HOUSE OF REPRESENTATIVES

TUESDAY, MAY 5, 1964

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore.

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

MAY 5, 1964.

I hereby designate the Honorable CARL ALBERT to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker.

PRAYER

The Chaplain, Rev. Bernard Braskamp, D.D., offered the following prayer:

James 4: 8: *Draw nigh unto God, and He will draw nigh unto thee.*

O Thou whose divine will is sovereign and supreme may we now render unto Thee the homage of our hearts and bring them into harmony with Thine.

We humbly acknowledge that we are conscious of being unequal to the tasks and responsibilities of our high vocation and confused in our search for the right solution to our many difficult problems.

However desperate and dire our plight may seem to be, let us never be tempted to feel that all that is noble in our social order and civilization is at the mercy of the powers of darkness.

Grant that we may have the courage to attempt new ventures in human relations that are more magnanimous and may we extend the frontiers of freedom and justice and good will to the uttermost parts of the earth.

Hear us in the name of our blessed Lord. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

DESIGNATION OF JOHN A. ROBERTS

The SPEAKER pro tempore laid before the House the following communication, which was read:

MAY 4, 1964.

The Honorable the SPEAKER,
House of Representatives.

SIR: Desiring to be temporarily absent from my office, I hereby designate Mr. John A. Roberts, an official in my office, to sign any and all papers and do all other acts for me which he would be authorized to do by virtue of this designation and of clause 4, rule III, of the House.

Respectfully yours,

RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

CASTRO'S RECENT THREATS

Mr. FUQUA. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The Speaker pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FUQUA. Mr. Speaker, Communist Cuba continues to pose a threat to the Western Hemisphere, and the recent tirades by dictator Fidel Castro that he will take retaliatory action against continued reconnaissance flights over that island have brought this threat into focus again.

These flights are essential to the defense of this Nation. It was such flights that revealed the presence of Russian missiles which nearly touched off a world conflict.

This Nation cannot remain unmindful of the threat, and it is an ever present threat, which a Communist government only 90 miles off our shore poses. Without such flights it would be possible for the Russians to again establish nuclear missile bases in this strategic position—where they would be a constant threat to these United States.

I know that President Johnson is going to remain firm with this Red menace and should, in no mistakable terms, tell the world that the United States will not yield to these intimidating threats. Any retreat from our position of maintaining constant surveillance of Cuba would seriously damage our prestige in the world, and would more importantly, be a serious breach in security.

I think that the firm action of the President in not being intimidated by Castro in the water crisis at Guantanamo made it unmistakably clear that he does not intend to be pushed around.

We should further make it unmistakably clear so that there can be no misunderstanding that any attempt at shooting down of American reconnaissance planes will be met with retaliation. With such an irresponsible ruler as Castro, the United States can ill afford to have him armed with nuclear weapons, poised at America's industrial and defensive might. The position of this Government should be crystal clear—we will not be intimidated into allowing this breach in our defensive armor.

JOHN F. KENNEDY MEMORIAL LIBRARY

Mr. MARTIN of Massachusetts. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The Speaker pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MARTIN of Massachusetts. Mr. Speaker, I am happy to join with you in endorsing the effort being made throughout the Federal Government to support the raising of funds for the John F. Kennedy Memorial Library.

Between the dates of May 15 and June 15, voluntary efforts will be in progress here on Capitol Hill to raise our share of this fund. All those who knew the late President, and who shared his ideals of public service, will want to participate.

This library is to be constructed on the banks of the Charles River in Boston. It will be a fitting memorial to the late President and a monument to his public career.

I subscribe to the appropriate remarks that you made on the subject yesterday, Mr. Speaker, and join with you in this nonpartisan request for support for a worthy cause.

WAR AGAINST POVERTY BILL

Mr. KILBURN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The Speaker pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. KILBURN. Mr. Speaker, following is a letter just received from a good sound patriotic American citizen from my district. I hope everyone reads it.

GLENFIELD, N.Y.,
May 1, 1964.

Hon. CLARENCE KILBURN,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN: Will you please work against the so-called war against poverty bill No. H.R. 10440? It is just another hodgepodge of a scheme to hand out the taxpayers hard earned money to influence votes.

Yours faithfully,

MILDRED STILES
Mrs. Mildred Stiles.

PRIVATE CALENDAR

The SPEAKER pro tempore. This is the day for the call of the Private Calendar. The Clerk will call the first bill on the calendar.

DR. AND MRS. ABEL GORFAIN

The Clerk called the bill (H.R. 2706) for the relief of Dr. and Mrs. Abel Gorfain.

Mr. GROSS. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

CHARLES WAVERLY WATSON, JR.

The Clerk called the bill (H.R. 2728) for the relief of Charles Waverly Watson, Jr.

Mr. CONTE. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

JOHN F. MACPHAIL, LIEUTENANT, U.S. NAVY

The Clerk called the bill (H.R. 5145) for the relief of John F. MacPhail, lieutenant, U.S. Navy.

Mr. ELLSWORTH. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

ESTATE OF J. W. GWIN, SR.

The Clerk called the bill (H.R. 2747) for the relief of the estate of J. W. Gwin, Sr.

Mr. ELLSWORTH. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

CWO ELDEN R. COMER

The Clerk called the bill (H.R. 6136) for the relief of CWO Elden R. Comer.

Mr. ELLSWORTH. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

HELEN J. GOOGINS

The Clerk called the bill (H.R. 6839) for the relief of Helen J. Googins.

Mr. ELLSWORTH. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

DONALD J. KENT

The Clerk called the bill (H.R. 9280) for the relief of Donald J. Kent.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Donald J. Kent the sum of $255 for compensation for the loss of certain personal property taken by rifle-armed "Shifta" bandits on the road from Asmara to Gondar in Ethiopia while he was serving as Branch Public Affairs Officer, United States Information Agency, Asmara, Ethiopia: *Provided,* That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RUSSELL D. HARRIS

The Clerk called the bill (H.R. 5309) for the relief of Russell D. Harris.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding laches or any statute of limitations, jurisdiction is hereby conferred upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Russell D. Harris, of Phoenixville, Pennsylvania, for retired pay under the Act of April 3, 1939 (53 Stat. 557; 10 U.S.C. 3687), or any other applicable law, and the said court is further authorized to determine whether the said Russell D. Harris was, at the time he was relieved from active duty in August of 1943, permanently incapacitated for active service and whether any such incapacity was the result of an incident of service as a commissioned officer in the United States Air Force incurred in the line of duty and not due to his own misconduct.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JONG WAN LEE

The Clerk called the bill (H.R. 6479) for the relief of Jong Wan Lee.

Mr. ELLSWORTH. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

MARYELLEN BOONE

The Clerk called the bill (H.R. 8879) for the relief of Maryellen Boone.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $15,000 to Maryellen Boone of Fort Lauderdale, Florida, in full satisfaction of her claim against the United States on account of the death of her son, the late Private Donald J. Boone (Army serial number BR 14699527), who died on November 3, 1959, as the result of head injuries suffered when he accidentally fell from a moving Army vehicle on which he was riding at Fort Rucker, Alabama: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

With the following committee amendments:

Page 1, line 5, strike "$15,000" and insert "$10,000".

Page 2, line 2, strike "in excess of 10 percentum thereof".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MRS. LUCINE BROUSSALIAN

The Clerk called the bill (H.R. 1880) for the relief of Mrs. Lucine Broussalian.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General is authorized and directed to cancel any outstanding orders and warrants of deportation, warrants of arrest, and bond, which may have issued in the case of Mrs. Lucine Broussalian. From and after the date of the enactment of this Act, the said Mrs. Lucine Broussalian 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.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PEDRO AGUINALDO

The Clerk called the bill (H.R. 2737) for the relief of Pedro Aguinaldo.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Pedro Aguinaldo shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WIESLAWA MARIANNA BORCZON

The Clerk called the bill (H.R. 5501) for the relief of Wieslawa Marianna Borczon.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 101(a)(27)(A) and 205 of the Immigration and Nationality Act, the minor child, Wieslawa Marianna Borczon, shall be held and considered to be the natural born alien child of Mr. and Mrs. Stanislaw Borczon, citizens of the United States: *Provided,* That the natural parents of Wieslawa Marianna Borczon shall not, by virtue of such parentage, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following: "That, in the administration of the Immigration and Nationality Act, Wieslawa Marianna Borczon may be classified as an eligible orphan within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Stanislaw Bor-

czon, citizens of the United States, pursuant to section 205(b) of the Act, subject to all the conditions in that section relating to eligible orphans."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WOLFGANG SEIDL

The Clerk called the bill (H.R. 6385) for the relief of Wolfgang Seidl.

Mr. GROSS. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

CONSTRUCTION OF DAM ON ST. LOUIS RIVER, MINN.

The Clerk called the bill (H.R. 9934) to authorize the construction of a dam on the St. Louis River, Minn.

There being no objection, the Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby granted for the purposes of section 9 of the Act of March 3, 1899 (33 U.S.C. 401), to the Eveleth Taconite Company, a Minnesota corporation, its successors and assigns, to construct a dam on the Saint Louis River, Minnesota, townships 56 and 57 north, range 18 west, Saint Louis County, Minnesota.

SEC. 2. The authority granted by this Act shall terminate if the actual construction of the dam hereby authorized is not commenced with five years and completed within ten years from the date of the passage of this Act.

With the following committee amendment:

Page 2, line 1, strike out "with" and insert in lieu thereof "within".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. CONTE. Mr. Speaker, under the policy agreement, the remaining bills on the Private Calendar are not eligible for consideration. Therefore, I ask unanimous consent that the further call of the Private Calendar be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. LIBONATI. Mr. Speaker, there are two bills on the calendar having to do with the granting of renewals of patents relating to a medal and a plaque of the American Legion. I am sure there will be no objection if they are considered today as this is necessary for these medals and plaques to be awarded within the next 2 months.

The SPEAKER pro tempore. The gentleman may call up those bills separately.

Mr. CONTE. Mr. Speaker, there is no objection to that.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

AMERICAN LEGION SCHOOL AWARD MEDAL

Mr. LIBONATI. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H.R. 9833) granting a renewal of patent No. D–162,975, relating to a medal of the American Legion.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a certain design patent issued by the United States Patent Office, dated April 17, 1951, being patent numbered D–162,975, is hereby renewed and extended for a period of fourteen years from and after the date of approval of this Act, with all the rights and privileges pertaining to the same, being generally known as a medal of the American Legion.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMERICAN LEGION SCHOOL AWARD PLAQUE

Mr. LIBONATI. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H.R. 9834) granting a renewal of patent No. D–161,955, relating to a plaque of the American Legion.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a certain design patent issued by the United States Patent Office, dated February 13, 1951, being patent numbered D–161,955, is hereby renewed and extended for a period of fourteen years from and after the date of approval of this Act, with all the rights and privileges pertaining to the same, being generally known as a plaque of the American Legion.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ELECTION OF MEMBER TO COMMITTEE ON WAYS AND MEANS

Mr. THOMAS. Mr. Speaker, by direction of the Democratic caucus, I offer a resolution (H. Res. 709) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That DAN ROSTENKOWSKI, of Illinois, be, and he is hereby, elected a member of the standing Committee of the House of Representatives on Ways and Means.

The resolution was agreed to.

A motion to reconsider was laid on the table.

RESIGNATION FROM A COMMITTEE

The SPEAKER pro tempore. The Chair lays before the House the following communication which the Clerk will read.

The Clerk read as follows:

MAY 5, 1964.

HON. JOHN W. MCCORMACK,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: I hereby tender my resignation from the House Interstate and Foreign Commerce Committee.

Respectfully yours,

DAN ROSTENKOWSKI,
Member of Congress.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

APPOINTMENT OF DELEGATES, INTERNATIONAL LABOR ORGANIZATION CONFERENCE IN GENEVA

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up the resolution, House Resolution 687, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives is hereby authorized to appoint a member from the majority and a member from the minority of the Committee on Education and Labor to attend the International Labor Organization Conference in Geneva, Switzerland, between June 17, 1964, and July 9, 1964.

He is further authorized to appoint as alternates a member from the majority and a member from the minority of the said committee.

Notwithstanding section 1754 of title 22, United States Code, or any other provision of law, local currencies owned by the United States shall be made available to the aforesaid delegates and alternates from the Committee on Education and Labor of the House of Representatives engaged in carrying out their official duties under section 190(d) of title 2, United States Code: *Provided,* (1) That no member of said committee shall receive or expend local currencies for subsistence in an amount in excess of the maximum per diem rates approved for oversea travel as set forth in the Standardized Government Travel Regulations, as revised and amended by the Bureau of the Budget; (2) that no member of said committee shall receive or expend an amount for transportation in excess of actual transportation costs; (3) no appropriated funds shall be expended for the purpose of defraying expenses of members of said committee in any country where counterpart funds are available for this purpose.

That each member of said committee shall make to the chairman of said committee an itemized report showing the number of days visited in each country whose local currencies were spent, the amount of per diem furnished and the cost of transportation if funished by public carrier, or if such transportation is furnished by an agency of the United States Government, the identification of the agency. All such individual reports shall be filed by the chairman with the

Committee on House Administration and shall be open to public inspection.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio [Mr. BROWN]; and, pending that, I yield myself 2 minutes.

Mr. Speaker, the resolution is self-explanatory. It merely provides that one Member of the majority and one Member of the minority may be appointed and may travel to the International Labor Organization conference in Geneva, Switzerland, which is to be held between June 17, 1964, and July 9, 1964. It further provides for the appointment of alternates, one to be from the majority and one to be from the minority.

It is my understanding, after conversation with the author of the resolution, the gentleman from California [Mr. ROOSEVELT], that there would not be a duplication but that rather, due to the length of the meeting, probably one Member would go over and return and then the alternate would be permitted to go over.

The resolution provides for the expenditure of counterpart funds, when they are available, and for the regular reporting procedures which are normal.

Therefore I urge the adoption of the resolution.

Mr. BROWN of Ohio. Mr. Speaker, I know of no opposition on this side to the adoption of the resolution. It is the normal resolution to authorize the appointment of persons to represent the House at the International Labor Organization conference in Geneva, Switzerland. It is customary to adopt a resolution of this type each year.

I support the resolution.

Mr. LAIRD. Mr. Speaker, will the gentleman from Ohio yield to me?

Mr. BROWN of Ohio. I yield to the gentleman from Wisconsin.

Mr. LAIRD. I should like to ask one or two questions with regard to the resolution.

It is my understanding that a resolution is not necessary in order for a majority Member and a minority Member to serve as congressional advisers either to WHO or to ILO. This procedure has been going on for a period of several years. Congressional advisers have been designated as part of the delegation on several occasions, and the appointments have been made by the President of the United States. It happens that I was designated to attend the meeting of WHO by President Eisenhower, and also by President Kennedy.

I wonder what is the purpose of a separate resolution.

Mr. ROOSEVELT. Mr. Speaker, will the gentleman yield to me?

Mr. BROWN of Ohio. I yield to the gentleman from California.

Mr. ROOSEVELT. I say to the distinguished gentleman that in the case of the ILO the President does not make these appointments of Members of Congress.

Secondly, the members of the Committee on Education and Labor are not permitted to travel abroad under their resolution authorizing their activities, and therefore a special resolution would be necessary.

Mr. BROWN of Ohio. Of course, there has been a feeling that rather than to have House Members serve as representatives of the Department of Labor they should serve, in a dignified manner, as representatives of the House of Representatives, or of the Congress itself. That was the original arrangement for those attending these conferences. They could be sent, and their expenses could be paid, with respect to the ILO, as I understand it, by the Department of Labor.

Mr. LAIRD. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Wisconsin.

Mr. LAIRD. That was the point I wished to make. We have provided funds in the budget for the Department of Labor for the congressional advisers. The funds are made available in the International Labor Section of the Budget of the Department of Labor. Funds were requested for this purpose.

Mr. BROWN of Ohio. I feel certain that if the gentleman from Wisconsin were to go to any international meeting he would much prefer to go as a representative of the Congress of the United States, than of some Government agency or department downtown. He would be in a better position to speak his mind. He would be a free agent and a free representative of the Congress, and could do his own thinking.

That is why I have always supported these resolutions.

Mr. LAIRD. If the gentleman will yield further, I certainly agree with the gentleman from Ohio. My only point was that if this is to be the procedural arrangement, then we should not be making the funds available for this purpose to the Department of Labor.

Mr. BROWN of Ohio. Mr. Speaker, I would have no objection if you just eliminated these funds for the Department of Labor. I think it might be a good idea.

I have no further requests for time.

Mr. SISK. Mr. Speaker, I move the previous question.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

TAX LEGISLATION FOR NON-REVENUE PURPOSES

Mr. BENNETT of Florida. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The Speaker pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BENNETT of Florida. Mr. Speaker, there has been an opinion repeatedly expressed at various times by our Government and its spokesmen to the effect that tax legislation should be solely for revenue purposes and not directed at other objectives. There probably never was any very substantial basis for this statement, but in 1964 the exceptions to any such rule obviously make the rule of little conesquence, and I think this is as it should be.

Congress has just enacted a law to substantially cut taxes in the face of a large national debt and currently large deficits. It did so for the purpose of improving the economy and stimulating the production of new jobs. These are the reasons why I voted for the bill.

Now, there is much discussion about the possibility of another tax cut. If such occurs, I hope that it will have as much incidental benefit as possible to the people in our country who need a closer look at the way the tax laws treat them. For instance, I believe a tax deduction to parents for the college education of their children is long overdue and a very logical way of bringing about Federal aid to education without undue centralized controls.

Also I believe inequities in the existing laws on taxes should be eliminated wherever possible, as for instance where we have a spotty excise tax picture without much foundation on logic. The excise taxes were based upon wartime necessities and passed in World War II. Insofar as possible, sales taxes of this type should be left for States and local communities if they are to exist at all.

There are indications that the tax cut of 1964 may not bring about as many jobs as had been anticipated. Of course, it is too early to say for sure. However, I believe this points up the need for any future tax cuts to be tied as tightly as possible to the specific production of new jobs. I see no reason why the tax laws should not provide some sort of a tax deduction for every new job created by a particular business concern. I hope that any new tax cut law will have such a provision.

