safety of transit.

Makes operation of Miraflores Locks independent of fog in Gaillard Cut.

Increases traffic capacity.

Eliminates lockage surges from cut as a navigational hazard.

Increases usable dry season storage in summit level.

CIVIL RIGHTS

Mr. CLARK. Mr. President, now that the civil rights bill has been passed and is on its way to the President, some of us are concerned as to how the Commission and the additional Assistant Attorney General will be financed.

I wonder it the distinguished minority leader would be able to give us some assurance that appropriations will be available from which the Commission, as well as the Assistant Attorney General, can be adequately financed, so that we can go home with a conviction that the members of the Commission can be appointed soon and go to work, without there being the necessity for any other appropriation.

Mr. KNOWLAND. Mr. President, I will say to the Senator from Pennsylvania that I cannot give a complete and categorical answer to his inquiry. I believe, however, that there are sufficient funds in the Department of Justice appropriations, in the case of the Assistant Attorney General. In the case of the Commission, if necessary there are sufficient funds in the President's special emergency funds at least to get the Commission started on its work.

Mr. CLARK. I thank the Senator from California.

Mr. JAVITS. Mr. President, will the Senator inform us as to whether he thinks the work will be impeded by the need for getting confirmation of the Director of the Commission?

Mr. KNOWLAND. I will say to the Senator, again I would not want to give a categorical answer to the Senator in that regard, but I hope, in the same spirit that the legislation was passed, that when the names are sent to the Senate and we have reconvened, there will be no unnecessary delay in having confirmation of the nominations.

Mr. JAVITS. Does the Senator believe these positions are subject to recess appointments?

Mr. KNOWLAND. I believe they are.

Mr. JAVITS. I thank the Senator.

ADDRESS BY LEWIS A. LAPHAM, PRESIDENT OF GRACE LINE, INC.

Mr. BEALL. Mr. President, in connection with the most recent developments in our maritime history, Mr. Lewis A. Lapham, president of Grace Line, Inc., delivered a constructive and interesting address which justifies the attention and reading of Members of the Congress and of the public generally. The speech was delivered at the christening of the steamship *Santa Rosa* on August 28, when interested supporters of the American merchant marine journeyed to Newport News to see two ships of the same name—one a replacement of the other, floating side by side. The modern ship just off the ways will replace the steamship *Santa Rosa* which for 25 years has transported thousands of Americans between our ports and ports of South America.

Mr. Lapham is one of the outstanding shipping officials of our country and has maintained the highest standards to which the Grace Line has adhered over decades of successful operations. In view of the importance of this ceremony and of the appropriateness of Mr. Lapham's remarks, I ask unanimous consent that the text of his address be printed in the CONGRESSIONAL RECORD.

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

REMARKS OF LEWIS A. LAPHAM, PRESIDENT, GRACE LINE, INC.

It goes without saying that this day is a marvelously pleasant and memorable one for the Grace Line. Traditionally, I suspect, I should speak about the new ship, the new *Santa Rosa*, which looms above us. But like most ships, this one will speak for herself, and if you will forgive a certain prejudice, I think she will speak better than most, as has her predecessor, the old *Santa Rosa*, laying off in the James River before you and getting ready even now to whistle her namesake here hail and farewell.

But I would rather speak, briefly, of what is behind the ship and how she came to be.

She will be the first passenger vessel built and launched in the shipping industry's overall replacement program, and she marks as well the first building of the Grace Line's own construction program, the largest by far the line has undertaken in its hundred years of existence. But her building has not just happened in this year of 1957. Far from it.

She is part of a program that began, in essence, in 1936 with the passage of the Merchant Marine Act in that year. It is an act that has been most faithfully and intelligently administered by the responsible Government agency, and at no time, incidentally, better administered than under its present leadership. And it is an act that has been equally faithfully and intelligently complied with by the industry it serves.

This ship is the first of a program that will send down the ways some 300 United States flag vessels over the next 12 years or so, a fleet of the finest, safest, and most effective ships afloat. It is a joint program of the industry and the Government, planned to provide an oceangoing transportation service for the overseas trade and support of a nation that demands and should have, the best.

All these things can be planned, of course, and talked about, but someone has to transmit the plans to paper and the paper to ships, and that just doesn't happen either. And I go no further with these remarks before expressing the Grace Line's warm and deep appreciation to Mr. William Francis Gibbs, who designed this ship, and to Newport News, who built it. The superb talents and craftsmanship that have gone into this new *Santa Rosa* make themselves manifest without any added comment from me, or anyone else. The performance is even more impressive when you consider that it was a bare 7½ months ago that some of us were here to see the keel plate for this same ship swung into place.

As for our sponsor today, she bears the most famous name in United States shipping history and we are delighted to have her. And a special touch of history is additionally with us in the person of the young maid of honor, Miss Carolyn Flint, a descendant of one of the families whose firm, Chapman & Flint, many years ago in Bath, Maine, built the clipper ship forerunners of the present Grace Line fleet.

The line has a host of other friends here, from the Federal Maritime Administration and other Government agencies, from the shipping world and its related industries, and to them all may I say, many, many thanks—we are complimented by your presence and are happy to have you with us, I promise you.