The most vital need for jobs in this country today is for the unskilled and untalented people in low-income brackets. These provide the greatest drain on the Treasury in unemployment and social programs of various kinds. Attention should be given in the tax laws to methods of opening up new opportunities for such employment. For instance, a tax deduction might be made for new jobs created in the field of domestics, maids, handymen, and other unskilled types of labor.

Another thing our country could do to increase job opportunities would be to enact a law prohibiting Federal employees hired hereafter from being employed by another employer at the same time, particularly if such a provision could be enacted at the same time that a pay raise for Federal employees is enacted.

Finally, it seems to me that there are many fields of activity in our country where there are still unmet needs, some of which involve large potential sources of revenue. One is the matter of rapid transit for suburban people into big employing centers. The need is there, and whether by tax assistance or by whatever other means might be devised it is obvious that potential job opportunities are just around the corner for many people if free enterprise or the Government can discover the ways to bring these about.

Mr. Speaker, I am no great authority on the things upon which I have been expressing my opinion, but I do have

the firm conviction that we should go more directly to the question of tying taxes to job production than we have done in previous legislation, and I am also of the opinion that many incidental things can be done to improve job opportunities in this country, such as the one I mentioned of expanding commuter services which are so greatly needed in most big cities today.

COMMITTEE ON RULES

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain reports.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

THE SOCIAL MECHANICS

Mr. HORTON. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The Speaker pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HORTON. Mr. Speaker, the President is tinkering again with the basic machinery of the free enterprise system. Rather than leaving collective bargaining in the hands of labor and management where it belongs, the administration is intent on erecting a labyrinth of "guideposts" and imposing its will on wages and prices.

Just last night, the President gave another example of his desire to restrict the system which has given us the highest standard of living in the world. By using his notorious persuasive practices, the President seeks to confine the possible limits of labor-management negotiations within boundaries laid out by the social mechanics of the Federal bureaucracy.

I think this is wrong and can only move the country toward the day when all relationships among our people will be ordained in Washington. I do not believe it is consistent with the exercise of Executive power for the President to interfere in the free economic processes of the Nation. Frankly, if the Government is permitted to run roughshod over every bargaining table, we might as well let the White House draft a standard contract for nationwide use. Certainly, all unions and managements accepting the terms of such a contract would be free from the threats they now face whenever they attempt to bargain without using a Government guidepost.

Mr. Speaker, if a labor organization wants to enter contract negotiations with demands in excess of what the President has decided are proper, that is its business. Similarly, if the management negotiators can accept these demands and the two sides can forge an agreement that is mutually profitable, free enterprise and the private economy has been strengthened. But, if this whole situation has to be conducted under the evil eye of bureaucrats, the fabric of collective bargaining begins to come unraveled.

We should remember that our democracy finds its greatest distinction in the freedom which fills all outlets for human activity. Any attempt to control that freedom makes it less meaningful.

This question of preserving the vitality of a process which is an integral part of the dynamism of America's industrial society is a symptom of one of the incipient illnesses which a great deal of our national body suffers. We never yet have solved our problems by turning them over to the Government; we only have created new difficulties and further weakened individual initiative.

There is no more rigorous approach to life than that which is inherent in a democracy. It requires the citizens, not the government, to meet the challenges of each advance which the system produces. And, because free people working together have proved their unique abilities to respond, they have gained strength and wisdom to carry on and achieve even greater heights. Mastery of ourselves has come about from personal responsibility, sustained effort, and individual sacrifice.

Before we go further down the road to a society that permits its Central Government to suppress freedom "for the good of the state," let us first reflect on the conditions which have nurtured the practical accomplishments of the last 200 years. I do not believe that any reasonable person in the United States wants to diminish the value possessed by the operation of free enterprise. Yet, as surely as day becomes night, these qualities will be destroyed and our economy tossed on the rocks by a sea of socialism if we do not recognize that these efforts to improve it are really costing it its forward motion.

THE WARREN COMMISSION

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Nebraska [Mr. BEERMANN], is recognized for 30 minutes.

Mr. BEERMANN. Mr. Speaker, the purpose of the Warren Commission is to sift and weigh all available facts regarding the assassination of John F. Kennedy at Dallas, Tex., last November 22. In appointing the Chief Justice and high Government officials to the Commission, President Johnson sought to create a panel whose findings would be unimpeachable.

There are myths and distortions of fact circulating throughout the world concerning President Kennedy's murder. Unless refuted by authoritative findings, such lies and inuendo could do our country real harm throughout the world. Needless to say, we have enemies who seek to profit by the spread of such distortions of facts and the consequent undermining of world confidence in the U.S. Government and system.

Overwhelming evidence points to the fact that President Kennedy was assassinated by a self-declared Marxist who had once defected to the Soviet Union and who was connected with the pro-Communist Fair Play for Cuba Committee. Yet Communists and their sympathizers around the world have sought to spread the false theory that the assassination was a plot by so-called rightwing extremists. The Communists are old hands at revising and distorting history, and they and their fellow travelers have been busy at work these past months disseminating propaganda to the effect that Lee Oswald did not kill President Kennedy; or in the alternative, if he did, he was not a Communist but an agent of anti-Communists.

These are typical Communist lies, a familiar pattern to those who have followed Communist historical revision through the years. This is a special case, however, since it involves a distortion of American history to suit Communist tactical purposes. The poison that filled Lee Oswald's mind was Communist poison. It was a poison created by the lies, half-truths, and distortions of Communist propaganda—the same kind of lies, half-truths and distortions that the Communists and their allies are now disseminating regarding the Kennedy assassination.

Thus, the Warren Commission has a heavy responsibility, and President Johnson was correct in appointing the highest level of Government officials, on a bipartisan basis, to determine the truth concerning the assassination and to report the facts to the American people and the world.

Considering these circumstances, it is amazing—shocking—incredible, to find that although competent and unimpeachable legal and investigative counsel can be found in any community in the land, the Warren Commission has on its staff as a $100-a-day consultant a member of the Emergency Civil Liberties Committee—an organization cited by both the House Committee on Un-American Activities and the Senate Internal Security Subcommittee.

Prof. Norman Redlich, on the national council of the Emergency Civil Liberties Committee—cited by House and Senate Committees as an organization "to defend the cases of Communist lawbreakers"—is currently employed, at $100 a day, for the Warren Commission. And as recently as April 13, 1964, just a few weeks ago, this "consultant" had his name listed in an advertisement appearing in the New York Times with other members of the cited Emergency Civil Liberties Committee—an advertisement condemning the Un-American Activities Committee.

Further, the cited Emergency Civil Liberties Committee, upon which the Warren Commission's "consultant" serves as a national councilman, has unexplained connections and associations with the very Fair Play for Cuba Committee to which the accused assassin Lee Oswald belonged. One Phillip Luce, who served as a leader of the purported "student" group that traveled to Castro's Cuba last summer, is currently in the employ of the ECLC. This so-called "student" group was no more than a propaganda device for the Castro Communist regime.

Moreover, at least one cosigner with Redlich on the Times' April 13 advertisement was one of the original organizers of the Fair Play for Cuba Committee. The name of Waldo Frank appears with Redlich's on the April 13 advertisement. Waldo Frank helped organize the so-called Fair Play for Cuba group.

According to a press report contained in a Scripps-Howard story last week by Gene Wortsman, Redlich admitted his national council position with the Emergency Civil Liberties Committee. He was hired on December 20, less than 1 month after the Warren Commission was created. And most incredible of all the facts surrounding this astounding hiring, Redlich listed his membership in the ECLC when he applied for a position with the Warren Commission.

What is Redlich's purpose in serving as "consultant" on the Commission? Lee Oswald was a "Communist lawbreaker"—perhaps the most notorious "Communist lawbreaker" of the century. Since the Emergency Civil Liberties Committee's alleged purpose is "to defend the cases of Communist lawbreakers," is Redlich carrying out any part of this mission as a member of the staff of the Warren Commission? Why was Redlich hired—and who hired this national councilman of a Communist-front organization as a $100-a-day consultant to one of the most important factfinding commissions ever created by a President?

Strangely, little has been said or written about the Redlich hiring, although it certainly impresses me as one of the greatest miscarriages of appointive judgment in the history of American Government. I call upon those in responsible positions to dismiss this patently unqualified "consultant" from the Warren Commission staff and to investigate and make public facts concerning how Redlich managed to get hired and keep his job despite his known Communist-front affiliations.

In the absence of early action along these lines, the important work of the Warren Commission could be damaged by further loss of vital public confidence. The hiring of Redlich was a tragic mistake. His retention with the Commission compounds this mistake, and if only by undermining confidence in the Commission, serves the purposes of the world Communist propaganda apparatus.

[From the Rocky Mountain News, Apr. 30, 1964]

JFK PROBE AID IN DOUBTFUL GROUP

(By Gene Wortsman)

WASHINGTON, April 29.—A $100-a-day consultant to the Warren Commission, investigating President Kennedy's assassination by an admitted Marxist, is a member of a committee twice cited by congressional committees as organized "to defend the cases of Communist lawbreakers."

The consultant, Prof. Norman Redlich, 38, Wednesday freely admitted that he is on the national council of the Emergency Civil Liberties Committee (ECLC).

J. Lee Rankin, Director of the Warren Commission and Solicitor General of the United States under President Eisenhower, said Redlich applied for the job.

He was hired on December 20, less than a month after the Commission was created by President Johnson on November 29. He returns to his teaching job at New York University 1 day a week.

LISTED ON APPLICATION

Rankin said that Redlich listed his membership in the committee on his application when he applied for the job.

The Senate Internal Security Subcommittee cited ECLC in 1956 and the House Un-American Activities Committee made a similar charge in 1957.

Rankin was asked if he saw any inconsistency in hiring a man for the Commission which is investigating not only President Kennedy's killing but whether Lee Harvey Oswald, the accused assassin, formed part of a Communist plot to slay the American President.

Rankin said that every staff member is subject to a full field investigation.

He said, however, that the results of the investigation must be determined by the members of the Warren Commission, headed by Chief Justice Earl Warren.

FORMED IN 1951

The committee was formed in late 1951 by 150 clergymen, educators, and professional men to aid persons and causes involving constitutional rights. The committee was to act in arrests under State and Federal sedition laws and denials of passports and rights to travel.

The House Un-American Activities Committee said in 1957 that the committee was formed to hamper the FBI and the House committee and to create opinion against exposure and punishment of subversives.

The report said that Harvey O'Connor, then chairman and now a member of ECLC's executive committee, "has been identified in sworn public testimony as a member of the Communist Party."

It said Corliss Lamont, then vice chairman and now ECLC's chairman, has been "one of the foremost apologists for the Soviet Union in the United States."

Redlich said he doesn't believe ECLC is Communist influenced or dominated.

He said he had heard that some of the leaders in ECLC were called Communist sympathizers but he had looked into it and believes it to be false.

[From the Washington (D.C.) Daily News, Apr. 30, 1964]

USED BY WARREN GROUP: CONSULTANT ADMITS ECLC MEMBERSHIP

(By Gene Wortsman)

A $100-a-day consultant to the Warren Commission, investigating President Kennedy's assassination by an admitted Marxist, is a member of a committee twice cited by congressional committees as organized "to defend the cases of Communist lawbreakers."

The consultant, Prof. Norman Redlich, 38, today freely admitted that he is on the national council of the Emergency Civil Liberties Committee.

J. Lee Rankin, director of the Warren Commission and Solicitor General of the United States under President Eisenhower, said Mr. Redlich applied for the job.

He was hired on December 20, less than a month after the Commission was created by President Johnson on November 29.

Mr. Redlich's salary as a legal consultant is payable for each day he works and is the top salary available to a consultant.

He returns to his teaching job at New York University 1 day a week, he said.

Mr. Rankin said that Mr. Redlich listed his membership in the committee on his application when he applied for the job.

WATER POLLUTION

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Texas [Mr. THOMPSON] is recognized for 30 minutes.

Mr. THOMPSON of Texas. Mr. Speaker, Members of Congress and the Nation at large are becoming more and more conscious of the problems of pollution of our waterways.

Much active and constructive thought has been given to the problem here in the Congress. Sometimes our efforts have met with opposition on the local level and, occasionally, industries which themselves do a considerable amount of polluting are hard to convince that they have a great deal of responsibility in the solution to the problem.

I have just read a most interesting and able address by the Honorable Karl R. Bendetsen which he delivered to an industry meeting of the University of Maine Pulp & Paper Foundation.

Mr. Bendetsen will be remembered most favorably by those of us who worked with him when he was Under Secretary of the Army during a previous administration. In his speech he lays the responsibility squarely on industry, not necessarily to do the whole job, but certainly to cooperate, to the fullest extent, with the Federal Government.

It is a refreshing approach to a problem that can best be solved by mutual effort. The speech in its entirety follows, and I commend it to every Member of Congress, particularly those who are interested in the problem of water pollution.

JOBS AND CLEAN WATER

(Address delivered by Hon. Karl R. Bendetsen before an industry meeting, University of Maine Pulp & Paper Foundation, April 24, 1964)

When one is honored by being asked to make a few comments to such an auspicious group of leaders of our industry, it is always tempting to turn to one of the many of our industry's more popular and well-established topics—such as overcapacity, wages and fringes, and the buyer's market.

Also tempting would be an old reliable like what is wrong with our foreign policy, the meaning of the New Hampshire primary, the Bobby Baker case, what really happened at the Bay of Pigs, or whither Brazil now. I chose a topic instead which, while neither new nor old, is ever increasing in importance, a topic calling for serious concern—frank talk—"Jobs and clean water."

Last year, speaking before the National Technical Task Committee on Industrial Wastes, James M. Quigley, Assistant Secretary of Health, Education, and Welfare said, "Enforcement is a very essential tool in any well-balanced water pollution control program. In my opinion, it is the key to effective water pollution control * * * unless we have a vigorous enforcement program, the job is never going to get done the way it must be done." One of our trade magazines observed, "the battle is joined."

Now just why did Mr. Quigley lay sole emphasis on "enforcement" instead of research. He said it because he does not believe we have any economic incentive to clean up our effluents. So perhaps he feels that in this way one will be provided.

The struggle to control waste and curb pollution has, in fact, been going on for some time. The Federal, State and local governments, along with industry, have, for the most part, gone their separate ways to research the problem and in most instances with very little or no coordination at all. The comment I just quoted is from one of our trade magazines. It may have more substance than meets the eye. I would ven-

ture the earnest hope that if this comment is accurate up to now—that soon it will be no longer. For if we look upon this problem as a battle between Federal authority and industry, as a "battle joined," it is one our industry will surely lose. This has nothing to do with the merits of the case as some of us may see them. Neither does it make any difference whether opinion is leading the Government or the Government is leading opinion. Grassroots, political action opinion is strongly developing and we must eventually yield to the court of popular opinion. If, instead of viewing the situation defensively, we view it as an opportunity for positive, collaborative and coordinated action, with all interested Federal, State and local agencies, we might be able to convert a doubtful balance to one that will redound to our credit and create an economic and technological breakthrough.

Inescapably, we are dependent on water in our manufacturing process. Without it our stack plumes would vanish, our boilers grow cold, our employees would become jobless. While we are its largest user—unfortunately we do not own it. All of us, as businessmen and as citizens, are deeply concerned with conservation of this natural resource as one of the mainstreams of our economic lifeblood. We are aware of the distressing but immutable fact that water can be taken from us, so our concern is well founded on self-interest. However, it seems to me that our self-interest will never be served by defensive reactions, particularly when they will insure not success but failure.

Following Mr. Quigley's statement, nevertheless, there was voluble expression of an all too familiar defensive posture. Some of the expressions connoting this were: "Give us more time." "Leave the enforcement authority at the local level—where our problems are better recognized and more appreciated."

Such defensive points of view may seem reasonable to us. But even though this may be so, they will avail us nothing. The handwriting is on the wall in bold script—the American people are deeply perturbed by dirty water; they want clear streams. They will have them.

The Federal Government is reflecting the attitude of politically powerful groups within the body politic. So are the State and local governments reflecting such organized demands. We urgently need understanding and cooperation if we are going to have effective action. We have not developed this necessary ingredient. This should suggest to us that a new approach on our part is imperative. The paper industry already has one of the highest capital investments per dollar of annual sales ratios in American industry. Because of this fact, it is especially important to get an adequate return on additional capital investments and huge capital investments which do not contribute to earnings would be ruinous. The capital expenditures which would be involved in effectively combating pollution are beyond the resources of the companies in our industry today. Now, we know that the Federal Government is not for clean water and no jobs. Consequently, there is a sound basis between Government and industry for understanding and cooperative effort to find the technoeconomic means for both—jobs and clean water. This we cannot do alone—we need Federal help. Let us face it. If effective help is to become available at all, then as a practical matter it is going to come from there—not from an uncoordinated multitude of well-meaning independent agencies.

The new and rapidly ascending dominance of the Federal Government in water pollution abatement on navigable waters will continue. This is no longer debatable—but a fact of life. I hasten to add that this does not eliminate State and local agencies from an important role by any measure. It simply means that the Federal authority has a new and controlling voice in a clearly constitutional role—its clear authority in interstate commerce and over navigable waters.

Each of us, in our individual companies, seeks new ways to improve our earnings by reducing waste. We have installed in-plant systems to recover valuable fibers and chemicals. We have participated in programs for primary and secondary treatment. However, more efficient methods are needed. We know how to settle, concentrate, and dispose of suspended solids. We know that secondary treatment of mill effluents will reduce biochemical oxygen demand and chemical oxygen demand. However, these processes remain excessively costly and relatively inefficient and, at best, they offer only partial solutions to the pollution problem. We must seek to improve materially the operating efficiency of our primary clarification equipment. Further, we should accelerate the development of sludge disposal methods so that they are more economical for application and operation.

Our problems as an industry have not grown like weeds in an unattended garden. Quite to the contrary, fairness requires due recognition of measurable progress. In 1939 total annual production of our industry was approximately 15 million tons. This year it will exceed 40 million tons. While we were busy growing we have also been busy reducing the pollution load. In the same period the stream loading per ton of production has been reduced through industry action by over 60 percent. Unfortunately, this is not good enough.

Even the best of these processes, particularly in the case of a large operation on a small stream, fall short of the mark. None of the known processes will economically remove color or foam, nor will they inhibit the tendency of the stream to foam. No one knows how to provide complete pollution abatement by economically feasible means.

Many times the initial answers in research prove economically impossible and offer only partial solutions. As an example, the lime filtration process, which is claimed to be at least a partial answer to the color problem is, in reality, no real answer at all. On sober inspection, this process is very costly and cumbersome to operate and offers only partial improvement—more research needs to be done on this problem.

Much work is already in process. Research projects are being conducted by the National Council for Stream Improvement, the Taft Sanitary Engineering Center, and other Government regional research centers. Many processes for waste water renovation are under study: (1) Foam fractionation; (2) carbon absorption; (3) electrodialysis; (4) distillation; and (5) reverse osmosis. Time, effort, and money are required for these projects to emerge from the laboratory into practical economic reality. Working with our Government agencies to develop realistic timetables and control plans for research, development, and implementation is in everyone's best interest.

It follows as night the day that no pollution abatement program will be successful in the eyes of the American people until the appearance of our streams is improved—that is, color and foam eliminated—as well as contamination. It is a political reality that the Government will remain steadfast in its position—that we must return clean water to the streams. And I suspect this will be so even if what we take in is not fully "clean" in the first place.

If it is true that the Government acting as prosecutor in the court of public opinion will not yield, then our course is clear. We cannot lick them—so let us join them. This calls for a fresh consideration of our relationships with the Government.

In New York earlier this year, Lammot du Pont Copeland, president of E. I. du Pont de Nemours & Co., said, "If we are to retain any hope of solving the grave problems of this age, we must do everything possible under whatever system we have to maintain a strong, healthy, and expanding economy.

"What I should like to suggest is a conscious, determined effort on both sides to improve the relationship between business and Government.

"It would be in the national interest, as well as our own interest, to put an end to what, at times, has seemed like a cold war between Government and business.

"A better relationship will not be achieved by standing off at arm's length or at sword's point. Someone will have to take the initiative."

We are desirous and conscious of the overriding necessity for conserving our water resources. We are conscious of our responsibilities as businessmen. In the past, the Government has spent large amounts of money on conservation. Why not on pollution abatement—in an allout joint effort? Conservation, and this is what we are talking about, is not a new area for Government-sponsored research. Our industry should come forward with an affirmative program for a joint effort involving Government-sponsored subsidized research into all aspects of how our industry can economically return clean water to our streams regardless of what we take in.

There is precedent in our own industry for the type of collaboration we need. An outstanding example is the U.S. Forest Service and industry working together. In the management and conservation of our national resources, what better example could be cited than the forest survey conducted by the U.S. Forest Service in cooperation with our industry? The results have been fruitful for all concerned in providing periodic timber resources benchmarks and trends in growth and drain.

In Atlanta, Ga., February 4 and 5, the Southern Pulpwood Conservation Association observed its silver anniversary. The association received strong praise for outstanding achievement in the development of southern forests. The U.S. Forest Service presented a special award citing the "effective coordination of conservation activities of private landowners, pulpwood companies, and public agencies." The Honorable Carl E. Sanders, Governor of Georgia, said, "Through improved methods, hard work and cooperative effort, the men of the industry have done more for the South than almost any other group." And the Honorable Frank Clement, Governor of Tennessee, said, "The continuing broad program of forest development in the South has resulted largely from the cooperative efforts of the pulp and paper industry, and State and Federal forestry agencies."

Local, State and Federal agencies and representatives of our industry can work jointly, cooperatively, and harmoniously in identifying, analyzing and developing practical solutions to our problems, especially in the field of natural resources.

If we may borrow from the past and cite the excellent results which have accrued to the credit of Government and our industry, we can contemplate real improvement in water management. This can be accomplished, if men of understanding and good will counsel together to seek solutions to the problems of economics and research.

There are those who will argue that the participation by the Government agencies and the use of Federal funds will, inevitably, lead to ever-tightening Federal control. Why debate this point? We will have even stricter Federal control if satisfactory water management is not achieved in our industry. With industry working together with Federal officials to satisfy our mutual interests, the problems can be solved and thus preclude a demand for more stringent control. We should accept the invitation of Murray Stein, Health,

Education, and Welfare Department, Chief of Enforcement Branch, Division of Water Supply and Pollution Control, who recently called for industry to lay aside suspicion and work in close collaboration with his Department.

The broad problem of water conservation demands urgent attention. As our country becomes more densely populated and as the public has more leisure time for recreation, the ground swell of demand for clean air and streams increases in intensity. Circumstances will not permit of delay, we must come to grips with the matter.

Our newly formed Pulp, Paper & Paperboard Institute has this responsibility and needs the full and unanimous support of all of us here and of the entire pulp and paper industry. I sound here and now a clarion call upon the Institute to consider as its first order of business a plan for bringing about a joint program of Government-sponsored subsidized research to find the economic ways and means to provide both jobs and clean water. Its urgent mission is to formulate, in cooperation with Health, Education, and Welfare, a plan whereby our industry and the Government will jointly, sharing the burdens equitably, attack and solve the technoeconomic aspects of this problem—a newly formulated attack to find in ways heretofore untried, the inevitable scientific breakthrough so desperately needed and so certainly waiting to be found.

Among the courses of action the Institute might explore are: (1) A committee to meet with U.S. Senators and Representatives to discuss current programs and problems; (2) provide for a mutual exchange of information between our industrial technologists and their counterparts in the Health, Education, and Welfare Department to assure better understanding on both sides, of the nature of the problems and what is being done about them, and solicit their collaboration; (3) propose the formation of a joint committee of our industrial representatives and members of Health, Education, and Welfare to search out and find economically feasible methods of achieving our mutual goal; (4) arrive at an area of understanding with the proper Federal agency upon a plan for sharing the financial burden of the necessary research program on a fair and equitable basis; (5) work with State and Federal officials to obtain recognition of the need for consideration in our tax structure of the huge capital outlays required to cope with this problem. As a starting point, it would seem fair to request that Government agencies recognize this problem and enable industry to write off all or a substantial part of the cost of installation and operation of such projects. Moneys spent strictly for pollution abatement offer no monetary return to industry, except to the extent that recovery of materials now wasted or burned may be achieved by economic methods as yet undiscovered. Costs by known methods are exorbitant and prohibitive.

The Government feels strongly that our industry has had no economic incentive to clean up our effluents and that the only way to generate such an incentive is through enforcement. But this assumes that we know how this could economically be done. What a tragedy it would be if we were to allow our officials and the public mistakenly to believe that the only missing link in providing economic incentive is enforcement—that is, clean up or close down. There would be no alternative but to close down. It is within our reasonable capabilities to prevent such a tragic misunderstanding.

The Federal Government is in the area of pollution abatement to stay. The idea that this is primarily a State problem is neither factual, true, nor realistic. We must be prepared to put up very substantial sums of money, and we must convince the Federal Government that it must do likewise, if our industry is to survive and if we are to have both jobs and clean water.

UNDER TWO FLAGS: BLUNDERS, CONFUSION, AND CHAOS AT PANAMA

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Pennsylvania [Mr. FLOOD], is recognized for 30 minutes.

Mr. FLOOD. Mr. Speaker, as a general rule, visitors to the capital city of our country observe the wonderful sights of Washington more closely than those of us residing here. One of the favorite points of interest is the National Archives Building, which houses important documents in our history, including the Declaration of Independence and the Constitution of the United States. Prominently inscribed at the northern entrance of the structure is the expression, "What Is Past Is Prologue."

Though the truth of this statement has been demonstrated many times in our history, its specific application has been dramatically illustrated in recent years by a succession of events affecting the Panama Canal. It was the study of the past that enabled me to understand what movements were underway on the Isthmus, to estimate their proximate form of development, and to make timely predictions of what subsequently occurred.

The bloody Red-led and directed mob assaults on the Canal Zone territory on January 9–11, 1964, though treated in the mass news media of our country as a sudden eruption, was actually the result of long preparation. Panamanian radicals, led by Red agents trained in Cuba and elsewhere, were awaiting an incident on which to base their attack.

The assault was anticipated by informed persons. The ensuing violence was not the work of our citizens in the Canal Zone charged with heavy responsibilities in the maintenance, operation, sanitation, and protection of the Panama Canal nor of their patriotic 17-year sons attending the Balboa High School, as has been falsely relayed in the major press of our country. Instead, the disorders were part of a long-range Red program for wresting control of the Panama Canal from the United States, and were directly attributable to flying the flag of Panama over the U.S. territorial possession known as the Canal Zone.

Because the January 1964 riots in a very real sense evoked a world crisis focusing on the Panama Canal, I addressed this body at length on March 9 and 11, 1964, summarizing the background, supplying considerable documentation, and outlining a formula for future canal policy.

The sanguinary lawlessness and disorders in January of this year, in effect, were rehearsed on November 3, 1959, the anniversary of the independence of Panama, when mobs of Panamanians attempted to invade the Canal Zone, overpower Canal Zone police, and forced Panama Canal authorities to call upon the U.S. Army to defend the zone from a Red bath of arson, pillage, and rape.

Did our Government take a strong stand at that time in defense of its sovereign rights, powers, and authority as it should have done? It did not. Instead, our Department of State sent a diplomatic emissary to placate the implacable.

This emissary, Under Secretary of State Livingston T. Merchant, under instructions of his superiors, on November 24, 1959, publicly announced that the United States recognized that "titular sovereignty over the Canal Zone remains in the Government of Panama." This unfortunate and ill-advised statement is highly significant in that it did not define the term, "titular sovereignty" nor did it explain the fact that Panama had never demanded a mere "titular sovereignty" but complete sovereignty.

As I have stated to this body on many previous occasions, so-called "titular sovereignty" can mean nothing more than a reversionary interest on the part of Panama, or a successor state, in the sole event the United States should abandon the Panama Canal or fail to meet its treaty obligations. The United States cannot in anywise discharge its tremendous duties with respect to the canal with less authority in the Canal Zone than it has always exercised and as was expressly granted in the 1903 treaty.

Another rash of Red-led violence occurred on November 28, 1959, with the result that the Panamanian Ambassador to the United States presented a formal request for the display of the Panama flag in the Canal Zone. A few days later, on December 2, 1959, our Department of State prevailed upon the then President of the United States to express his belief that "we should have visual evidence that Panama does have titular sovereignty over the region" but he likewise refrained from defining the term, "titular sovereignty."

Contemporaneously with these developments, the House Committee on Foreign Affairs, in order to avoid dangers clearly foreseen, after an extensive inquiry into the Canal Zone sovereignty situation, reported favorably and recommended adoption by the Congress of the following concurrent resolution:

> That it is the sense of the Congress that any variation in the traditional interpretation of the treaties of 1903, 1936, and 1955 between the United States and the Republic of Panama, with special reference to matters involving the provisions of such treaties concerning territorial sovereignty, shall only be made pursuant to treaty. (H. Con. Res. 459, 86th Cong.; see also H. Rept. No. 2218, 86th Cong., pp. 37–40.)

Debated in the House on February 2, 1960, this resolution was adopted by a record vote of 381 to 12, clearly showing the overwhelming feeling of the people of our country against permitting the flag of Panama to be flown in the Canal Zone. Sent to the Senate, this resolution was referred to the Committee on Foreign Relations but was never acted on by this committee—see CONGRESSIONAL RECORD, February 2, 1960.

The House followed up its first action by passing on February 9, 1960, the Gross amendment to the 1961 Department of Commerce appropriation bill. This

amendment prohibited the use of any appropriated funds under the bill "for the purpose of displaying the flag of Panama in the Canal Zone, the sovereign control of which is vested in the U.S. Government by virtue of longstanding treaty." The amended bill was accepted by the Senate and became law. This action by the Congress showed clearly the resolve of the people of the United States not to surrender to Red-dictated demands in Panama.

Addressing the House again on June 23, 1960, I emphasized the stupidity of allowing the formal display of the Panama flag in the Canal Zone, warned the Congress of the intention of certain suspect elements in the Department of State to do so, and called for a housecleaning of those elements from the Department. On June 30, I wrote the then Secretary of State, Christian A. Herter, giving notice that should such formal display of the Panama flag over the Canal Zone be made that Members of this House, who are clothed with constitutional authority in this regard, would press for his impeachment—CONGRESSIONAL RECORD, July 1, 1960.

Did these actions deter the suspect elements in the Department of State in their course? They did not. These elements merely waited for the Congress to adjourn.

Then, on September 17, 1960, the President of the United States, acting on the advice of the Department of State and utterly ignoring the actions of the Congress in the premises, directed that the Panama flag be flown together with the United States flag at a single place in the Canal Zone and authorized the U.S. Ambassador to Panama, Joseph S. Farland, to make a public statement to that effect. This surrender to Red aims at Panama, Mr. Speaker, was a major catastrophe in the conduct of U.S. foreign policy that placed the Canal Zone Government under two flags.

Notwithstanding the warning by Ambassador Farland in the note on September 17, 1960, that such display was "in nowise to be considered as modifying in any way the treaties and agreements in force between the United States and Panama," the Panamanian people, led by Reds and other radicals, exactly as any high school student could foresee, interpreted the formal display of the Panama flag as a belated recognition by the United States of full Panamanian sovereignty over the Canal Zone.

Aggravated later by a more profuse display of Panamanian flags in the zone by the succeeding U.S. administration, that initial display amounted to placing the Panama Canal enterprise under dual sovereignty, which was the very situation that President Theodore Roosevelt and his advisers had sought to avoid. The January 1964 violence was the inevitable consequence of this part way concession to Red-instigated demands.

In this connection, Mr. Speaker, I may add that among those most directly responsible for this deplorable surrender was Dr. Milton S. Eisenhower, whose part was condemned by me on the floor when he was meddling in isthmian matters. Certainly his record of experience is not such as to qualify him to express authoritative opinions on the problems of the Panama Canal.

In an effort to establish facts concerning the titular sovereignty and flag incidents following the recent Panamanian outbreak, I wrote the Secretary of State on January 15, 1964. Because of the evasive responses received this endeavor resulted in considerable correspondence.

The facts thus developed are quite revealing and should be understood by all concerned with interoceanic canal problems.

An examination of these letters will disclose an impossible situation in which the Governor of the Canal Zone serves under two flags, making the zone a no man's land. Furthermore, Mr. Speaker, the fight that erupted in January is going to continue until all Panama flags are removed from the Canal Zone and the United States stands up for its legitimate rights, power, and authority or the other way around—the sole display of the Panama flag with abandonment of the Canal Zone by the United States. As shown by the contemptible action on the part of the President of Panama in demanding that the Panama flag be hoisted at full height while the U.S. flag was at half-mast in respect to General MacArthur, the Panama Canal cannot serve under two masters.

The timid, vacillating course of our highest officials of the Department of State with respect to Panama Canal through the years, dominated by overt and covert efforts to liquidate U.S. authority as regards the enterprise, constitutes a tragic and sinister chapter in American diplomatic history. It has weakened and brought into actual contempt the public image of our great country in the world at large. Had a more courageous course been pursued, with proper assertion and maintenance of the wise and justifiable rights of our Government at Panama, the posture of our country would have been one to command the respect of all nations. Moreover, Mr. Speaker, I can state that growing numbers of our people are no longer fooled by diplomatic deceptions and are asking what are the influences in our Government that have permitted such betrayals of our interests.

Confusing the issue of sovereignty by the clever misuse of the term "titular sovereignty" and the unauthorized display of the Panama flag in the zone in violation of law, treaty, and international usage, were blunders of the first magnitude, which can and should be promptly corrected by their removal. The only thing that could be worse than making such blunders in the first place would be persistence in the errors.

Now that the January events are ample proof that someone made mistakes in flying the Panama flag in the Canal Zone, let us correct the situation so that only one flag will fly in the future—the flag of the United States of America.

In order to make the indicated exchange of letters available as source materials for editors, commentators, and other publicists; as documentation for historians; and as references for the Congress and the executive branch of our Government, I quote them as part of my remarks and urge that they be carefully studied, especially by the members and staffs of cognizant appropriation, legislative, and investigating committees.

JANUARY 15, 1964.

Hon. DEAN RUSK,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: In connection with the action of officials of the executive branch of our Government with respect to the recognition in 1959 of so-called titular sovereignty of Panama over the Canal Zone and the flying of the Panama flag in Shaler Triangle in September 1960, I request the following:

1. A copy of any order or statement by the President, the Secretary of State, or other official directing the recognition in 1959 of titular sovereignty over the zone.

2. A copy of any order or statement by the President, the Secretary of State, or other official directing the display in 1960 of the Panama flag in Shaler Triangle.

An early reply is requested.

Sincerely yours,

DANIEL J. FLOOD,
Member of Congress.

DEPARTMENT OF STATE.
Washington, January 30, 1964.

Hon. DANIEL J. FLOOD,
House of Representatives.

DEAR CONGRESSMAN FLOOD: Thank you for your letter of January 15, 1964, to the Secretary in which you requested certain documents relative to the titular sovereignty of Panama over the Canal Zone and the flying of the Panamanian flag in Shaler Triangle.

Pursuant to your request there is enclosed a copy of a recently prepared summary background report on the flag issue. The texts of the principal pertinent documents are contained in this report.

If I can be of further assistance to you in this matter, please do not hesitate to call on me.

Sincerely yours,

FREDERICK G. DUTTON,
Assistant Secretary.

SUMMARY BACKGROUND: FLYING OF PANAMANIAN FLAG WITH U.S. FLAG IN CANAL ZONE BY CIVILIAN AUTHORITIES, JANUARY 20, 1964

Following violent disturbances on November 3, 1959, at the Canal Zone-Panama boundary, involving sovereignty, flags, and other issues, a special representative of the Department of State said in Panama on November 24, 1959:

"During the course of our discussions, in response to a question by the President of Panama, I assured him that the policy of the U.S. Government with respect to the status of the Canal Zone remains as it had been stated more than 50 years ago to the effect that the United States recognizes that titular sovereignty over the Canal Zone remains in the Government of Panama."

Further demonstrations, including some violence against the Canal Zone, occurred again on November 28, 1959. Subsequently the Panamanian Ambassador to the United States in Washington presented a formal request for, among other things, the flying of the Panamanian flag in the Canal Zone.

On December 2, 1959, President Eisenhower in a press conference stated that he did "in some form or other believe that we should have visual evidence that Panama does have titular sovereignty over the region." In a press conference on December 10, 1959, Secretary of State Herter stated that sympathetic consideration was being given to the proposal that the Panamanian flag fly in the Canal Zone.