But nothing perhaps more significantly emphasizes the continuity of the program I have been talking about, of this lengthy maritime tradition, past, present and future, than the presence out there in the James River of the old *Santa Rosa*. She has had a long, proud service, in peace and in war, under her country's flag. And this occasion, unique, I suspect in seagoing history, is a fine climax for her honorable career.

REPORT ON 85TH CONGRESS, 1ST SESSION

Mr. JAVITS. Mr. President, under the heading of "85th Congress, 1st session, Final Report," I ask unanimous consent to have printed in the RECORD a report of the happenings of this session of the Congress.

There being no objection, the report was ordered to be printed in the RECORD, and will appear hereafter.

DEATH OF PETER K. MORSE, DEPUTY GENERAL COUNSEL, INTERNATIONAL COOPERATION ADMINISTRATION

Mr. MANSFIELD. Mr. President, it was with profound regret that I learned of the untimely death of Peter K. Morse, Deputy General Counsel of the International Cooperation Administration. Mr. Morse was killed in an automobile accident on Monday near Sharon, Mass. Mr. Morse was well and favorably known to many members of the Committee on Foreign Relations because of his work during the past several years in the presentation of the executive branch position on the foreign-aid programs.

Mr. Morse, who was 38 years of age at the time of his death, was a native of Detroit, Mich. He had served in the United States Navy from 1942 to 1946. He was a graduate of the University of Michigan and the Harvard Law School, where he was case editor of the Harvard Law Review. After having been associated for 3 years with a New York law firm he joined the legal staff of the Economic Cooperation Administration in August 1949. He had been given progressively increasing responsibility in the administration of the mutual-security program in the 8 years since that time. He became Deputy General Counsel of ICA in 1956 and he had been serving as Acting General Counsel during the past 6 months.

The Government of the United States has lost a devoted public servant. It is my hope that Peter Morse's family and friends can take comfort from the widespread appreciation of this fact.

TRANSACTION OF ADDITIONAL ROUTINE BUSINESS

By unanimous consent, the following additional routine business was transacted:

RESOLUTIONS OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD three resolutions adopted by the delegates to the convention of the American Federation of Government Employees at the Hotel Statler, Boston,

Mass., August 5–9, 1957, concerning Federal employees and employment conditions.

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

RESOLUTION 15, INCREASED BENEFITS FOR FEDERAL EMPLOYEES IN HAZARDOUS OCCUPATIONS

Whereas employees of United States naval and VA hospitals and United States penal and mental institutions are engaged in hazardous work; and

Whereas these Federal employees are engaged in hazardous occupations such as all types of employment involving the custody, care, and/or treatment of fellow humans and the protection of public properties are not receiving adequate compensation or retirement benefits; and

Whereas determination by Federal administrative officials is overly restrictive in allowing recognition of hazardous-type employment: Therefore, be it

Resolved, That the Massachusetts State Federation of Labor urge the Congress of the United States of America to increase the compensation and retirement benefits of these Federal employees and provide for a more liberal interpretation of hazardous-type occupations.

Submitted by Delegate John S. Gannon, lodge 1088, American Federation of Government Employees, Boston, Mass.

Resolution 15 adopted by delegates in convention at Hotel Statler, Boston, Mass., August 5 to 9, 1957.

RESOLUTION 16, MAINTAINING WATERTOWN AND SPRINGFIELD ARSENALS

Whereas the Watertown Arsenal and the Springfield Armory are Federal field establishments that have greatly contributed to the defense needs of the nation and the prosperity of the Commonwealth over the past century; and

Whereas both these traditional defense activities have been subjected to a series of adverse administrative actions which have curtailed their scope of operations; and

Whereas such curtailment of operation has unduly hurt the economic well-being of the Commonwealth and the defense readiness of the Nation: Therefore be it

Resolved, That the Massachusetts State Federation of Labor in Convention go on record and urge the Congress of the United States of America to provide for and insure the continued operation of the Watertown Arsenal and the Springfield Armory at a higher plain and wider scope of operations as an aid to bolster the economy of the Commonwealth of Massachusetts and improve the defense preparedness of the Nation.

Submitted by delegate John S. Gannon, Lodge 1088, American Federation of Government Employees, Boston, Mass.

Resolution 16 adopted by delegates in convention at Hotel Statler, Boston, Mass., August 5 to 9, 1957.

RESOLUTION 54, MAINTAINING EMPLOYMENT LEVELS AT BOSTON NAVAL SHIPYARD

Whereas the Boston Naval Shipyard draws its employees from every part of the Commonwealth more particularly within a radius of 60 miles from the city of Boston; and

Whereas each city and town therein is greatly affected by the financial stability of these employees; and

Whereas any proposed layoff which will affect every trade and occupation and result in many professional and technical men and skilled mechanics seeking work in other States; and

Whereas the Navy has announced an economy cut of several fighting ships from the active fleet, that could mean diverting Boston repair work to other shipyards; and

Whereas any reduction in the appropriation for the Boston Naval Shipyard and any further cutback in work would increase unemployment in this area to an untenable degree: Therefore be it

Resolved, That the Massachusetts State Federation of Labor delegates in convention urge the Congress of the United States to take action as may be necessary to compel the Department of Defense to maintain the present standard of employment and work at the Boston Naval Shipyard; and be it further

Resolved, That copies of these resolutions be transmitted to the President of the United States, to each Member of the Massachusetts Congressional delegation, to the Secretary of Defense, to the Secretary of the Navy.

Submitted by delegate John S. Gannon, Lodge 1088, American Federation of Government Employees, Boston Naval Shipyard.

Resolution 54 adopted by delegates in convention at Hotel Statler, Boston, Mass., August 5–9, 1957.

REPORT ENTITLED "OPERATION OF ARTICLE VII, NATO STATUS OF FORCES TREATY" (S. REPT. NO. 1162)

Mr. FLANDERS. Mr. President, the full Committee on Armed Services on August 22 approved the report of the Armed Services Subcommittee on the Operation of Article VII of the NATO Status of Forces Treaty and other foreign jurisdictional arrangements. This report covers a review of these arrangements from December 1, 1955, through November 30, 1956. Separate comment is also made on the Girard case.

Mr. President, I submit this report from the Committee on Armed Services and request unanimous consent that it be printed, with illustrations.

The VICE PRESIDENT. The report will be received and printed, as requested by the Senator from Vermont.

STATEHOOD FOR ALASKA AND HAWAII—REPORTS OF A COMMITTEE—MINORITY VIEWS (S. REPTS. NO. 1163 and 1164)

Mr. JACKSON. Mr. President, by direction of the Committee on Interior and Insular Affairs, I submit a report on the bill (S. 49) to provide for the admission of the State of Alaska into the Union, and also the bill (S. 50) to provide for the admission of the State of Hawaii into the Union. I ask unanimous consent that the minority may file a report during the present session of the Congress or during the adjournment of the Congress.

The VICE PRESIDENT. The reports will be received, and the bills will be placed on the calendar; and, without objection, the reports will be printed, and the request of the Senator from Washington is granted.

ADDITIONAL BILLS INTRODUCED

By unanimous consent, Mr. YARBOROUGH introduced the following bills, which were read twice by their titles and referred as indicated:

S. 2886. A bill to authorize continuing studies of the biology, propagation, catch, and abundance of species of fish and shrimp that are of interest to sport and commercial fishermen in waters adjacent to certain areas in the State of Texas so that appropriate measures for protecting the environment and increasing the abundance of such species of fish and shrimp may be taken; to protect the whooping crane and the lands upon which it is dependent by the establishment of a wildlife sanctuary in the State of Texas, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. YARBOROUGH (for himself and Mr. BYRD):

S. 2887. A bill to amend title I of the Federal-Aid Highway Act of 1956 to provide that the Secretary of the Interior shall approve the acquisition of certain lands of national historical significance, or interests therein, for highway purposes; to the Committee on Public Works.

CONSERVATION OF FISH AND WILDLIFE IN THE STATE OF TEXAS

Mr. YARBOROUGH. Mr. President, there is a great need in the State of Texas and in the country to enlarge our program of fish and wildlife conservation. The extinction of the passenger pigeon, heath hen, Labrador duck, and numerous other American native birds of great economic and cultural value are pointed examples of our wastefulness with our natural resources in the past and our need for conservation now. The land is filling up with people and there is less and less natural habitat and unpolluted waters for our native animals and birds to rest upon, feed in, and drink.

We must move fast if we are to save many species of our beautiful wildlife. Many are threatened with extinction.

The fishermen of the gulf coast are interested in a program which will preserve and propagate the marine life that contribute to their livelihood.

All Americans and all Canadians have followed with close interest as the whooping crane population of the world dwindled. Only a handful of these beautiful birds are alive today, and unless further steps are taken to preserve and protect this species of fowl, we are likely soon to be without these fine and lovely creatures. They are the tallest wild birds in America today.

Mr. President, we also need additional study of the fish and marine life resources of this country.

Mr. President, I introduce, for appropriate reference, a bill that would not only provide for protecting the environment and increasing the abundance of marine life, but would also establish a wildlife sanctuary in the State of Texas for whooping cranes and other wildlife.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 2886) to authorize continuing studies of the biology, propagation, catch, and aboundance of species of fish and shrimp that are of interest to sport and commercial fishermen in waters adjacent to certain areas in the State of Texas so that appropriate measures for protecting the environment and increasing the abundance of such species of fish and shrimp may be taken; to protect the whooping crane and the lands upon which it is dependent by the establishment of a wildlife

sanctuary in the State of Texas, and for other purposes, introduced by the Senator from Texas [Mr. YARBOROUGH] was received, read twice by its title, and referred to the Committee on Interstate and Foreign Commerce.

PRESERVATION OF CERTAIN LANDS OF NATIONAL HISTORICAL INTEREST

Mr. YARBOROUGH. Mr. President, under the Federal interstate road program, certain historical shrines and monuments are in grave danger of being destroyed by the routing of Federal highways, and doubtless in the future, many other shrines of great cultural and historic value to our people will be destroyed unless laws are enacted to preserve them.