On September 17, 1960, President Eisenhower directed that the U.S. flag and the Panamanian flag be flown together in a single place in the Canal Zone known as Shaler Triangle. This action was announced by a White House release which read as follows:

"Last December 2, the President stated his belief that there should be visual evidence of Panama's titular sovereignty over the Panama Canal Zone. The President has now, as a voluntary and unilateral decision on the part of the Government of the United States, approved and directed the flying of the flag of the Republic of Panama together with the U.S. flag on a daily basis in Shaler Triangle in the Canal Zone. The President has authorized the American Ambassador, Joseph S. Farland, to make a public statement to this effect.

"The President hopes that his decision will demonstrate the continuing close bonds that exist between the people of the United States and the Republic of Panama and their Governments."

The United States note transmitted to the Panama Foreign Office on September 17, 1960, stated (Department of State Bulletin, Oct. 10, 1960, vol. XLIII, No. 1111, p. 558):

"I am pleased to state that, after the highest consideration by my Government, I am instructed to inform you that as a further reflection of the genuine friendship existing between our two Governments and peoples, my Government has determined that as a voluntary act on the part of the United States, and in recognition of the titular sovereignty residing in the Republic of Panama with respect to the Canal Zone, the Panamanian flag will hereafter be flown together with the United States flag on a daily basis in the area known as Shaler Triangle in the Canal Zone. This determination is in no wise to be considered as modifying in any way the treaties and agreements in force between the United States and Panama."

On September 21, 1960, the two flags were first flown at Shaler Triangle, and have flown there daily since then.

On June 13, 1962, Presidents Kennedy and Chiari issued a joint communique stating that they were appointing high-level representatives to discuss points of dissatisfaction. Ambassador Farland and Governor Fleming were appointed by President Kennedy and Foreign Minister Scolls and Dr. Octavio Fábrega were appointed by President Chiari.

The communique stated that the Presidents "agreed that their representatives will arrange for the flying of Panamanian flags in an appropriate way in the Canal Zone."

The flag question was the first substantive matter discussed by the Special Commission. Governor Fleming with the concurrence of Ambassador Farland developed a list of 15 sites at which the United States and Panamanian flags would fly together in the Canal Zone, including Shaler Triangle where the two flags had been flying since September 21, 1960, by direction of President Eisenhower. This list of site locations for the dual flags was presented to Panama at a meeting on July 20, 1962, for discussion purposes, and was forwarded to Washington for review by the Department of State and others.

The selected sites were acquiesced in by Panama and were approved in principle by those reviewing the matter in Washington. The sites were substantially the same as those subsequently used except as affected by the addition of civilian school premises in January 1964.

The original list of sites did not include any schools. At no time did Panama or anyone in Washington object to the specific list of civilian areas or suggest any additions or deletions or raise a question about the schools. This remained true until after the trouble which began on January 7, 1964.

While the list of civilian sites was not itself controversial, Panama sought also to have her flag flown in military areas and on transiting ships. And some Members of Congress and many U.S. citizen residents in the Canal Zone felt strongly against the flying of the Panamanian flag at all in the Canal Zone. The House of Representatives had passed House Resolution 459 on February 2, 1960, against flying the Panamanian flag. The pertinent 1961 appropriation act contained a rider prohibiting the use of Canal Zone Government or Panama Canal Company funds to install a flagpole for flying a Panamanian flag in the Canal Zone (Public Law 86–451, May 13, 1960). Nevertheless the September 1960 action by President Eisenhower followed and the dual flags were established in Shaler Triangle, using special funds.

When the new Thatcher Ferry Bridge was dedicated on October 12, 1962, United States and Panamanian flags were flown at each end of the center span. These flags, the first dual sets to be flown since the Shaler Triangle action, have flown 24 hours a day ever since.

On October 29, 1962, in further implementation of the agreement, dual flags were flown at the Administration Building at Balboa Heights, and on November 1, 1962, at the administration building at Cristobal. This followed public announcement of the agreement on flags by President Chiari in an address to the Panamanian National Assembly on October 1, 1962.

On January 10, 1963, the Joint Commission created by Presidents Kennedy and Chiari issued a joint communique, the first paragraph of which reads as follows:

"1. It has been agreed that the flag of the Republic of Panama will be flown together with the flag of the United States of America on land in the Canal Zone where the flag of the United States of America is flown by civilian authorities. Private organizations and persons in the zone are free to display flags at will over their places of residence or business. Other aspects of the flag question will be discussed later."

On October 26, 1962, a Panama Canal Company employee, Gerald Doyle, had filed suit against the Governor of the Canal Zone seeking to enjoin the flying of the Panamanian flag in the Canal Zone. This action received substantial support from many Canal Zone residents and from some Members of Congress. While the suit was pending the Governor refrained from initiating any further dual flags at the remaining sites. Panama, apparently understanding the situation, did not press for action to further implement the flag agreement during the litigation, despite adverse press comment in Panama concerning the litigation.

The flag suit was dismissed by the U.S. District Court in the Canal Zone on July 8, 1963, the court opinion holding that the matter was one of executive discretion. The time for appeal expired on September 27, 1963, without an appeal having been filed.

Thereafter, the Governor directed that the dual flags be flown at the remaining selected sites. This was carried out in accordance with a schedule which would permit completion of the installation of all poles by February 7, 1964. As each set of poles was erected the two flags were immediately flown thereon, without publicity or ceremony. In the meantime the list of 15 locations for the two flags had increased to 17 by reason of the Governor's addition of sites at two cemeteries, which had been mentioned but not specifically included at the time of the original list.

During the course of the year, some flagpoles at locations not selected for dual flags were removed, such as at the Governor's residence which is a block or so from the administration building where the two flags were already flying. The removal of flagpoles drew some adverse press comment. In general, the sites for the dual flags were selected to provide for such display in each major population area plus special locations such as the locks and governmental administration buildings.

In November 1963 the Governor considered flying the dual flags at the four high schools. This question was discussed informally with the Canal Zone Civic Council leaders and with the senior officials of the Panama Canal Company and Canal Zone Government. The civic councils felt strongly that such dual displays at the schools would lead to major flag incidents. Senior agency officials generally agreed with the civic councils. This position was consistent with the informal opinion received from school officials in 1962 when the question of flags at schools was first considered by the Governor. The original decision not to fly the dual flags outside the schools, and therefore no flag, under the agreement, was reaffirmed by the Governor in December 1963.

By the end of December 1963, 11 of the dual flag installations were in operation, with 5 more scheduled for January and early February 1964, and the final site set for new Gorgas Hospital when construction would be completed later in 1964.

During the Christmas holidays it was decided by the Governor that full implementation of the agreement with Panama would be put into effect on January 2, 1964, at which time the Panamanian flag would be flown wherever the U.S. flag was flown by civilian authorities. This meant that no U.S. flags would be flown outside the schools and at about four other locations where single U.S. flags were still flying on December 31.

On December 30, 1963, the following press release was issued by the Governor:

"On and after January 2, 1964, the Panamanian flag will be flown together with the flag of the United States on civilian land areas in the Canal Zone where the U.S. flag is flown by civilian authorities.

"This action implements the understanding made public in a joint communique issued by the two Governments earlier this year which stated that 'the flag of the Republic of Panama will be flown together with the flag of the United States of America on land in the Canal Zone where the flag of the United States of America is flown by civilian authorities. Private organizations and persons in the zone are free to display flags at will over their places of residence or business.'

"For some time the Panama Canal has been erecting dual flagpoles at selected sites. Work has been completed and the two flags are now flying at 11 of the sites. Dual flagpoles will be erected at five additional sites between now and the early part of February. One further location at which the two flags will fly will be the new Gorgas Hospital addition when it is completed later this year.

"The 11 locations where the two flags are now flying are Shaler Plaza, Thatcher Ferry Bridge, the administration building in Balboa and also at Cristobal, Miraflores and Gatun Locks, Coco Solo and Corozal Hospitals, Palo Seco, Margarita and Coco Solo. The five remaining locations in addition to the new Gorgas Hospital addition are Gamboa-Santa Cruz, Rainbow City, Paraiso, Mount Hope Cemetery and Corozal Cemetery. Locations at which the U.S. flag has currently been flown alone and at which no flags will be flown on or after January 2, 1964, are the schools; the Ancon District Court Building, the Industrial Division, Cristobal; a site in Gamboa which will be replaced by the site for the two flags; and the present Gorgas Hospital.

"In accordance with law and customs requiring the U.S. flag to be displayed in or near schools, the U.S. flag will continue to be displayed in classrooms or elsewhere within the schools as at present. The Panamanian flag will continue to be displayed with the U.S. flag in all Latin American schools and in

certain other schools as appropriate, following present practice."

Schools reopened on Thursday, January 2, 1964, after the Christmas holiday. The U.S. flag which formerly had been raised in front of each school on school days was no longer flown, in accordance with the commitment to Panama to fly two or none.

During the first few days of the new school period students at Balboa High School began to generate feeling in protest against the discontinuance of the U.S. flag outside the school. A U.S. flag is displayed in every classroom but the outside flag became an object of current significance. By Monday, January 6, it was known by school officials and some parents and others that some of the students intended to go to school early on Tuesday, January 7, and to raise the U.S. flag on the outside pole at Balboa High School. On Friday, January 3, a petition to President Johnson protesting the discontinuance of the U.S. flag outside the Balboa High School was circulated at the school and signed by 400 to 500 students.

Balboa High School has an enrollment of 1,851. Of these, 1,777 are U.S. citizens; 927, or 50.1 percent, of the students at Balboa High School are children of military or civilian personnel of the U.S. Armed Forces. Six hundred and thirty-nine or 34.5 percent are children of employees of the Canal Zone Government and Panama Canal Company, 136 or 7.3 percent are children of American businessmen and other non-Government personnel in Panama and the Canal Zone, 75 or 4.1 percent are children of U.S. citizen employees of the U.S. Embassy, AID, USIS, and the Federal Aviation Agency, 74 or 4 percent are non-United States citizen tuition students, principally Panamanians.

By 6:45 a.m. on Tuesday, January 7, about 25 students had gathered on the lawn in front of the high school with a flag. The halyards were locked on the pole. Attempts were made to climb the pole but efforts to get the flag aloft were at first not succesful. By 7:25 some 200 to 300 students, mostly observers, were present and a group of 50 to 80 were around the pole itself. The few actually working at it finally worked the halyards loose so that despite the lock the flag was raised at 7:25. School officials were present, and a couple of policemen were in the area. A dozen or so adults, presumably parents, were on the sidelines.

Classes started at 7:45 and nearly all students attended. Absenteeism during the day was nearly normal. A dozen or so adults and students remained in the area across the street from the campus. At 8:20 the acting superintendent of schools, the principal of the high school, and the civil affairs director within whose Bureau the schools operate, lowered the flag, which was taken to the principal's office.

The first class period was over at 8:38 a.m., and at 8:40 six college students and one high school student put up another small flag. About 150 students were on the school steps or lawn and they pledged allegiance to the flag. A number of adults were in the area. School officials were present. No police were in the immediate area. No effort to prevent the students' action was taken because of a policy decision approved by the Governor that an incident involving physically preventing these American students from raising the American flag outside their school and pledging allegiance should be avoided, in the expectation that the protest demonstration would have achieved its purpose and the flag could be lowered quietly later. No laws were broken and it was considered that the demonstration by the students did not constitute a flying of the flag by "civilian authorities."

It was understood that the active ringleader group of students intended to require authorities to use force if an effort were made to prevent the raising of the flag, or to take it down once up, or to remove the flagpole. School officials urged students to return to classes which nearly all did. Photographers, professional and others, were present at all actions described.

During the morning a small group of students kept watch from just off the campus. Between classes large numbers appeared to see what had happened, there having been rumors that the authorities intended to remove the pole or halyard. At noon the students substituted a larger flag on the pole. After school about 100 students, with adults, remained around the area until late evening to prevent action to remove the flag or pole. About 25 remained on watch all night and were furnished food and blankets by adult sympathizers.

At 6 p.m. on Tuesday the flag was lowered by six high school boys. At 7:30 a.m. on Wednesday it was again raised. The situation was about the same on Wednesday. In the afternoon some 200 students marched around the flag with placards demanding that the flag stay up. Ringleaders told school officials that students would continue in classes so long as the flag was up. It was understood that if the flag were taken down the fire alarm would be used to signal a student rush to prevent the action. The principal put out written bulletins assuring that there was no intention to remove the flagpole, and cautioning against any improper use of the fire alarm system.

On the Atlantic side similar action was taken on Wednesday by large numbers of students at Cristobal High School with substantial parental support. Groups went to several elementary schools also and put up flags, on both the Atlantic and Pacific sides.

On Wednesday, January 8, the Governor issued a statement appealing to the public for cooperation. He reviewed the background of the dual flag program and said:

"I believe that it is unnecessary for me to dwell at length on the responsibilities of U.S. citizens to abide by the official commitments of their Government. I would, however, like to emphasize that we have a particular responsibility here in the Canal Zone where our actions are subject to direct view by citizens of other countries.

"I request the cooperation of all U.S. citizens at this time in honoring our country's commitments and in showing our good faith by our own actions. We must set the example and some recent actions have not been good in view of an international commitment of the United States.

"At the same time, I will say that the list of official locations at which the two flags are to be flown is not final and absolute. Should the various communities desire dual flag displays at other locations, it is possible that we can make appropriate additions in consonance with our international commitment. In this regard, I would look to the civic councils for advice as to the wishes of the communities."

On Thursday morning, January 9, the Governor pretaped and film-recorded an address to the public. This statement was presented by Canal Zone radio and television at 6:15 p.m. It reviewed the discussions with Panama during the preceding 2 years with particular reference to the flag issue. The Governor explained the commitment to Panama, the selection of the sites for dual flags, and the issue as to flags at the schools. He stated that "the flag agreement is a valid commitment of our Government. We Americans in the zone have an obligation as citizens to support that commitment regardless of our personal beliefs. I hope that we Americans will conduct ourselves with reason, and in an emotional situation successfully avoid emotionalism."

Following the tragic events of Thursday, evening, January 9, and thereafter, which are not within the scope of this summary, the dual flags were directed to be flown outside the Canal Zone schools by Secretary of the Army Vance. The following announcement was made on January 11, 1964:

"After consultation with Governor Fleming, Secretary Vance announced tonight that the Canal Zone Government will continue to fly the United States flag outside public schools in the Canal Zone and that in accordance with the existing agreement between the Republic of Panama and the United States, the Panamanian flag will be flown alongside the U.S. flag at these locations."

Accordingly, poles were erected and the dual flags were flown from 17 public schools in the Canal Zone beginning January 15, 1964.

As of January 19, 1964, the Panamanian flag is being flown or is scheduled to be flown by civilian authorities in the Canal Zone where the U.S. flag is flown, at 30 locations, identified in the attached list which also states the date upon which the two flags were first flown together at each location.

SUMMARY—DUAL FLAG INSTALLATIONS IN CANAL ZONE

Location and date dual flags first flown:

Shaler Triangle, September 21, 1960.

Thatcher Ferry Bridge, October 12, 1962.

Administration Building, Balboa Heights, October 29, 1962.

Administration Building, Cristobal, November 1, 1962.

Miraflores locks, October 24, 1963.

Gatun locks, November 9, 1963.

Coco Solo Hospital, November 15, 1963.

Corozal Hospital, November 30, 1963.

Palo Seco Hospital, December 4, 1963.

Margarita Townsite, December 18, 1963.

Balboa High School, January 15, 1964.

Canal Zone College, January 15, 1964.

Balboa Elementary School, January 15, 1964.

Ancon Elementary School, January 15, 1964.

Diablo Elementary School, January 15, 1964.

Diablo Junior High School, January 15, 1964.

Los Rios Elementary School, January 15, 1964.

Pedro Miguel Elementary School, January 15, 1964.

Paraiso Elementary School, January 15, 1964.

Paraiso Junior-Senior High School, January 15, 1964.

Gamboa Elementary School, January 15, 1964.

Santa Cruz Elementary School, January 15, 1964.

Cristobal Junior-Senior High School, January 15, 1964.

Coco Solo Elementary School, January 15, 1964.

Rainbow City Junior-Senior High School, January 15, 1964.

Margarita Elementary School, January 15, 1964.

Gatun Elementary School, January 15, 1964.

Mount Hope Cemetery, scheduled for January 31, 1964.

Corozal Cemetery, scheduled for February 7, 1964.

New Gorgas Hospital, scheduled for later in 1964.

FEBRUARY 6, 1964.

Hon. FREDERICK G. DUTTON,
Assistant Secretary of State for Congressional Relations, Department of State, Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of January 30, 1964, and its enclosed summary background on flying the Panamanian flag in the Canal Zone territory. This summary, with the single exception of the indentation of one paragraph, seems to be identical with the summary published in the Panama Canal Spillway of January 27.

As you know, I have dealt at length with the unauthorized display of the Panama flag in the Canal Zone in addresses to the Congress and have made some pointed observations thereon.

The special representative of the Department of State sent to the isthmus following the November 3, 1959, attempted mob invasion of the Canal Zone, which I had predicted on the floor of the Congress, was Under Secretary of State Livingston Merchant, who is not specifically named in the summary and who at no time defined the term, "titular sovereignty."

After he made his November 24, 1959, statement I wrote him a critical letter challenging his authority. In reply, he stated that the indicated action did not originate with him and that he was acting under instructions. It is unfortunate that he and his superiors did not seem to realize that the Panama Canal is neither a filling station nor a Safeway Store but, indeed, one of the great agencies for the betterment and protection of the free world.

The specific information that I wish to have may be covered in the following questions:

(a) What is the name of the official in the Department of State who originated the proposal to fly the Panama flag in the Canal Zone as visual evidence of "titular sovereignty"?

(b) What are the names of the officials who approved the instructions to Under Secretary Merchant?

(c) Was the enclosure to your letter prepared in the Department of State or in the Panama Canal Organization?

(d) What is the Department of State's definition of the term, "titular sovereignty"?

(e) Is it anything more than the reversionary clause in a deed which conveys full perpetual title to property with a provision that if the grantee fails to use the property for the purposes for which it was conveyed, as for instance, in charitable and educational transactions, there is reversion of title to the grantor?

(f) Why is it not made clear to the Panamanian Government and the world at large exactly what the Department of State means when using the term, "titular sovereignty"?

(g) It is the contention of the Department that the United States, in the building, operation and maintenance of the canal, has by omission or commission been guilty of acts which have the effect of nullifying the grant of sovereignty in perpetuity accorded by the 1903 treaty?

In these general connections permit me to quote the statement by former President Theodore Roosevelt on December 2, 1918, the year after John Reed's declaration in Petrograd for internationalizing the Panama Canal:

"The Panama Canal must not be internationalized. It is our canal; we built it, we fortified it, and we will protect it, and we will not permit our enemies to use it in war. In time of peace, all nations shall use it alike but in time of war our interest at once becomes dominant." (Daily CONGRESSIONAL RECORD, Feb. 4, 1964, p. A501.)

In order that I may advise the Congress in the premises, full information is desired and an early reply is respectfully requested.

Sincerely yours,

DANIEL J. FLOOD,
Member of Congress.

DEPARTMENT OF STATE,
Washington, February 18, 1964.

Hon. DANIEL J. FLOOD,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN FLOOD: Thank you for your letter of February 6, 1964, regarding certain aspects of U.S. relations with the Republic of Panama. The answers to your specific questions follow:

(a–b) Deputy Under Secretary of State Merchant, in making the statement to which you refer, was speaking in the name of and with the full authority of the Secretary of State. In this connection, you will recall that President Eisenhower, in announcing that the Panamanian flag would be flown in the Canal Zone, stated at a news conference on December 2, 1959, that this action would constitute visual evidence of the titular sovereignty of the Republic of Panama in the Canal Zone.

(c) The enclosure to my letter of January 30, 1964, on the flag issue was prepared in the Office of the Governor of the Canal Zone and was subsequently reprinted in the Panama Canal publication "Spillway" as an accurate account of the events of January 9–12 in Panama.

(d) Regarding a definition of titular sovereignty in the Canal Zone, the Department of State has always relied on statements by Mr. William Howard Taft, in view of his preeminence as a jurist and his intimate knowledge of matters pertaining to the Canal Zone. These statements read as follows:

" 'The truth is that while we have all the attributes of sovereignty necessary in the construction, maintenance, and protection of the canal, the very form in which these attributes are conferred in the treaty [of 1903] seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama, and as we have conceded to us complete judicial and police power and control over the zone and the two ports at the end of the canal, I can see no reason for creating a resentment on the part of the people of the isthmus by quarreling over that which is dear to them but which to us is of no real moment whatever.' From letter signed William H. Taft, Secretary of War, and addressed to the President under date of January 12, 1905. Printed in Hearings before the Committee on Interoceanic Canals of the U.S. Senate, in the matter of the Senate resolution adopted January 9, 1906, providing for an investigation of matters relating to the Panama Canal, etc., Senate document 401, 59th Congress, 2d session, pages 2392, 2393, 2399 (vol. III); volume 32, Senate documents (1907, 59th Cong., 2d sess.), 2392, 2393, 2399.

"Article III of the treaty [the Hay-Bunau Varilla Convention for the Construction of a Ship Canal, signed November 28, 1903] provides as follows:

" 'The Republic of Panama grants to the United States all the rights, power, and authority within the zone mentioned and described in article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority.'

"It is peculiar in not conferring sovereignty directly upon the United States, but in giving to the United States the powers which it would have if it were sovereign. This gives rise to the obvious implication that a mere titular sovereignty is reserved in the Panamanian Government. Now, I agree that to the Anglo-Saxon mind a titular sovereignty is like what Governor Allen, of Ohio, once characterized as a 'barren ideality,' but to the Spanish or Latin mind poetic and sentimental, enjoying the intellectual refinements, and dwelling much more on names and forms it is by no means unimportant." From statement by William Howard Taft, as Secretary of War, before Committee on Interoceanic Canals on April 18, 1906. Hearings, Wednesday, April 18, 1906, Senate Committee on Interoceanic Canals, 59th Congress, 2d session, ibid., 2315, 2526–2527.

(e) The nature of a right granted by treaty depends upon the particular treaty language according to practice of international law. For this reason private law relating to real property is to be differentiated from applicable treaties.

(f) The statements of Mr. William Howard Taft quoted under item (d) above are widely known.

(g) So far as the matter of sovereign rights is concerned, the United States has built, operates, and maintains the canal in exercise of the rights, power, and authority granted by the several treaties between the United States and the Republic of Panama, and with special reference to the grant contained in articles II and III of the 1903 convention whereby the United States is entitled to exercise such rights, power, and authority which it "would possess and exercise if it were the sovereign of the territory within which said lands and waters are located."

If I can be of further assistance to you in this matter, please do not hesitate to call upon me.

Sincerely yours,

FREDERICK G. DUTTON,
Assistant Secretary.

MARCH 13, 1964.

Hon. DEAN RUSK,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: The Department of State letter of February 18, 1964, over the signature of Assistant Secretary Frederick G. Dutton, is not adequately responsive in replies to my questions nor, may I say, fully candid. Quoting Mr. Taft in one connection and ignoring his true meanings and interpretations as expressed in other statements constitutes "special pleading." Because of this, I shall elaborate, primarily on the question of "titular sovereignty."

In an address at New Orleans on February 9, 1909, when the Panama Canal was under construction, President-elect Taft included the following statement in his remarks:

"Because under the treaty with Panama we are entitled to exercise all the sovereignty and all the rights of sovereignty that we would exercise if we were sovereign, and Panama is excluded from exercising any rights to the contrary of those conceded to us. Now that may be a ticklish argument, but I do not care whether it is or not. We are there. We have the right to govern that strip and we are going to govern it. And without that right to govern the strip, without the power to police it, and without the power to make the laws in that strip bend, all of them, to the construction of the canal, we would not have been within 2 or 3 or 4 years, hardly, of where we are in the construction." (See my address, "Panama Canal: Object of Irresponsible Political Extortion," CONGRESSIONAL RECORD, July 23, 1958.)

On another occasion, November 16, 1910, when attending a banquet given by the President of Panama in the capital of that country, President Taft made this significant pronouncement:

"We are here to construct, maintain, operate, and defend a world canal, which runs through the heart of your country, and you have given us the necessary sovereignty and jurisdiction over the part of your country occupied by that canal to enable us to do this effectively." (Source: Canal Record, vol. IV (Nov. 23, 1910), p. 100.)

These words were not mere offhand remarks by an exhilarated banquet speaker but a deliberately phrased declaration by the President of the United States addressed to Panamanian officials with great candor and for the purpose of avoiding misunderstanding. It reflected the policy of our Government under which the Canal Zone was acquired, the Panama Canal constructed, and has been subsequently maintained, operated, sanitated and protected.

Again in 1930, when Chief Justice of the United States, Mr. Taft discussed the theory of "titular sovereignty" in an opinion of the Supreme Court delivered by him in *Luckenbach S.S. Co.* v. *United States,* 280 U.S. 173; 50 Supreme Court 148: "Whether the grant in the treaty amounts to a complete cession of territory and dominion to the United States, or is so limited that it leaves at least titular sovereignty in the Republic of Panama, is a question which has been the subject of diverging opinions and is much discussed in the briefs." The opinion stated that for the purposes of this case the construction of the treaty in that regard need not be examined as an original question. This opinion was in nowise in derogation of the views of President Taft as hereinbefore set forth.

That the grant of full sovereignty over the Canal Zone to the United States was the intent and understanding of responsible Panamanian officials in 1903 as well as those of the United States is completely established.

Years later, when describing his 1903 treaty negotiations as Minister of Panama to the United States, Bunau-Varilla stated:

"After mature thought I recognized that if I enumerated in succession the various attributes of sovereignty granted, I ran the risk of seeing in the (U.S.) Senate, some other attributes asked for. To cut short any possible debate I decided to grant a concession of sovereignty en bloc." (Earl Harding, "The Untold Story of Panama," 1959, p. 39.)

Subsequent to the ratification of the 1903 treaty, Minister of Government Tomas Arias of Panama, a member of the revolutionary junta that brought about Panamanian independence, addressed the following statement on May 25, 1904, to Gov. George W. Davis of the Canal Zone:

"The Government of the Republic of Panama considers that upon the exchange of ratifications of the treaty for opening an interoceanic canal across the Isthmus of Panama its jurisdiction ceased over the zone." (See my address, "Panama Canal—Latest Development," CONGRESSIONAL RECORD, June 9, 1958.)

In addition to understanding what was in the minds of United States and Panamanian officials at the time, it is important to realize that the formula for exclusive U.S. sovereignty in perpetuity was not accidental, or the result of the machinations of secret agents as claimed by some partisan writers, but was based upon the January 18, 1902, recommendation of the Isthmian Canal Commission, of which Rear Adm. John G. Walker, one of the ablest officers of his era, was president. I quote a pertinent part:

"The grant [of the Canal Zone] must be not for a term of years, but in perpetuity, and a strip of territory from ocean to ocean of sufficient width must be placed under the control of the United States. In this strip the United States must have the right to enforce police regulations, preserve order, protect property rights, and exercise such other powers as are appropriate and necessary." (Source: S. Doc. No. 123, 57th Cong., p. 9.)

It was the realistic philosophy of this recommendation, made after prolonged study of conditions on the Isthmus, that was embodied in the 1902 Spooner Act authorizing acquisition of the Canal Zone and that found expression in provisions in the 1903 treaty for sovereignity in perpetuity and a Canal Zone width of 10 miles rather than 10 kilometers as was to be provided under the Hay-Herran Treaty with Colombia. These were important, in fact, indispensable conditions under which the United States was willing to build the Isthmian Canal at Panama instead of Nicaragua. It was only after the United States became fully committed to build the canal at Panama under the 1903 treaty and after the 1904 declaration of Minister of Government Tomas Arias quoted above that Panama raised the question of Panamanian sovereignty, which was promptly denied by Secretary Hay.

Regardless of the many clamorous statements of advocates on the sovereignty question, these two observations are pertinent:

1. That any so-called "titular sovereignity" of Panama over the Canal Zone would be entirely naked or barren; that Panama would derive no present sovereign rights, powers, privileges, or other perquisites whatever except as authorized under treaty; that in respect to the difference between private law relating to real property and international law, the basic commonsense interpretations are the same; and that "titular sovereignty" would be wholly latent or reversionary in character, analogus to the case of a private conveyance of real estate for a particular purpose and thus forever binding unless the grantee fails to use the property for the intended purpose, in which case the title would revert to the grantor.

2. That Panama, as far as can be ascertained, has never at any time contended that it possessed "titular sovereignty" but absolute sovereignty, not withstanding the positive provisions of the 1903 treaty to the contrary.

It seems very strange, indeed, that contemporary Department of State officials ignore the interpretations on the sovereignty issue given by Mr. Taft as President-elect, President and Chief Justice and as practiced by him as Secretary of War, and also the historic statements of Secretaries Tomas Arias, Hay, and Hughes.

From the time the United States occupied the Canal Zone in 1904, the Congress has passed all legislation necessary for the construction, maintenance, operation, sanitation, and protection of the Panama Canal. This, together with minor enactments by the Isthmian Canal Commission, 1904–14, form an extensive Canal Zone Code covering all the vital features of legislation required for the government of the Canal Zone and the construction, maintenance and operation of the canal. As was foreseen by both Panamanian and United States officials at the outset, the great achievements incident to construction of the Panama Canal simply could not have been accomplished except with complete U.S. sovereignty over the zone. To argue differently is to contend against the overwhelming logic of the practical, realistic conditions required for the success of the canal enterprise; and any other interpretation, as repeatedly sown by events, brings nothing but chaos and bloodshed. If the United States is to do the job that it is obligated to do it must have the adequate authority provided in the 1903 treaty; and nothing less. This policy is not one of colonialism or oppression but one of commonsense and absolute necessity, and is fully understood by informed Panamanians as well as by thoughtful U.S. citizens conversant with isthmian history. The fate of this great enterprise, which means so much to the entire world, must not yield to the radical demands emanating from the pressure of Panamanian political campaigns or the manifest policies of the world revolutionary movement.

The January 1964 mob assaults on the Canal Zone enabled the entire world to see the dangerous confusion occasioned by the invalid display of the Panama flag in the zone. As recognized by all who understand isthmian conditions, it was inevitable that Panamanians would regard such display as evidence not of "titular sovereignty" but of controlling sovereignty being vested in Panama—the insistence on which was vastly augmented by the display of Panamanian flags in the zone. Thus, the executive policy of uncertainty, vacillation and weakness, which such display symbolizes, has made the Canal Zone another Cyprus.

It is respectfully submitted that if the administrative officials of the United States had been forthright in dealing with the flag issue and related questions during recent years we would not have had the series of mob violence and fatalities at Panama. Long experience has shown that firmness, in upholding our just and necessary rights on the isthmus, is best for Panama as well as for the United States. Moreover firmness will give a far better image of our country to the world at large.

In this connection it should ever be borne in mind that recognition of any present-day Panamanian claims of sovereignty over the Canal Zone and canal will inevitably end in the complete liquidation of U.S. authority over them and communistic revolutionary power will soon fill the vacuum thus created; witness Cuba and other Communist takeovers. If Soviet control over Cuba could be established and maintained 90 miles off the United States, it can certainly gain control over the Panama Canal if and when our Nation is divested of its authority and control over the Canal Zone and canal. With such loss, all Caribbean, Central and South American countries will inevitably pass into the Soviet orbit. The only alternative would be a successful nuclear war to destroy Soviet power. Our present policies at Panama are inviting this dreadful situation.

In view of the foregoing and the absolute necessity to clear up immediately the present dangerous confusions over "titular sovereignty" and to stop needless conjectures on the subject, I reiterate my previous question: Why does the Department of State not prepare and promptly issue a public statement setting forth in clear, understandable terms the definition of "titular sovereignty" as a reversionary interest on the part of Panama in the Canal Zone, which can become vital only in the sole event of the United States abandoning the Panama Canal or failing to meet its treaty obligations for its perpetual maintenance, operation, sanitation, and protection, with payment of annuities in perpetuity to Panama?

An early reply is respectfully requested.

Sincerely yours,

DANIEL J. FLOOD,
Member of Congress.

DEPARTMENT OF STATE,
Washington, April 17, 1964.

DEAR CONGRESSMAN FLOOD: The Secretary has asked me to answer your letter of March 13, 1964, in further reference particularly to the matter of "titular sovereignty" and Mr. William Howard Taft's statements with reference to the rights granted to the United States by the Republic of Panama under the 1903 convention.

In your letter you state that Mr. Dutton's reply of February 18, 1964, to your previous letter of February 6, 1964, was "not adequately responsive in replies to my questions nor, may I say, fully candid." You also stated that we quoted Mr. Taft "in one connection" and ignored "his true meanings and interpretations as expressed in other statements" and that this constituted "special pleading." Let me assure you that the Department is anxious to be fully responsive.

In President-elect Taft's statement at New Orleans on February 9, 1909, which you quote, Mr. Taft carefully stated that "under the treaty with Panama we are entitled to exercise all the sovereignty and all the rights of sovereignty that we would exercise if we were sovereign, and Panama is excluded from exercising any rights to the contrary of those conceded to us." This statement by Mr. Taft treated of the matter of which country has the right to "exercise" sovereignty or sovereign rights, as distinguished from which country is the "sovereign" or holds territorial "sovereignty" with respect to the Canal Zone. The Department of State agrees fully with Mr. Taft; he differentiated quite correctly between "sovereignty" and the exercise of sovereignty or sovereign rights as if sovereign. In this context of the right to "exercise" sovereign rights, he spoke

quite correctly of the rights to govern the zone, the power to police it, and the power to make the laws in it.

As to the statement by President Taft, on November 16, 1910, which you have also quoted, on the occasion of a banquet given by the President of Panama in Panama City, President Taft expressly recognized that the Canal Zone is "part of your country," referring to the Republic of Panama. He said:

"We are here to construct, maintain, operate, and defend a world canal, which runs through the heart of your country, and you have given us the necessary sovereignty and jurisdiction over the part of your country occupied by that canal to enable us to do this effectively."

While the statement is not entirely free of ambiguity, we agree with you that, to quote your letter: "These words were not mere offhand remarks by an exhilarated banquet speaker but a deliberately phrased declaration by the President of the United States addressed to Panamanian officials with great candor and for the purpose of avoiding misunderstanding. It reflected the policy of our Government under which the Canal Zone was acquired, the Panama Canal constructed, and has been subsequently maintained, operated, sanitated, and protected."

For this reason, this statement by Mr. Taft is accordingly to be construed consistently with his other statements on the matter, rather than as indicating a departure in policy.

Further, as you have again quoted in your letter, years later when Chief Justice, Mr. Taft stated in *Luckenbach* v. *United States*, 280 U.S. 173, 177–178 (1930): "Whether the grant in the treaty amounts to a complete cession of territory and dominion to the United States or is so limited that it leaves at least titular sovereignty in the Republic of Panama, is a question which has been the subject of diverging opinions and is much discussed in the briefs."

The Chief Justice found that decision on this point was unnecessary for purposes of the decision in that case, because of "a long continued course of legislative and administrative action" by the United States. It was held in that case, nonetheless, that Canal Zone ports were "foreign ports" within the meaning of section 4009 of the Revised Statutes. Of course, the sentence quoted by you from the opinion of the Chief Justice in the Luckenbach SS Co. case "was in nowise in derogation of the views of President Taft" otherwise set forth.

However, nothing in the statements you have quoted from Mr. Taft substantiates the opinion expressed in various parts of your letter that by the 1903 convention the United States was granted "full sovereignty," "exclusive U.S. sovereignty," "complete U.S. sovereignty," "absolute sovereignty." Tomas Arias' statement refers to the cessation on the part of Panama of jurisdiction not sovereignty; Admiral Walker speaks of control and the right to police, preserve order, and to exercise "powers" not sovereignty. The grant to the United States, contained in the 1903 convention, of "all the rights, power, and authority" within the zone and auxiliary lands and waters, "which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority" has been ample for the purposes indicated in that convention and in successive treaties and agreements between the two countries.