One such historic shrine which has been placed in jeopardy by the recently announced routing of an interstate highway in New Jersey is the Morristown National Historical Park and the Revolutionary War headquarters of Gen. George Washington. The National Park Service has protested the proposed new route for the highway.

In 1949 the Congress chartered the National Trust for Historic Preservation to further the national policy of preserving cultural or historic monuments and shrines, set forth in the Historic Sites Act of 1935, which act was sponsored by the Senator from Virginia [Mr. BYRD] and Representative Maury Maverick. The Senator from Virginia [Mr. BYRD] has joined me in sponsoring a bill to amend the Federal Highway Act of 1956, to provide that the Secretary of the Interior shall give his written opinion that land sought for a highway right-of-way and paid for with Federal funds, will not adversely affect the national policy of preserving for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States, before the land can be bought.

Therefore, on behalf of myself, and the Senator from Virginia [Mr. BYRD], I introduce, for appropriate reference, a bill to amend title I of the Federal Aid Highway Act of 1956 to provide that the Secretary of the Interior shall approve the acquisition of certain lands of national historical significance, or interests therein, for highway purposes, and ask that it be appropriately referred.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 2887) to amend title I of the Federal-Aid Highway Act of 1956 to provide that the Secretary of the Interior shall approve the acquisition of certain lands of national historical significance, or interests therein, for highway purposes, introduced by Mr. YARBOROUGH (for himself and Mr. BYRD), was received, read twice by its title, and referred to the Committee on Public Works.

CREATION OF A COAL RESEARCH AND DEVELOPMENT COMMISSION—ADDITIONAL COSPONSOR OF BILL

Mr. MARTIN of Pennsylvania. Mr. President, I ask unanimous consent that the name of the Senator from Kentucky [Mr. COOPER] may be added as a cosponsor of the bill (S. 2877) to encourage and stimulate the production and conservation of coal in the United States through research and development by creating a Coal Research and Development Commission and for other purposes, introduced by me, for myself and my colleague, the junior Senator from Pennsylvania [Mr. CLARK].

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

TRIAL OF MEMBERS OF THE ARMED FORCES FOR CRIMINAL OFFENSES COMMITTED IN FOREIGN COUNTRIES—ADDITIONAL COSPONSORS OF RESOLUTION

Mr. SMATHERS. Mr. President, I wish to announce that Senators BIBLE, BRIDGES, BUTLER, CURTIS, EASTLAND, GOLDWATER, HOLLAND, JOHNSTON of South Carolina, MALONE, MCCLELLAN, MUNDT, POTTER, ROBERTSON, STENNIS, TALMADGE, YOUNG, and ERVIN have indicated their desire to join me as cosponsors of the resolution (S. Res. 163) favoring trial by the United States, where primary jurisdiction is conferred upon it by treaty, of members of the Armed Forces for criminal offenses committed in foreign countries, submitted by me on July 15, 1957. I ask unanimous consent that their names be added as cosponsors of the resolution the next time it is printed.

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

ADJOURNMENT TO 9 A. M. TODAY

Mr. MANSFIELD. Mr. President, in accordance with the order previously entered, I now move that the Senate be in adjournment until 9 o'clock this morning.

The motion was agreed to; and (at 12 o'clock and 59 minutes a. m. on Friday, August 30) the Senate adjourned, the adjournment being, under the order previously entered, until 9 o'clock a. m. the same day.

A NOMINATION

Executive nomination received by the Senate August 29, 1957:

UNITED STATES MARSHAL

Edward L. McCarthy, of Rhode Island, to be United States marshal for a term of 4 years for the district of Rhode Island, vice Howard S. Proctor, retired.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 29, 1957:

IN THE ARMY

The following-named officers for temporary appointment in the Army of the United States to the grades indicated under the provisions of title 10, United States Code, sections 3442 and 3447:

To be major generals

Brig. Gen. Theodore Scott Riggs, O17076.
Brig. Gen. Garrison Barkley Coverdale, O17148.
Brig. Gen. Hugh Mackintosh, O17716.

To be brigadier generals

Col. Herbert Volvenelle Mitchell, O18073.
Col. Willis Almeron Perry, O18131.
Col. Harrison Alan Gerhardt, O18697.
Col. Charles John Timmes, O29777.
Col. Richard John Meyer, O19147.
Col. Samuel Edward Gee, O19251.

The nominations of Col. John R. Jannarone and 154 other officers for appointment in the Regular Army of the United States, which were confirmed today, were received by the Senate on August 16, 1957, and appear in full in the Senate proceedings of the CONGRESSIONAL RECORD for that date beginning with the name of Col. John R. Jannarone which is shown on page 15060, and ending with the name of Edward L. Witzell, which is shown on the said page.

IN THE AIR FORCE

The following officers under the provisions of section 8066, title 10, United States Code, to be assigned to positions of importance and responsibility in the United States Air Force, designated by the President in rank as follows:

To be general

Lt. Gen. Leon William Johnson, 88A (major general, Regular Air Force).