I am sure that your studies of the early history of the canal have brought to your attention President Roosevelt's letter of October 18, 1904, to Mr. Taft, empowering him to visit Panama to attempt to solve certain differences which had, even at that early date, arisen between the Panamanians and ourselves. The visit resulted in the so-called Taft agreement which endured from 1904 until it was replaced in 1924 by a proclamation issued by President Coolidge. As this letter bears on the questions you have raised I enclose it for your ready reference.

In addition, I quote Mr. Taft in a letter to President Roosevelt January 12, 1905, shortly after he had concluded the Taft agreement: "The truth is that while we have all the attributes of sovereignty necessary in the construction, maintenance, and protection of the canal, the very form in which these attributes are conferred in the treaty seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama, and as we have conceded to us complete judicial and police power and control over the zone and the two ports at the ends of the canal, I can see no reason for creating a resentment on the part of the people of the isthmus by quarreling over that which is dear to them but which to us is of no real moment whatever."

Somewhat later, April 18, 1906, in a statement before the Committee on Interoceanic Canals, Mr. Taft quoted article III of the 1903 convention and then said: "It is peculiar in not conferring sovereignty directly upon the United States, but in giving to the United States the powers which it would have if it were sovereign. This gives rise to the obvious implication that a mere titular sovereignty is reserved in the Panamanian Government. Now, I agree that to the Anglo-Saxon mind a titular sovereignty is like what Governor Allen, of Ohio, once characterized as a 'barren ideality,' but to the Spanish or Latin mind poetic and sentimental, enjoying the intellectual refinements, and dwelling much on names and forms it is by no means unimportant."

I think that you will agree with me that, regardless of the answer to the question of territorial sovereignty which Chief Justice Taft did not find necessary to resolve in the Luckenbach case, the grant of rights by the Republic of Panama to construct, operate, maintain and defend the canal has been, during the past 60 years, sufficient for the United States to provide the great public service offered by the Panama Canal.

I would have no objection to the publication in full of this letter.

Sincerely yours,

ABRAM CHAYES,
Legal Adviser.

WASHINGTON, *October 18, 1904.*

TO WILLIAM HOWARD TAFT:

SIR: By Executive order of May 9, 1904, I placed under your immediate supervision the work of the Isthmian Canal Commission both in the construction of the canal and in the exercise of such governmental powers as it seemed necessary for the United States to exercise under the treaty with the Republic of Panama in the canal strip. There is ground for believing that in the execution of the rights conferred by the treaty the people of Panama have been unduly alarmed at the effect of the establishment of a government in the canal strip by the Commission. Apparently they fear lest the effect be to create out of part of their territory a competing and independent community which shall injuriously affect their business, reduce their revenues and diminish their prestige as a nation. The United States is about to confer on the people of the State of Panama a very great benefit by the expenditure of millions of dollars in the construction of the canal. But this fact must not blind us to the importance of so exercising the authority given us under the treaty with Panama as to avoid creating any suspicion, however unfounded, of our intentions as to the future. We have not the slightest intention of establishing an independent colony in the middle of the State of Panama, or of exercising any greater governmental functions than are necessary to enable us conveniently and safely to construct, maintain, and operate the canal, under the rights given us by the treaty. Least of all do we desire to interfere with the business and prosperity of the people of Panama. However far a just construction of the treaty might enable us to go, did the exigencies of the case require it, in asserting the equivalent of sovereignty over the canal strip, it is our full intention that the rights which we exercise shall be exercised with all proper care for the honor and interests of the people of Panama. The exercise of such powers as are given us by the treaty within the geographical boundaries of the Republic of Panama may easily, if a real sympathy for both the present and future welfare of the people of Panama is not shown, create distrust of the American Government. This would seriously interfere with the success of our great project in that country. It is of the utmost importance that those who are ultimately responsible for the policy pursued should have at firsthand as trustworthy information as can be obtained in respect to the conditions existing in Panama and the attitude and real interest of the people of that state. After a conference with the Secretary of State and yourself, I have concluded that it will be of great advantage if you can visit the Isthmus of Panama in person and hold a conference with the President and other governmental authorities of the Republic of Panama. You are authorized in doing this to take with you such persons as you desire, familiar with the conditions in the isthmus, who may aid you with their counsel. The earlier you are able to make this visit the better. The Secretary of State will instruct the U.S. Minister at Panama to render you every assistance in his power, and the Governor of the canal strip, General Davis, will, of course, do the same thing. You will advise the President of the Republic what the policy of this Government is to be, and assure him that it is not the purpose of the United States to take advantage of the rights conferred upon it by the treaty to interfere with the welfare and prosperity of the State of Panama, or of the cities of Colón and Panamá. You will make the due report of the result of your visit on your return.

Very truly yours,

ROOSEVELT (MSS.)

APRIL 29, 1964.

Hon. DEAN RUSK,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: The Department of State letter of April 17, 1964, over the signature of Abram Chayes, Legal Adviser, confirms major points raised by me in a series of letters on the crucial question of U.S. sovereignty and jurisdiction over the Canal Zone and Panama Canal.

As a student of interoceanic canal problems, I concur with Mr. Chayes' statement that the grant of sovereign rights, power, and authority in the 1903 treaty was sufficient for the construction, maintenance, operation, sanitation, and protection of the Panama Canal until ratification in 1939 of the 1936 treaty with Panama, but I challenge the validity of its application to the remaining period of the past 60 years.

Since 1936 there have been serious erosions of U.S. authority under the 1903 treaty through treaty and administrative actions but without impairment of the basic sovereignty and perpetuity provisions set forth in articles II and III of this treaty. The situation on the isthmus, aggravated by the illegal display of the Panama flag in the Canal Zone as "visual evidence of the titular sovereignty of the Republic of Panama" over this U.S. territorial possession, has become acute largely because of the failure of our Government to clarify the dangerous confusions over so-called titular sovereignty.

The Panamanian Government has never claimed titular sovereignty, but, more espe-

cially in recent years, it has contended that it has absolute sovereignty and has widely proclaimed our Government's executive actions in displaying the Panama flag in the Canal Zone as proof positive of such complete sovereignty. Thus, both the publicly announced recognition of titular sovereignty by the United States without defining it, and its symbolization by the formal display of Panama flags, were cruel frauds perpetrated largely by Dr. Milton Eisenhower and the Department of State in violation of law, treaty, international usage, and the historic canal policy of the United States.

Regardless of what Mr. Taft may or may not have said on various occasions about titular sovereignty, which he termed a barren ideality, the indubitable fact is that throughout his service, first as Secretary of War and later as President, he invariably applied in practical manner the exclusive sovereignty of the United States. This is illustrated by the purchase by the United States from individual owners of all land and property in the Canal Zone, by President Taft's December 5, 1912, Executive order declaring that "all land and land under water within the limits of the Canal Zone are necessary for the construction, maintenance, operation, protection, and sanitation of the Panama Canal," and the long administration of the Canal Zone as a U.S. Government reservation in which only active employees and their families are allowed to reside.

Such exclusive application was clearly intended by the framers of the 1903 treaty, for they well knew that if there were a division of authority over the canal, the great enterprise would in large degree become a political pawn of a country afflicted by periodic lawlessness, disorder, and revolutionary processes, thereby endangering the tremendously responsible work of the United States.

So understanding the situation Secretary of State Hughes, when faced with Panamanian demands for revision of the 1903 treaty in 1923 stated to the Panamanian Minister in Washington that "it was an absolute futility for the Panamanian Government to expect any American administration, no matter what it was, any President or any Secretary of State, ever to surrender any part of these rights which the United States had acquired under the treaty of 1903." (Foreign Relations, 1923, vol. III, p. 684.)

It seems to me, Mr. Secretary, that in recent years, and under more than one administration, our position at Panama has been gravely weakened by timid and vacillating policies on the part of our Government and their conduct is so regarded by the world at large. Among the most unfortunate surrenders was authority for enforcing sanitary ordinances and for maintenance of public order in the two terminal cities of Panama and Colon.

In this general connection, I would stress that in the exercise of our powers of exclusive sovereignty in the Canal Zone prior to the 1936–39 treaty we did not do so with any desire to be unfair to Panama or to evince our superior strength, as partisans and the uninformed have alleged, but only for the purpose of meeting the tremendous responsibilities imposed by the task to which our country is obligated; no more, no less. If we had not possessed and exercised the authority accorded in the 1903 treaty, the practical problems encountered would have forced the obstention of such exclusive powers, whatever the cost. The world would respect us vastly more if we firmly reiterated our sovereign rights, power, and authority with respect to the Panama Canal enterprise, for which purpose the provisions in House Concurrent Resolution 105 would be a start.

Finally, I wish to make the following four observations:

1. Certainly a new declaration in behalf of our undoubted rights at Panama should be made and followed with respect to the Panama Canal; and all questions now at issue should be governed thereby.

2. Because Mr. Chayes did not answer the key question presented in my March 13, 1964, letter, I reiterate it: "Why does the Department of State not prepare and promptly issue a public statement setting forth in clear, understandable terms the definition of "titular sovereignty" as a reversionary interest on the part of Panama in the Canal Zone, which can become vital only in the sole event of the United States abandoning the Panama Canal or failing to meet its treaty obligations for its perpetual maintenance, operation, sanitation, and protection, with payment of annuities in perpetuity to Panama?"

3. Unless and until the preceding question is properly answered and its substance promulgated, the situation at Panama is not going to be satisfactorily resolved and more Red led Panamanian mob assaults on the Canal Zone can be expected.

4. For such an unfortunate outcome, you will hold the fullest measure of responsibility.

Sincerely yours,

DANIEL J. FLOOD,
Member of Congress.

FREE POSTAGE ON CERTAIN TAX INFORMATION RETURNS

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that the gentleman from California [Mr. CHARLES H. WILSON] may extend his remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. CHARLES H. WILSON. Mr. Speaker, today I am introducing a bill to provide free postage on certain tax information returns which are required by law.

In 1962 Congress amended the Internal Revenue Code to require that all payers of dividends and interest of $10 or more notify the recipients and the Treasury Department of the amounts so paid. This information is for the benefit of the Treasury and is an aid in tax collection.

I believe the Treasury, therefore, should pay the postage on these tax information returns. Present law requires the taxpayer to do part of the Government's job, and it is only fair that the Government should bear some of the cost involved. The individual taxpayer, of course, would still have to prepare the information, put it in written form, and address the information to the recipient and the Treasury Department.

This postage cost, Mr. Speaker, is only a fraction of the total cost involved, but I do believe my bill will bring some relief to thousands of small businesses that are presently compelled to bear the expense of supplying the required information.

BIG DAMS ARE WINNING THE WAR FOR WATER

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that the gentleman from Missouri [Mr. HULL] may extend his remarks at this point in the RECORD and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HULL. Mr. Speaker, the hopes for economic development and future prosperity in Missouri and other states which are blighted by a continuing exodus away from the farms of its rural population and by perplexing urban problems rest to a substantial degree on proper use of water resources.

The contributions made by multipurpose reservoirs to the welfare of our people are not sufficiently appreciated by citizens who do not live in areas afflicted by water problems, such as floods and droughts.

As part of my remarks, I include an editorial in the Kansas City Star written by the most able writer on matters relating to water resource development in the entire Middle West, Karl L. Peterson, Jr.:

BIG DAMS ARE WINNING THE WAR FOR WATER

In nature's cycle it falls from the heavens, flows to the sea, and arises by evaporation back to the clouds. Water—it gives life to the land and without it nothing can survive on that land. The supply may fluctuate with the changing weather periods but basically, it is fixed. Yet the demands on that supply, both from the swiftly growing population and because of new uses for water, race steadily ahead—toward trouble.

Somewhere on this earth there is plenty of water for all, and for as far ahead as we can see. But it is not in the most desirable places. Mighty rivers flow in the far North where few can abide the harsh climate. In the sunny regions of the American Southwest, teeming populations are nearing the critical point on water supply.

In the Midwest, the water problem historically has been one of too little or too much: Flood and drought, drought and flood, in a continuing sequence of waste. It is surprising, in the view of history, that not until a generation ago, during World War II, was the concept of the multipurpose reservoir recognized.

This was the dam that could do it all: Trap the floods and, by so doing, store water to irrigate parched lands or to be held in conservation reserve against a time of need. The multibillion-dollar Pick-Sloan plan of 1945 threw in byproducts with a value, only half appreciated at the time, that has grown by the year.

This rich bank account of stored water, payable on demand, can spin the turbines that light the farms and turn new industrial wheels on the prairie. Hydroelectric power, in particular, generates dollars to help pay for these huge works. This same water floats the barges which could not otherwise operate a full season on the river's natural flow. And the low-cost freight transportation of the barges sparks a new dimension of growth in an agricultural region.

But the big sleeper in the reservoir program—the benefit of most direct impact on the average person—has been recreation. In 1952 Army Engineer projects across the Nation attracted 30 million visitors. Last year, the figure was 147 million. Here in the 10 Missouri Basin States, particularly, the modern prairie schooner has become a weekend station wagon dragging a boat and packed with fishing tackle and water skis.

Perhaps nowhere else has man more boldly challenged the world as he found it than in river development. He has dared to remold geography, at staggering costs, to make of water a servant rather than a tormentor. It has been neither a cheap, quick nor easy victory over nature, but the dazzling future prospect of that victory now may be seen.

Reservoirs take land, thousands of acres, some of it valuable farm property which must be surrendered for the protection of greater, more developed acreages and cities

downstream. More and more, a reservoir project necessarily involves the moving or wiping out of old towns, the relocating of highways and railroads, even of cemeteries.

Every river project has had its opposition, frequently bitter and vocal. Federal laws on land acquisition have been steadily liberalized to assure those evicted a fair market value and their moving expenses. But no money can assuage the wrench of giving up a homestead dating back generations in the family, and trying to start life anew elsewhere. Opponents of the dams sought engineering alternatives—small dams scattered over the upper parts of the watershed, even "flow ways" in which man abandoned the bottomlands to let the floods roll. But there was no satisfactory alternative to big dams for checking major flooding.

Here in the Kansas-Missouri area, once the big main stem dams of the Upper Missouri basin were substantially completed, Tuttle Creek Reservoir became the acrid battleground. At a host of public meetings the charges and counterclaims were hotly debated. In the early 1950's, the $80 million project was started, then stopped, then restarted. The issue unseated a Congressman and was aired all the way to the White House. In the end, as it had to be, the reservoir was built.

Now the tumult has softened and, with the keystone of the Kaw Basin flood program in place, others are following along smoothly. Wilson and Milford Reservoirs are nearly finished and Perry and Glen Elder are getting started. The levees are finished at the Kansas Citys, Manhattan, Salina and Abilene. They are well along at Topeka and soon construction will start at Lawrence. There is money in the Federal budget for Clinton, near Lawrence, the first of four more small dams indicated by a restudy of the 1961 flood disaster.

In the Arkansas River basin of southeastern Kansas, along the Neosho, Verdigris, and the Cottonwood, the dams are building, too: Fall River, Toronto, Council Grove, John Redmond, Elk City and more to come.

So also in the two-State Marais des Cygnes-Osage Valley, with Pomme de Terre finished in Missouri and Pomona in Kansas, Stockton Dam starting, the Ottawa levees ready and the biggest of all in this area, Kaysinger Bluff near Warsaw, just around the corner. Its 55,600-acre lake, nearly as large as the Lake of the Ozarks, will prove a powerful lever to the whole economy of west, central Missouri. But its value as a giant resort and recreation center should not obscure the considerable benefits in flood control in the other half of the State, along the lower Osage and on the Missouri itself below Jefferson City.

Planning is virtually completed on Kaysinger. The push for initial construction money this year may or may not succeed. With so many river projects under way, the administration is reluctant to launch another in the $143-million class until the pace moderates.

But Kaysinger will be started, this year or next, because the essential theory of the multipurpose reservoir now is accepted. The bargain in varied benefits it offers is just too good to pass up, whatever the cost and the attendant discomforts of locating it.

The task is far from ended. Full protection against the ultimate flood requires some measure of control on every troublesome tributary, and there are many worthy projects yet on the boards.

Snags still lurk below the surface of the river program. The strange misunderstanding that blocked dredging and completion of the Missouri navigation channel below Kansas City now is ended. In another 2 years or so barges loaded to the full 9-foot depth should push already record tonnages to the far higher levels of other rivers in the inland waterways system.

Someone, however, always wants to change the rules in the middle of the game. One bill now before Congress would revise the whole planning approach, creating a water council of Cabinet officials and subsidized Federal-State basin commissions. It would surely upset the existing agencies which already are getting the job done. Another proposal would push local cost contributions to prohibitive levels. If approved by Congress, it would destroy such still-unauthorized programs as the $278 million Grand River plan in northwest Missouri and the Chariton River project east of it by requiring multimillion-dollar donations far beyond the means of rural communities. Projects already under way or authorized would not be subject to such requirements.

Area river interests fret over such scares, and the occasional local squabbles, but they are buoyed by the conviction that this awesome undertaking at last is rolling inexorably ahead. At a current rate of some $75 million a year, the funds pour into this area and the dirt keeps flying. The benefits, largely unseen, pile up quietly in the floods that never happen or the low-flow pollution threat that is washed away by opening the dam gates upstream.

Questions and quarrels still roil other regions, but there is no trouble right here in River City. Kansas Citians and their neighbors have learned what floods can do—and what flood protection and its related rewards are worth.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. FLOOD, for 30 minutes, today; and to revise and extend his remarks and to include extraneous matter.

Mr. O'NEILL, for 10 minutes, today.

Mr. THOMPSON of Texas, for 30 minutes, today; and to revise and extend his remarks and include an address.

Mr. FRELINGHUYSEN, for 1 hour, on tomorrow, Wednesday, May 6, on the subject of antipoverty legislation and the jurisdiction of the House Committee on Education and Labor.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

(The following Members (at the request of Mr. HARRISON) and to include extraneous matter:)

Mr. DOLE.

Mr. FINDLEY.

(The following Members (at the request of Mr. ROSTENKOWSKI) and to include extraneous matter:)

Mr. RIVERS of South Carolina.

Mr. CELLER.

Mr. MULTER.

Mr. EVINS.

ADJOURNMENT

Mr. ROSTENKOWSKI. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 24 minutes p.m.) the House adjourned until tomorrow, Wednesday, May 6, 1964, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2028. A letter from the secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, transmitting the report of the Board of Visitors to the U.S. Naval Academy, 1964; to the Committee on Armed Services.