To be lieutenant generals

Maj. Gen. Francis Hopkins Griswold, 94A, Regular Air Force.
Maj. Gen. William Fulton McKee, 467A, Regular Air Force.
Maj. Gen. William Dole Eckert, 560A, Regular Air Force.

IN THE NAVY AND IN THE MARINE CORPS

The nominations of James S. Webb, Jr., and 717 other officers for appointment in the Navy and Marine Corps, which were received by the Senate on August 16, 1957, and which were confirmed today, may be found in full in the Senate proceedings of the CONGRESSIONAL RECORD of August 16, 1957, under the caption "Nominations," beginning with name of James S. Webb, Jr., which is shown on page 15060, and ending with the name of Richard C. Yessi, which is shown on page 15063.

The nominations of Edward G. Goodman and 44 other officers for temporary or permanent promotion in the Navy or the Marine Corps, which were received by the Senate on August 21, 1957, were confirmed today, and may be found in full in the Senate proceedings of the CONGRESSIONAL RECORD for that date, beginning with the name of Edward G. Goodman, appearing under the caption "Nominations" on page 15502.

POSTMASTERS

ALABAMA

Henry L. Mullins, Andalusia.
Grady J. Taylor, Spruce Pine.
Hughie J. McInnish, Union Springs.

ARIZONA

Ruth M. Despain, Bagdad.
Opal V. Chambers, Cashion.

ARKANSAS

Bart M. Price, Cove.
Mitchell A. McCoy, Kingsland.
Dillard H. Collins, Salem.
Elbert R. Upshaw, Turrell.
Vernoy V. Godwin, Warren.
Lewis A. J. Booth, Williford.

CALIFORNIA

Jay C. Andes, Biggs.
Alfred E. Rider, Burney.
Eldrude E. Case, Butte City.
Marguerite I. Wilson, Dutch Flat.
Richard L. Bernard, Gonzales.
Arthur M. Webb, Mammoth Lakes.
Evelyn O. Pedroia, Monte Rio.
Berniece K. Williams, Rheem.

COLORADO

Ben H. Cox, Springfield.

CONNECTICUT

John Shanaghan, East Haddam.
Raffaele A. DePanfilis, South Norwalk.
Helen L. Clough, Tolland.
Dorothy B. Tuller, West Simsbury.

FLORIDA

Charles Wyland, Fort Myers Beach.
William C. Davis, Leesburg.
Virginia D. Welch, Waldo.
Carl David Lippincott, Jr., Zephyrhills.

GEORGIA

Martha W. Sanders, Jeffersonville.
Mittie F. Jones, Lavonia.
William Avery Bryant, Lexington.
Mary M. Pitts, Rabun Gap.
Edward J. Snow, Sr., Rebecca.
Dennis R. DeLoach, Statesboro.
Bertha C. Taylor, Tallulah Falls.
John Clyde Twiggs, Sr., Young Harris.

ILLINOIS

James S. Rutter, Addison.
Inez F. Smith, Brookport.
Melvin V. Mader, Forest Park.
Harry C. Bunting, Fowler.
Alden L. McCaw, Leaf River.
Robert C. Peterson, Lynn Center.
John Paul Smothers, Marion.
Mary E. Ayres, Moro.
Carroll D. Barnes, Mount Auburn.
Darwin E. Porterfield, Mount Erie.
William V. Martin, Odell.
Roy George Fraser, Roxana.
Emery E. Tipsord, Saybrook.
Josephine C. Hanfelder, South Roxana.
Hugh H. Holsapple, Toledo.
Charles R. Simmons, Venice.

INDIANA

Lela E. Neptune, Brooklyn.
Leonard E. Taylor, Fairland.
Virgil R. McVay, Fortville.
John S. Solomon, Manilla.
Orlyn J. Clawson, San Pierre.
Max E. Martin, Windfall.

IOWA

Francis Darwin Smith, Cleghorn.
Bryce L. Bremser, Dow City.
William L. Talbot, Keokuk.
Robert W. Grote, Portsmouth.
Kenneth D. Cunningham, Rippey.
Richard A. Chancellor, St. Ansgar.
LeRoy E. Larson, St. Olaf.
Ross G. Hauser, Union.
Ernest K. Woods, Woodburn.

KANSAS

John K. Wells, Coffeyville.
Velma M. Peters, Lorraine.
James W. Brown, Strong City.

KENTUCKY

William T. Brooks, Jr., Buffalo.
Glenn House, East Bernstadt.
John C. Hicks, Hindman.
Acton R. Anderson, Mayfield.
Eleanor R. Millis, Russell.

LOUISIANA

Clarence A. Rousse, Sr., Buras.
Louise M. Gibbs, Longstreet.
Ralph J. Treuil, Sr., Port Sulphur.
Katherine M. Boucher, Springhill.
Christine R. Anderson, Venice.

MARYLAND

Reginald E. Wolfe, Freeland.
Richard R. Sinnisen, Keedysville.

MASSACHUSETTS

John S. Conway, Nantucket.
Dorothy E. Strong, Stow.