2029. A letter from the Comptroller General of the United States, transmitting a report of a review of payments to Army and Air Force Reserve officers on annual active duty training for days on which no training or necessary travel was performed, Department of Defense; to the Committee on Government Operations.

2030. A letter from the Comptroller General of the United States, transmitting a report on the audit of the Government Printing Office for the fiscal year ended June 30, 1963; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. RIVERS of South Carolina: Committee on Armed Services. H.R. 10322. A bill to extend the provisions of the act of August 11, 1959, Public Law 86–155, as amended (74 Stat. 396) to provide improved opportunity for promotion for certain officers in the naval service; without amendment (Rept. No. 1375). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLLING: Committee on Rules. House Resolution 710. Resolution for consideration of H.R. 10945, a bill to authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes; without amendment (Rept. No. 1376). Referred to the House Calendar.

Mr. SISK: Committee on Rules. House Resolution 711. Resolution for consideration of S. 2, an act to establish water resources research centers at land-grant colleges and State universities, to stimulate water research at other colleges, universities, and centers of competence, and to promote a more adequate national program of water research; without amendment (Rept. No. 1377). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DONOHUE:

H.R. 11135. A bill to amend the Antidumping Act, 1921; to the Committee on Ways and Means.

By Mr. ELLIOTT:

H.R. 11136. A bill to amend title 38, United States Code, to permit, for 1 year, the granting of national service life insurance to veterans heretofore eligible for such insurance; to the Committee on Veterans' Affairs.

By Mr. FARBSTEIN:

H.R. 11137. A bill to amend title I of the National Housing Act to provide Federal Housing Administration insurance of loans made for the purchase of dwelling units in cooperative housing projects, and for other purposes; to the Committee on Banking and Currency.

H.R. 11138. A bill to amend title I of the Housing Act of 1949 to require the inclusion of housing designed for low- and middle-income groups when rental or cooperative housing is constructed in the redevelopment of an urban renewal area; to the Committee on Banking and Currency.

H.R. 11139. A bill to amend the U.S. Housing Act of 1937 to provide that a tenant of a low-rent public housing project shall be permitted to continue to occupy such project (with appropriate rent adjustments) even though his income increases beyond the applicable limits; to the Committee on Banking and Currency.

H.R. 11140. A bill to amend title I of the Housing Act of 1949 to require that any rental or cooperative housing constructed in the redevelopment of an urban renewal area shall be designed for low- and middle-income groups; to the Committee on Banking and Currency.

H.R. 11141. A bill to amend section 213 of the National Housing Act to provide that mortgages covering middle-income consumer cooperative housing projects may be insured thereunder up to the full amount of the replacement cost of such projects; to the Committee on Banking and Currency.

H.R. 11142. A bill to amend the U.S. Housing Act of 1937 to make it clear that low-rent public housing includes stores and other necessary or desirable nondwelling facilities; to the Committee on Banking and Currency.

H.R. 11143. A bill to amend the Internal Revenue Code of 1954 to increase from $600 to $800 the personal income tax exemptions of a taxpayer (including the exemption for a spouse, the exemption for a dependent, and the additional exemptions for old age and blindness); to the Committee on Ways and Means.

By Mr. FEIGHAN:

H.R. 11144. A bill to amend title 28 of the United States Code, so as to provide for the appointment of one additional district judge for the northern district of Ohio; to the Committee on the Judiciary.

By Mr. PUCINSKI:

H.R. 11145. A bill to provide for the establishment of a mint of the United States in the State of Illinois; to the Committee on Public Works.

By Mr. SECREST:

H.R. 11146. A bill to amend the Capper-Volstead Act, with respect to the control of unfair practices affecting associations of producers of agricultural products and members thereof; to the Committee on the Judiciary.

By Mr. CHARLES H. WILSON:

H.R. 11147. A bill to amend chapter 57 of title 39, United States Code, so as to authorize the free use of the mails in making reports required by law of certain payments to others; to the Committee on Post Office and Civil Service.

H.R. 11148. A bill to broaden the investment powers of Federal savings and loan associations, and for other purposes; to the Committee on Banking and Currency.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of Alaska, memorializing the President and the Congress of the United States relating to a national Natural Disaster Insurance Act; to the Committee on Banking and Currency.

Also, memorial of the Legislature of the State of California, memorializing the President and the Congress of the United States relative to the withdrawal of certain lands in Death Valley from mining entry; to the Committee on Interior and Insular Affairs.

Also, memorial of the Legislature of the State of California, memorializing the President and the Congress of the United States relative to importing beef and veal; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. HAGAN of Georgia:

H.R. 11149. A bill for the relief of Georgios Minakakis; to the Committee on the Judiciary.

By Mr. POWELL:

H.R. 11150. A bill for the relief of Mrs. Vanda Paolina, her minor daughter Carla Paolina, and her mother-in-law Mrs. Italia Paolina; to the Committee on the Judiciary.

By Mr. ROGERS of Florida:

H.R. 11151. A bill for the relief of Ruben Gutierrez Sitson; to the Committee on the Judiciary.

By Mr. PATMAN:

H.J. Res. 1020. Joint resolution authorizing the expression of appreciation and the issuance of a gold medal to Henry J. Kaiser; to the Committee on Banking and Currency.

PETITIONS, ETC.

Under clause 1 of rule XXII,

883. The SPEAKER presented a petition of Richard W. Dickenson, county counsel, county of San Joaquin, Stockton, Calif., urging adoption of Senate bill 1275, regarding Federal-State conflict over water rights, which was referred to the Committee on Interior and Insular Affairs.

SENATE

TUESDAY, MAY 5, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

God, our Father, whom we seek in all our need, we come praying that through all the mystery and perplexity of life, Thou wilt keep our hearts with Thee. Show us Thy will in all the maze of paths our uncertain feet may take.

May we know Thee in the common life that entangles us. May we never lose a sense of Thy presence in the thorny questions, national and international, which confront us.

May we face these baffling days in the triumphant confidence that no weapon that has been formed can prevail against Thy eternal purpose, and that Thou, our God, will not fail or be discouraged until on a cross, deep rooted in Thine own heart, Thou dost lift a willful world to the radiance of Thy love and light.

We ask it in the ever blessed name of the One who is the Light of the World. Amen.

THE JOURNAL

On request of Mr. INOUYE, and by unanimous consent, the reading of the Journal of the proceedings of Monday, May 4, 1964, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 627) to promote State commercial fishery research and development projects, 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 resolutions, in which it requested the concurrence of the Senate:

H.R. 7651. An act to provide authority to protect heads of foreign states and other officials;

H.R. 8078. An act to amend the act of July 26, 1956, to authorize the Muscatine Bridge Commission to construct, maintain, and operate a bridge across the Mississippi River at or near the city of Muscatine, Iowa, and the town of Drury, Ill.;

H.R. 8373. An act to clarify the application of certain annuity increase legislation;

H.R. 9689. An act declaring a portion of Bayou Black and Bayou Terrebonne, La., nonnavigable waterways of the United States;

H.R. 9720. An act authorizing a study of dust control measures at Long Island, Fort Isabel, Tex.;

H.R. 10053. An act to amend section 502 of the Merchant Marine Act, 1936, relating to construction differential subsidies;

H.R. 10483. An act to authorize the sale of 58.19 acres of Eastern Shawnee tribal land in Oklahoma;

H.J. Res. 733. Joint resolution to designate the powerhouse on Clear Creek at the head of Whiskeytown Reservoir, in the State of California, as Judge Francis Carr Powerhouse; and

H.J. Res. 950. Joint resolution granting the consent of Congress to an amendment to the compact between the State of Ohio and the Commonwealth of Pennsylvania relating to Pymatuning Lake.

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 45) expressing the sense of the Congress that the Administrator of the Saint Lawrence Seaway Corporation should cooperate with other governmental authorities in the United States and with Canadian authorities to reduce oil pollution, in which it requested the concurrence of the Senate.

HOUSE BILLS AND JOINT RESOLUTIONS REFERRED

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

H.R. 7651. An act to provide authority to protect heads of foreign states and other officials; and

H.J. Res. 950. Joint resolution granting the consent of Congress to an amendment to the compact between the State of Ohio and the Commonwealth of Pennsylvania relating to Pymatuning Lake; to the Committee on the Judiciary.

H.R. 8078. An act to amend the act of July 26, 1956, to authorize the Muscatine Bridge Commission to construct, maintain, and operate a bridge across the Mississippi River at or near the city of Muscatine, Iowa, and the town of Drury, Ill.; and

H.R. 9720. An act authorizing a study of dust control measures at Long Island, Port Isabel, Tex.; to the Committee on Public Works.

H.R. 8373. An act to clarify the application of certain annuity increase legislation; to the Committee on Post Office and Civil Service.

H.R. 9689. An act declaring a portion of Bayou Black and Bayou Terrebonne, La., nonnavigable waterways of the United States; and

H.R. 10053. An act to amend section 502 of the Merchant Marine Act, 1936, relating to construction differential subsidies; to the Committee on Commerce.

H.R. 10483. An act to authorize the sale of 58.19 acres of Eastern Shawnee tribal land in Oklahoma; and

H.J. Res. 733. Joint resolution to designate the powerhouse on Clear Creek at the head of Whiskeytown Reservoir, in the State of California, as Judge Francis Carr Powerhouse; to the Committee on Interior and Insular Affairs.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 45) expressing the sense of the Congress that the Administrator of the Saint Lawrence Seaway Corporation should cooperate with other governmental authorities in the United States and with Canadian authorities to reduce oil pollution, was referred to the Committee on Commerce, as follows:

Whereas oil pollution of navigable waters has seriously impaired the commercial and recreational value of many areas; and

Whereas such pollution has caused serious injury to wildlife, even to the point of threatening some species of waterfowl with extinction; and

Whereas the policy of the United States, as expressed by the Oil Pollution Acts of 1924 and 1961, and many other enactments, is to employ every feasible means to reduce the menace of oil pollution: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the Administrator of the Saint Lawrence Seaway Corporation should seek to enter into and carry out cooperative arrangements with other governmental authorities in the United States, and with Canadian authorities, to require that vessels passing through the Saint Lawrence Seaway be equipped with such fittings, keep such records, and comply with such rules or regulations as may be feasible to reduce oil pollution of the Saint Lawrence Seaway and adjacent waters, and navigable waters of the United States through which such vessels may subsequently pass.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

Mr. INOUYE. Mr. President, I ask unanimous consent that, at the conclusion of a quorum call, there be a morning hour, under the usual circumstances, with statements therein limited to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CALL OF THE ROLL

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

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

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

[No. 193 Leg.]

Aiken	Hruska	Muskie
Allott	Humphrey	Nelson
Bartlett	Inouye	Neuberger
Bayh	Jackson	Pastore
Bennett	Javits	Pearson
Bible	Johnston	Pell
Boggs	Jordan, Idaho	Prouty
Burdick	Keating	Proxmire
Cannon	Kennedy	Randolph
Case	Kuchel	Robertson
Church	Lausche	Russell
Clark	Long, Mo.	Saltonstall
Cooper	Magnuson	Scott
Cotton	Mansfield	Simpson
Curtis	McCarthy	Smith
Dirksen	McClellan	Stennis
Dodd	McGee	Symington
Dominick	McGovern	Talmadge
Douglas	McIntyre	Thurmond
Ellender	McNamara	Walters
Fong	Metcalf	Williams, N.J.
Goldwater	Monroney	Williams, Del.
Gore	Morse	Yarborough
Hart	Morton	Young, N. Dak.
Hartke	Moss	
Hickenlooper	Mundt	

Mr. HUMPHREY. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Maryland [Mr. BREWSTER], the Senator from Virginia [Mr. BYRD], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Arizona [Mr. HAYDEN], the Senator from Florida [Mr. HOLLAND], the Senator from Louisiana [Mr. LONG], the Senator from Connecticut [Mr. RIBICOFF], the Senator from Florida [Mr. SMATHERS], and the Senator from Alabama [Mr. SPARKMAN] are absent on official business.

I also announce that the Senator from West Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from North Carolina [Mr. ERVIN], the Senator from Alaska [Mr. GRUENING], the Senator from Alabama [Mr. HILL], the Senator from North Carolina [Mr. JORDAN], and the Senator from Ohio [Mr. YOUNG] are necessarily absent.

I further announce that the Senator from California [Mr. ENGLE] is absent because of illness.

Mr. KUCHEL. I announce that the Senator from Maryland [Mr. BEALL], the Senator from New Mexico [Mr. MECHEM], the Senator from Iowa [Mr. MILLER], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from Kansas [Mr. CARLSON] is absent on official business to attend the Kennedy roundtable agreement negotiations at Geneva.

The PRESIDING OFFICER (Mr. WALTERS in the chair). A quorum is present.

Morning business is in order.

Mr. MANSFIELD. Mr. President, is there an order for morning business?

The PRESIDING OFFICER. There is an order for morning business.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of executive business, to take up the nominations on the Executive Calendar under "New Reports."

The motion was agreed to; and the Senate proceeded to consider executive business.

The PRESIDING OFFICER. If there be no reports of committees, the nominations on the Executive Calendar, under "New Reports," will be stated.

TEMPORARY ALASKA CLAIMS COMMISSION

The Chief Clerk proceeded to read sundry nominations to the Temporary Alaska Claims Commission.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed.

Mr. MANSFIELD. I ask that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate return to legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

REPORT OF JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES—FEDERAL STOCKPILE INVENTORIES

Mr. BYRD of Virginia. Mr. President, as chairman of the Joint Committee on Reduction of Nonessential Expenditures, I submit a report on Federal stockpile inventories as of February 1964. I ask unanimous consent to have the report printed in the RECORD, together with a statement by me.

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

FEDERAL STOCKPILE INVENTORIES, FEBRUARY 1964

INTRODUCTION

This is the 51st in a series of monthly reports on Federal stockpile inventories. It is for the month of February 1964.

The report is compiled from official data on quantities and cost value of commodities in these stockpiles submitted to the Joint Committee on Reduction of Nonessential Federal Expenditures by the Departments of Agriculture, Defense, Health, Education, and Welfare, and Interior, and the General Services Administration.

The cost value of materials in inventories covered in this report, as of February 1, 1964, totaled $13,839,271,236, and as of February 29, 1964, they totaled $13,664,227,228, a net decrease of $175,044,008 during the month.

Different units of measure make it impossible to summarize the quantities of commodities and materials which are shown in tables 1, 2, 3, 4, and 5, but the cost value figures are summarized by major category, as follows:

Summary of cost value of stockpile inventories by major category

Major category	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month
Strategic and critical materials:			
National stockpile [1]	$5,745,501,600	$5,737,864,200	−$7,637,400
Defense Production Act	1,480,852,400	1,479,097,500	−1,754,900
Supplemental—Barter	1,356,779,689	1,359,304,909	+2,525,220
Total, strategic and critical materials [1]	8,583,133,689	8,576,266,609	−6,867,080
Agricultural commodities:			
Price-support inventory	4,820,644,910	4,651,250,647	−169,394,263
Inventory transferred from national stockpile [1]	112,236,173	110,319,277	−1,916,896
Total, agricultural commodities [1]	4,932,881,083	4,761,569,924	−171,311,159
Civil defense supplies and equipment:			
Civil defense stockpile, Department of Defense	11,877,626	11,874,512	−3,114
Civil defense medical stockpile, Department of Health, Education, and Welfare	194,673,360	195,182,396	+509,036
Total, civil defense supplies and equipment	206,550,986	207,056,908	+505,922
Machine tools:			
Defense Production Act	2,208,600	2,187,200	−21,400
National Industrial Reserve Act	90,171,700	89,981,200	−190,500
Total, machine tools	92,380,300	92,168,400	−211,900
Helium	24,325,178	27,165,387	+2,840,209
Total, all inventories	13,839,271,236	13,664,227,228	−175,044,008

[1] Cotton inventory valued at $128,409,100 withdrawn from the national stockpile and transferred to Commodity Credit Corporation for disposal, pursuant to Public Law 87-548, during August 1962.

Detailed tables in this report show each commodity, by the major categories summarized above, in terms of quantity and cost value as of the beginning and end of the month. Net change figures reflect acquisitions, disposals, and accounting and other adjustments during the month.

The cost value figures represent generally the original acquisition cost of the commodities delivered to permanent storage locations, together with certain packaging, processing, upgrading, et cetera, costs as carried in agency inventory accounts. Quantities are stated in the designated stockpile unit of measure.

Appendix A to this report, beginning on page 19, includes program descriptions and statutory citations pertinent to each stockpile inventory within the major categories.

The stockpile inventories covered by the report are tabulated in detail as follows:

Table 1: Strategic and critical materials inventories (all grades), February 1964 (showing by commodity net changes during the month in terms of cost value and quantity, and excesses over maximum objectives in terms of quantity as of the end of the month).

Table 2: Agricultural commodities inventories, February 1964 (showing by commodity net changes during the month in terms of cost value and quantity).

Table 3: Civil defense supplies and equipment inventories, February 1964 (showing by item net changes during the month in terms of cost value and quantity).

Table 4: Machine tools inventories, February 1964 (showing by item net changes during the month in terms of cost value and quantity).

Table 5: Helium inventories, February 1964 (showing by item net changes during the month in terms of cost value and quantity).

New stockpile objectives

The Office of Emergency Planning is in the process of establishing new objectives for strategic and critical materials. Table 1 of this report reflects the new objectives for 19 materials.

Appendix B, beginning on page 21, contains excerpts from the Office of Emergency Planning statement setting forth the new policy with respect to objectives for strategic and critical materials.