MICHIGAN

Marian G. Decker, Auburn Heights.
Gordon Arthur Young, Coloma.
Albert V. Morgan, Croswell.
Woodrow C. Rowell, Kalkasa.
Eilleen D. Wood, Lacota.
Norman F. Smith, Marlette.
Chauncey A. Gulette, Pearl Beach.
Chester J. Orr, Standish.
Harold George Weller, Whitmore Lake.

MINNESOTA

Gustav A. Marohn, Annadale.
Raymond O. Halvorson, Ceylon.
William A. Larson, Crookston.
Bertha H. Swenson, Dawson.
Julian V. Dalum, Hoffman.
Miles O. Olson, Isle.
Stanley F. Drips, Rochester.
Vernon R. Flint, St. Charles.

MISSISSIPPI

Henry W. Jones, Brandon.
Cecil R. Dubuisson, Long Beach.
Emma J. Cummings, Pheba.
Harvey C. Mitchell, Jr., Plantersville.
John H. Hobdy, Waynesboro.
L. Jones Hand, West.

MISSOURI

J. B. Gregory, Amsterdam.
Samuel K. Bartlett, Bogard.
Virginia L. Ward, Bonne Terre.
Otto W. Buescher, Columbia.
Theodore R. Shell, De Soto.
Tony E. Cates, Ellsinore.
Curtis M. Cook, Festus.
Harold G. McLeland, Gorin.
Lena V. McMurry, Moscow Mills.
Clyde R. Muller, Sweet Springs.

NEBRASKA

Arthur G. Pohl, Hampton.
Donald S. Wightman, Wayne.

NEW HAMPSHIRE

Warren F. Metcalf, Tilton.

NEW JERSEY

Alice M. Dwyer, Hopatcong.
Holger G. Holm, Metuchen.
George C. Koeppel, Pennington.
M. Elizabeth Mathis, Rancocas.
George W. Stader, South Amboy.
Gerard G. Pisson, Whippany.

NEW MEXICO

Otto Klaudt, Deming.
Solomon G. Alvarez, Las Cruces.

NEW YORK

Alton G. Snyder, Atlanta.
Alta P. Johnson, Blue Moutain Lake.
Bernard J. Davis, Bouckville.
Alden Francis Matt, Canajoharie.
Robert J. Gardner, Croghan.
Francis B. Crowley, East Rockaway.
Leo J. Morgan, Farmingdale.
Francis W. Robinson, Fort Edward.
Harold E. Coyne, Remsen.
Dorothy E. Forsman, Rhinecliff.
Glenn E. Bock, Sherman.
Margaret M. Cutler, Upper Jay.
Harry C. Hager, Watertown.
Raymond P. Cary, West Coxsackie.
Charles J. Ryemiller, Jr., West Sand Lake.
Howard V. Galer, Worcester.
Dalton H. Newton, Yorkshire.

NORTH CAROLINA

Ruth A. Farrior, Calypso.
William T. Stokes III, Graham.
Annie B. Smith, Guilford.
Calvin Turner Draper, Jackson.
Grady S. Tucker, Locust.
Mary R. Titman, Lowell.
Steven Andrew Gaydek, Maury.
James J. Lee, Jr., Mebane.
Jake H. Wright, Jr., Middlesex.
James H. Canipe, Morven.
William K. Delbridge, Norlina.
Lola A. Woody, Saxapahaw.
Alice H. Graves, Seagrove.
Robert W. Sharpe, Sharpsburg.
Robert W. Loflin, Trinity.

NORTH DAKOTA

Robert M. Otterson, Aneta.
George J. Dietz, Belfield.
Maurice A. Ellingrud, Buxton.
Donald C. Ditch, Douglas.
Gertrude E. Anderson, Epping.
Charles S. Moores, Finley.
Donald C. Hawley, Hope.
Myron Halstenson, Niagara.
Mons K. Ohnstad, Jr., Sharon.

OHIO

Robert C. Anderson, Clarksburg.
Kenneth W. Folsom, Columbia Station.
Frank A. Kitts, Kitts Hill.
Fern L. Graver, Lindsey.
Ned J. Reynolds, Sterling.
Vera Gail Slater, The Plains.

OKLAHOMA

Frances L. McFadyen, Anadarko.
Martin M. Cassity, Ardmore.
Hobart F. R. Higdon, Avant.
Rae R. Toney, Bennington.
Thornton J. Lucado, Jr., Blanchard.
Buster E. Barker, Boswell.
Hershell S. Harper, Broken Arrow.
William A. Craig, Miami.
Carson Scott, Okmulgee.
Wayne Coffman, Pauls Valley.
W. Galen Dunn, Shawnee.
John D. Jordan, South Coffeyville.
Leonard W. Booker, Stroud.

OREGON

Kenneth V. Richards, Cottage Grove.

PENNSYLVANIA

Mark D. Reber, Centerport.
William E. Miller, Chadds Ford.
Fernando J. Perott, Emeigh.
William J. Hlavats, Glassport.
Elmer E. Mower, Marcus Hook.
Harold J. Niemeyer, Newtown Square.

SOUTH CAROLINA

Linder Lee Ray, St. Matthews.
James T. Claffy, Eastover.

TENNESSEE

Daniel E. Porter, Adams.
Dale L. Marion, Blountville.
Vance T. Tankersley, Cornersville.
Dan L. Clapp, Corryton.
Jim N. Bone, Cumberland Furnace.
Ralph B. Gilliland, Harriman.
Frank Melson, Lutts.
Evelyn E. Roach, New Market.
David A. Weaver, Persia.
Iriene A. Roblin, Pressmen's Home.
Della G. Henard, Russellville.
John E. Carter, Sparta.
William Raymon Kea, Waynesboro.

TEXAS

Roland W. Davie, Grand Prairie.
Neil O. Clute, Jewett.
Jeffie M. Griffith, Lockney.
Birdie L. Lindsey, Simms.
Frances E. Renfro, West Columbia.
John L. Pevey, Woodson.

UTAH

John B. Nelson, Goshen.

VERMONT

Ralph W. Reirden, Richford.

VIRGINIA

C. Ronald Woodrum, Staunton.

WASHINGTON

Ernest R. Meier, Arlington.
Howard W. Grending, Benton City.
Herbert L. Coon, Bremerton.
Ann M. Ingraham, Burton.
John C. Nowadnick, Chehalis.
Melvin LaHammer, Darrington.
Otis K. Hill, Goldendale.
Lawrence V. Grape, Ione.
Roy E. Rettig, Kenmore.
Mary Elizabeth Morrow, Lacey.
Theodore H. Biermann, Lind.
Genevieve K. Simm, Metaline Falls.
Pauline G. Stewart, Milton.
Arthur J. Freeborg, Moses Lake.
August E. Tornow, Mossyrock.
Richard H. Vaughn, Mountlake Terrace.
Mayme C. Ross, Mukilteo.
Marguerite T. Christie, Nahcotta.
Homer A. Smithson, Jr., Peshastin.
Paul E. McMahan, Randle.
Chauncey F. Arnold, Silverdale.
Eleanor G. Monson, Silvana.
Emil E. Bruno, South Cle Elum.
Harlan M. Shepardson, Toledo.

Chesla D. Williams, Tonasket.
Calvin M. Langfield, Trout Lake.
Wanda G. Wyatt, Union.
Albert J. Ricard, Uniontown.
Ivan K. Keve, Waitsburg.

WEST VIRGINIA

Verla O. Eary, Fayetteville.
Ruth J. Cochran, Mona.

WISCONSIN

Joseph A. Battalio, Clinton.
Charles A. Hall, Gresham.
Frederick M. Griswold, Lakemills.
Warren R. Erdmann, Oakfield.
Arthur G. Mehring, Port Washington.
Roger W. Most, Prescott.
William R. Barnard, Reedsville.
Chester J. Kuroski, Schofield.
Roy H. Andrews, Sharon.
Norbert F. Schumerth, West De Pere.

HOUSE OF REPRESENTATIVES

THURSDAY, AUGUST 29, 1957

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D. D., offered the following prayer:

Almighty God, may we begin each new day with the unshakable confidence that our lives are in Thy divine keeping and control.

We thank Thee for the glad and glorious assurance that no needed blessing wilt Thou withhold from us if we do justly, love mercy, and walk humbly with the Lord.

Inspire us with a strong and steadfast faith as we seek and strive continuously to achieve for ourselves and all mankind a larger measure of the more abundant life.

May we never become weary in well-doing and allow our energies to be depleted by fear and worry.

Grant that when we falter and fail we may not lose heart or hope for Thou art always ready to restore and rehabilitate us if we are willing to try again.

In Christ's name we offer our prayer. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the House by Mr. Ratchford, one of his secretaries, informing the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On August 21, 1957:

H. R. 1672. An act for the relief of the legal guardian of Frederick Redmond;

H. R. 1861. An act for the relief of George W. Arnold;

H. R. 2045. An act for the relief of Robert D. Miller, of Juneau, Alaska;

H. R. 2264. An act for the relief of Donald F. Thompson;

H. R. 2460. An act to improve the career opportunities of nurses and medical specialists of the Army, Navy, and Air Force;

H. R. 2674. An act for the relief of Morris B. Wallach;

H. R. 2740. An act for the relief of Mrs. Harriet Sakayo Hamamoto Dewa;

H. R. 2950. An act for the relief of Lt. Col. Emery A. Cook;

H. R. 2985. An act for the relief of Alton B. York;

H. R. 3440. An act for the relief of Mr. and Mrs. Allan Schlossberg;

H. R. 3473. An act to authorize and direct the Secretary of the Interior to sell certain public lands in the State of California;

H. R. 4830. An act to authorize revision of the tribal roll of the Eastern Band of Cherokee Indians, North Carolina, and for other purposes;

H. R. 5492. An act to amend the act of August 31, 1954 (68 Stat. 1044) to extend the time during which the Secretary of the Interior may enter into amendatory repayment contracts under the Federal reclamation laws, and for other purposes;

H. R. 5679. An act to authorize amendment of the irrigation repayment contract of December 28, 1950, between the United States and the Mirage Flats Irrigation District, Nebr.;

H. R. 6517. An act to provide for the retirement of officers and members of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the White House Police force, and of certain officers and members of the United States Secret Service, and for other purposes;

H. R. 7540. An act to amend Public Law 815, 81st Congress, relating to school construction in federally affected areas, to make its provisions applicable to Wake Island;

H. R. 8643. An act to authorize the construction of certain works of improvement in the Niagara River for power, and for other purposes;

H. R. 8996. An act to authorize appropriations for the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes; and

H. J. Res. 275. Joint resolution transferring to the Commonwealth of Puerto Rico certain archives and records in possession of the National Archives.

On August 22, 1957:

H. R. 1058. An act to preserve the key deer and other wildlife resources in the Florida Keys by the establishment of a National Key Deer Refuge in the State of Florida;

H. R. 1460. An act for the relief of Tom R. Hickman and others;

H. R. 1562. An act for the relief of Maj. John P. Ruppert;

H. R. 1682. An act for the relief of Edward J. Moskot;

H. R. 1864. An act for the relief of Mrs. Lidie Kammauf;

H. R. 2049. An act for the relief of Mrs. Blanche Houser;

H. R. 2937. An act for the relief of Clarence L. Harris;

H. R. 3723. An act for the relief of Maj. Gen. Julius Klein;

H. R. 4023. An act for the relief of Oswald N. Smith;

H. R. 5627. An act for the relief of Mrs. Emma Hankel; and

H. R. 6527. An act for the relief of Horace Collier.

On August 23, 1957:

H. R. 1473. An act for the relief of Richardson Corp.

On August 26, 1957:

H. R. 232. An act to amend the Internal Revenue Code of 1954 with respect to the readjustment of tax in the case of certain amounts received for breach of contract, and to restrict the issuance of certificates for rapid amortization of emergency facilities;

H. R. 2928. An act for the relief of Harry and Sadie Woonteiler;

H. R. 3281. An act for the relief of Howard S. Gay;

H. R. 4154. An act for the relief of the legal guardian of Thomas Brainard, a minor;

H. R. 4520. An act to amend section 401 (e) of the Civil Aeronautics Act of 1938 in order to authorize permanent certification for certain air carriers operating between the United States and Alaska;

H. R. 8090. An act making appropriations for civil functions administered by the Department of the Army and certain agencies of the Department of the Interior, for the fiscal year ending June 30, 1958, and for other purposes; and

H. J. Res. 323. Joint resolution to facilitate the admission into the United States of certain aliens.

On August 27, 1957:

H. R. 52. An act to provide increases in service-connected disability compensation and to increase dependency allowances.

On August 28, 1957:

H. R. 787. An act to authorize the exchange of certain lands between the United States of America and the State of California;

H. R. 993. An act to provide for the conveyance of certain land by the United States to the Cape Flattery School District in the State of Washington;

H. R. 1259. An act to clear the title to certain Indian land;

H. R. 1349. An act for the relief of John J. Fedor;

H. R. 1365. An act for the relief of Elmer L. Henderson;

H. R. 1424. An act for the relief of Sylvia Ottila Tenyi;

H. R. 1595. An act for the relief of Vanja Stipcic;

H.R. 1652. An act for the relief of Rajka Markovic and Krunoslav Markovic;

H. R. 1678. An act to provide for the quitclaiming of the title of the United States to the real property known as the Barcelona Lighthouse site, Portland, N. Y.;

H. R. 1797. An act for the relief of Maria Sausa and Gregorio Sausa;

H. R. 1826. An act to authorize the sale of certain lands of the United States in Wyoming to Bud E. Burnaugh;

H. R. 1851. An act for the relief of Dezrin Boswell (also known as Dezrin Boswell Johnson);

H. R. 1953. An act to provide that checks for benefits provided by laws administered by the Administrator of Veterans' Affairs may be forwarded to the addressee in certain cases;

H. R. 2058. An act for the relief of Franklin Institute of the State of Pennsylvania;

H. R. 2237. An act authorizing the transfer of certain property of the Veterans' Administration (in Johnson City, Tenn.) to Johnson City National Farm Loan Association and the East Tennessee Production Credit Association, local units of the Farm Credit Administration;

H. R. 2354. An act for the relief of the estate of Leatha Horn;

H. R. 2741. An act to authorize and direct the Administrator of Veterans' Affairs to convey certain lands of the United States to the Hermann Hospital Estate, Houston, Tex.;

H. R. 2816. An act to provide for the conveyance of Esler Field, La., to the parish of Rapides in the State of Louisiana, and for other purposes;

H. R. 2973. An act for the relief of the estate of William V. Stepp, Jr.;

H. R. 2979. An act for the relief of Mary Hummel;

H. R. 3025. An act to authorize the Secretary of the Navy to surrender and convey to the city of New York certain rights of access in and to Marshall, John, and Little Streets adjacent to the New York Naval Shipyard, Brooklyn, N. Y., and for other purposes;

H. R. 3184. An act for the relief of Gordon Broderick;

H. R. 3246. An act to authorize the exchange of lands at the United States Naval Station, San Juan, P. R., between the Commonwealth of Puerto Rico and the United States of America;

H. R. 3658. An act to liberalize certain criteria for determining eligibility of widows for benefits;