TABLE 1.—*Strategic and critical materials inventories (all grades), February 1964 (showing by commodity net changes during the month in terms of cost value and quantity, and excesses over maximum objectives in terms of quantity as of the end of the month)*

Commodity	Cost value			Quantity					
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Maximum objective [1]	Excess over maximum objective
Aluminum, metal:									
National stockpile	$487,680,600	$487,680,600		Short ton	1,128,898	1,128,989			
Defense Production Act	428,916,100	428,160,300	−$755,800	do	850,570	849,082	−1,488		
Total	916,596,700	915,840,900	−755,800	do	1,979,559	1,978,071	−1,488	[2] 450,000	1,528,071
Aluminum oxide, abrasive grain:									
Supplemental—barter	15,412,589	15,669,229	+256,640	Short dry ton	50,162	50,397	+235	(3)	50,397
Aluminum oxide, fused, crude:									
National stockpile	21,735,100	21,735,100		do	200,093	200,093			
Supplemental—barter	22,747,400	22,747,400		do	178,266	178,266			
Total	44,482,500	44,482,500		do	378,359	378,359		200,000	178,359
Antimony:									
National stockpile	20,488,000	20,488,000		Short ton	30,301	30,276	−25		
Supplemental—barter	12,905,282	13,026,670	+121,388	do	21,979	22,078	+99		
Total	33,393,282	33,514,670	+121,388	do	52,280	52,354	+74	70,000	(4)
Asbestos, amosite:									
National stockpile	2,637,600	2,637,600		do	11,703	11,705			
Supplemental—barter	7,585,946	8,104,443	+518,497	do	30,683	32,184	+1,501		
Total	10,223,546	10,742,043	+518,497	do	42,388	43,889	+1,501	45,000	(4)
Asbestos, chrysotile:									
National stockpile	3,356,200	3,356,200		Short dry ton	6,224	6,224			
Defense Production Act	2,102,600	2,102,600		do	2,348	2,348			
Supplemental—barter	4,475,065	4,727,329	+252,264	do	6,645	7,049	+404		
Total	9,933,865	10,186,129	+252,264	do	15,217	15,621	+404	11,000	4,621
Asbestos, crocidolite:									
National stockpile	702,100	702,100		Short ton	1,567	1,567			
Supplemental—barter	8,282,083	8,832,386	+550,303	do	31,611	33,606	+1,995		
Total	8,984,183	9,534,486	+550,303	do	33,178	35,173	+1,995	(3)	35,173
Bauxite, metal grade, Jamaica type:									
National stockpile	13,925,000	13,925,000		Long dry ton	879,740	879,740			
Defense Production Act	18,168,000	18,168,000		do	1,370,077	1,370,077			
Supplemental—barter	89,399,100	89,402,800	+3,700	do	5,780,590	5,780,590			
Total	121,492,100	121,495,800	+3,700	do	8,030,407	8,030,407		2,600,000	5,430,407

See footnotes at end of table.

TABLE 1.—*Strategic and critical materials inventories (all grades), February 1964 (showing by commodity net changes during the month in terms of cost value and quantity, and excesses over maximum objectives in terms of quantity as of the end of the month)*—Continued

Commodity	Cost value			Quantity					
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Maximum objective [1]	Excess over maximum objective
Bauxite, metal grade, Surinam type:									
National stockpile	$78,552,500	$78,552,500		Long dry ton	4,962,706	4,962,706			
Supplemental—barter	45,280,400	45,280,400		do	2,927,260	2,927,260			
Total	123,832,900	123,832,900		do	7,889,966	7,889,966		6,400,000	1,489,966
Bauxite, refractory grade:									
National stockpile	11,347,800	11,347,800		Long calcined ton.	299,279	299,279		137,000	162,279
Beryl:									
National stockpile	9,768,400	9,768,400		Short ton	23,230	23,230			
Defense Production Act	1,425,800	1,425,800		do	2,543	2,543			
Supplemental—barter	22,761,530	22,847,715	+$86,185	do	11,387	11,652	+265		
Total	33,955,730	34,041,915	+86,185	do	37,160	37,425	+265	[2] 28,000	9,425
Beryllium metal:									
Supplemental—barter	18,457,095	18,480,200	+23,105	do	153	153		[3]	153
Bismuth:									
National stockpile	2,674,300	2,674,300		Pound	1,342,402	1,342,402			
Defense Production Act	52,400	52,400		do	22,901	22,901			
Supplemental—barter	5,540,200	5,540,200		do	2,506,493	2,506,493			
Total	8,266,900	8,266,900		do	3,871,796	3,871,796		3,000,000	871,796
Cadmium:									
National stockpile	15,965,800	16,748,600	−217,200	do	8,132,807	8,012,934	−119,873		
Supplemental—barter	12,327,600	12,327,600		do	7,448,989	7,448,989			
Total	28,293,400	28,076,200	−217,200	do	15,581,796	15,461,923	−119,873	[2] 5,100,000	10,361,923
Castor oil:									
National stockpile	49,934,200	49,655,000	−279,200	do	195,823,934	194,708,114	−1,115,820	[2] 22,000,000	172,708,114
Celestite:									
National stockpile	1,412,300	1,412,300		Short dry ton	28,816	28,816			
Supplemental—barter	356,089	386,932	+30,843	do	9,015	9,012	−3		
Total	1,768,389	1,799,232	+30,843	do	37,831	37,828	−3	22,000	15,828
Chromite, chemical grade:									
National stockpile	12,288,000	12,288,000		do	559,452	559,452			
Supplemental—barter	21,879,400	21,896,300	+16,900	do	699,647	699,644	−3		
Total	34,167,400	34,184,300	+16,900	do	1,259,099	1,259,096	−3	475,000	784,096
Chromite, metallurgical grade:									
National stockpile	264,565,500	264,565,500		do	3,795,292	3,795,292			
Defense Production Act	35,879,900	35,879,900		do	985,646	985,646			
Supplemental—barter	224,197,600	224,197,600		do	1,543,110	1,543,110			
Total	524,643,000	524,643,000		do	6,324,048	6,324,048		[2] 2,970,000	3,354,048
Chromite, refractory grade:									
National stockpile	25,149,300	25,149,300		do	1,047,159	1,047,159			
Supplemental—barter	5,039,000	5,039,000		do	179,775	179,775			
Total	30,188,300	30,188,300		do	1,226,934	1,226,934		1,300,000	[4]
Cobalt:									
National stockpile	169,205,200	169,205,200		Pound	76,067,613	76,067,613			
Defense Production Act	52,075,300	52,075,300		do	25,066,651	25,066,651			
Supplemental—barter	2,169,000	2,169,000		do	1,065,398	1,065,398			
Total	223,449,500	223,449,500		do	102,199,662	102,199,662		19,000,000	85,199,662
Coconut oil:									
National stockpile	7,015,400	6,899,300	−116,100	do	46,286,368	45,520,236	−766,132	[3]	45,520,236
Colemanite:									
Supplemental—barter	2,636,400	2,636,400		Long dry ton	67,636	67,636		[3]	67,636
Columbium:									
National stockpile	23,919,200	23,644,100	−275,100	Pound	7,507,959	7,278,288	−229,671		
Defense Production Act	50,238,900	50,238,900		do	8,222,684	7,966,341	−256,343		
Supplemental—barter	799,100	799,100		do	388,877	371,426	−17,451		
Total	74,957,200	74,682,100	−275,100	do	16,119,520	15,616,055	−503,465	1,900,000	13,716,055
Copper:									
National stockpile	523,264,500	523,447,800	+183,300	Short ton	1,008,251	1,008,091	−160		
Defense Production Act	56,491,400	56,025,900	−465,500	do	101,131	100,350	−781		
Supplemental—barter	8,255,300	8,252,100	−3,200	do	12,382	12,382			
Total	588,011,200	587,725,800	−285,400	do	1,121,764	1,120,823	−941	[2] 775,000	345,823
Cordage fibers, abca:									
National stockpile	37,035,300	37,034,500	−800	Pound	146,935,286	146,934,136	−1,150	150,000,000	[4]
Cordage fibers, sisal:									
National stockpile	41,870,900	41,867,000	−3,900	do	309,598,347	309,561,908	−36,439	320,000,000	[4]
Corundum:									
National stockpile	393,100	393,100		Short ton	2,008	2,008		2,000	8
Cryolite:									
Defense Production Act	6,309,500	6,199,400	−110,100	do	22,849	22,450	−399	[3]	22,450
Diamond dies:									
National stockpile	522,400	523,000	+600	Piece	17,140	17,300	+190	25,000	[4]

See footnotes at end of table.

TABLE 1.—*Strategic and critical materials inventories (all grades), February 1964 (showing by commodity net changes during the month in terms of cost value and quantity, and excesses over maximum objectives in terms of quantity as of the end of the month)*—Continued

Commodity	Cost value			Quantity					
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Maximum objective [1]	Excess over maximum objective
Diamond, industrial, crushing bort:									
National stockpile	$61,609,500	$61,609,500		Carat	31,113,411	31,113,411			
Supplemental—barter	15,890,500	15,800,500		do	5,550,579	5,550,579			
Total	7,410,000	77,410,000		do	36,663,990	36,663,990		30,000,000	6,663,990
Diamond, industrial, stones:									
National stockpile	100,501,500	100,501,500		do	9,315,183	9,315,183			
Supplemental—barter	186,341,500	186,341,500		do	15,425,827	15,425,827			
Total	286,843,000	286,843,000		do	24,741,010	24,741,010		18,000,000	6,741,010
Diamond tools:									
National stockpile	1,015,400	1,015,400		Piece	64,178	64,178		[3]	64,178
Feathers and down:									
National stockpile	36,687,200	36,369,900	−$317,300	Pound	8,855,902	8,779,301	−76,601	[2] 3,000,000	5,799,301
Fluorspar, acid grade:									
National stockpile	26,167,500	26,167,500		Short dry ton	463,049	463,049			
Defense Production Act	1,394,400	1,394,400		do	19,700	19,700			
Supplemental—barter	33,530,700	33,530,700		do	673,232	673,232			
Total	61,092,600	61,092,600		do	1,155,981	1,155,981		[2] 540,000	615,981
Fluorspar, metallurgical grade:									
National stockpile	17,332,400	17,332,400		do	369,443	369,443			
Supplemental—barter	1,508,100	1,508,100		do	42,800	42,800			
Total	18,840,500	18,840,500		do	412,243	412,243		[2] 850,000	[4]
Graphite, natural, Ceylon, amorphous lump:									
National stockpile	937,900	937,900		do	4,455	4,455			
Supplemental—barter	341,200	341,200		do	1,428	1,428			
Total	1,279,100	1,279,100		do	5,883	5,883		3,600	2,283
Graphite, natural, Madagascar, crystalline:									
National stockpile	6,974,660	6,946,200	−28,400	do	33,836	33,698	−138		
Supplemental—barter	232,000	236,300	+4,300	do	1,907	1,908	+1		
Total	7,106,600	7,183,500	−24,100	do	35,743	35,606	−137	17,200	18,406
Graphite, natural, other, crystalline:									
National stockpile	1,896,300	1,896,300		do	5,487	5,487		2,100	3,387
Hyoscine:									
National stockpile	30,600	30,600		Ounce	2,100	2,100		2,100	[4]
Iodine:									
National stockpile	4,082,000	4,082,000		Pound	2,977,648	2,970,811	−6,837		
Supplemental—barter	1,066,000	1,066,000		do	994,920	983,470	−11,450		
Total	5,148,000	5,148,000		do	3,972,568	3,954,281	−18,287	4,300,000	[4]
Iridium:									
National stockpile	2,525,800	2,525,800		Troy ounce	13,937	13,937		4,000	9,937
Jewel bearings:									
National stockpile	4,137,600	4,154,900	+17,300	Piece	51,727,565	51,845,565	+118,000	57,500,000	[4]
Kyanite-mullite:									
National stockpile	773,200	773,200		Short dry ton	8,943	8,943		4,800	4,143
Lead:									
National stockpile	319,298,100	319,298,100		Short ton	1,050,370	1,050,370			
Defense Production Act	612,700	224,800	−387,900	do	1,601	588	−1,013		
Supplemental—barter	78,398,600	78,398,600		do	327,998	327,998			
Total	398,309,400	397,921,500	−387,900	do	1,379,969	1,378,956	−1,013	[2] 0	1,378,956
Magnesium:									
National stockpile	128,117,000	127,944,500	−172,500	do	176,477	176,239	−238	[2] 145,000	31,239
Manganese, battery grade, natural ore:									
National stockpile	21,025,500	21,025,500		do	144,485	144,485			
Supplemental—barter	13,621,900	13,621,900		do	137,671	137,671			
Total	3 ,647,400	34,647,400		do	282,156	282,156		50,000	232,156
Manganese, battery grade, synthetic dioxide:									
National stockpile	3,095,500	3,095,500		Short dry ton	21,272	21,272			
Defense Production Act	2,524,700	2,524,700		do	3,779	3,779			
Total	5,620,200	5,620,200		do	25,051	25,051		20,000	5,051
Manganese, chemical grade, type A:									
National stockpile	2,133,300	2,133,300		do	29,307	29,307			
Supplemental—barter	7,922,100	7,922,100		do	117,607	117,607			
Total	10,055,400	10,055,400		do	146,914	146,914		30,000	116,914
Manganese, chemical grade, type B:									
National stockpile	132,600	132,600		do	1,822	1,822			
Supplemental—barter	6,669,800	6,669,800		do	99,016	99,016			
Total	6,802,400	6,802,400		do	100,838	100,838		53,000	47,838

See footnotes at end of table.

TABLE 1.—*Strategic and critical materials inventories (all grades), February 1964 (showing by commodity net changes during the month in terms of cost value and quantity, and excesses over maximum objectives in terms of quantity as of the end of the month)*—Continued

Commodity	Cost value			Quantity					
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Maximum objective [1]	Excess over maximum objective
Manganese, metallurgical grade:									
National stockpile	$248,240,300	$248,240,300		Short dry ton	5,851,264	5,851,264			
Defense Production Act	176,474,800	176,474,800		do	3,056,691	3,056,691			
Supplemental—barter	241,824,760	242,353,367	+$528,607	do	3,671,854	3,673,846	+1,992		
Total	666,539,860	667,068,467	+528,607	do	12,579,809	12,581,801	+1,992	6,800,000	5,781,801
Mercury:									
National stockpile	21,164,900	22,051,700	[5] +886,800	Flask	132,525	139,525	[5] +7,000		
Supplemental—barter	3,446,200	3,446,200		do	16,000	16,000			
Total	24,611,100	25,497,900	+886,800	do	148,525	155,525	+7,000	[2] 200,000	[4]
Mica, muscovite block:									
National stockpile	27,602,200	27,602,200		Pound	11,617,756	11,621,325	+3,569		
Defense Production Act	40,746,400	40,746,400		do	6,446,722	6,446,722			
Supplemental—barter	5,639,010	5,762,174	+123,164	do	1,683,305	1,718,476	+35,171		
Total	73,987,610	74,110,774	+123,164	do	19,747,783	19,786,523	+38,740	8,300,000	11,486,523
Mica, muscovite film:									
National stockpile	9,058,100	9,058,100		do	1,724,327	1,720,758	−3,569		
Defense Production Act	633,300	633,300		do	102,681	102,681			
Supplemental—barter	1,105,010	1,122,402	+17,392	do	113,060	114,825	+1,765		
Total	10,796,410	10,813,802	+17,392	do	1,940,068	1,938,264	−1,804	1,300,000	638,264
Mica, muscovite splittings:									
National stockpile	40,598,300	40,498,300		do	40,159,938	40,159,938			
Supplemental—barter	6,225,800	6,225,800		do	4,826,257	4,826,257			
Total	46,824,100	46,824,100		do	44,986,195	44,986,195		21,200,000	23,786,195
Mica, phlogopite block:									
National stockpile	303,600	303,600		do	223,239	223,239		17,000	206,239
Mica, phlogopite splittings:									
National stockpile	2,580,500	2,580,500		do	3,079,062	3,079,062			
Supplemental—barter	2,400,100	2,418,600	+18,500	do	1,986,903	1,986,902	−1		
Total	4,980,600	4,999,100	+18,500	do	5,065,965	5,065,964	−1	1,700,000	3,365,964
Molybdenum:									
National stockpile	83,679,000	83,679,000		do	79,043,336	79,043,336		[2] 68,000,000	11,043,336
Nickel:									
National stockpile	181,941,300	181,919,200	−22,100	Short ton	167,079	167,045	−34		
Defense Production Act	100,344,300	100,344,300		do	52,489	52,489			
Total	282,285,600	282,263,500	−22,100	do	219,568	219,534	−34	[2] 50,000	169,534
Opium:									
National stockpile	13,661,700	13,661,700		Pound	195,757	195,757		[2] 141,280	50,477
Palladium:									
National stockpile	2,079,000	2,079,000		Troy ounce	89,811	89,811			
Supplemental—barter	12,170,200	12,170,200		do	648,124	648,124			
Total	14,249,200	14,249,200		do	737,935	737,935		340,000	397,935
Palm oil:									
National stockpile	3,714,900	3,560,200	−154,700	Pound	20,641,287	19,781,167	−860,120	[3]	19,781,167
Platinum:									
National stockpile	56,879,900	56,879,900		Troy ounce	716,343	716,343			
Supplemental—barter	4,024,500	4,024,500		do	49,999	49,999			
Total	60,904,400	60,904,400		do	766,342	766,342		165,000	601,342
Pyrethrum:									
National stockpile	415,100	415,100		Pound	67,065	67,065		66,000	1,065
Quartz crystals:									
National stockpile	68,013,700	68,013,700		do	5,513,775	5,513,775			
Supplemental—barter	3,519,200	3,519,200		do	232,352	232,352			
Total	71,532,900	71,532,900		do	5,746,127	5,746,127		650,000	5,096,127
Quinidine:									
National stockpile	1,889,900	1,889,900		Ounce	1,638,428	1,638,428		1,600,000	38,428
Quinine:									
National stockpile	3,402,500	3,402,500		do	5,379,732	5,379,732		[3]	5,379,732
Rare earths:									
National stockpile	7,134,900	7,134,900		Short dry ton	10,042	10,042			
Supplemental—barter	5,818,009	5,826,900	+8,891	do	6,163	5,874	−289		
Total	12,952,909	12,961,800	+8,891	do	16,205	15,916	−289	5,700	10,216
Rare earths residue:									
Defense Production Act	657,800	657,800		Pound	6,085,311	6,085,311		[3]	6,085,311
Rhodium:									
National stockpile	78,200	78,200		Troy ounce	618	618		[3]	618
Rubber:									
National stockpile	733,044,800	728,231,500	−4,813,300	Long ton	948,243	941,915	−6,328	750,000	191,915
Ruthenium:									
Supplemental—barter	559,500	559,500		Troy ounce	15,001	15,001		[3]	15,001

See footnotes at end of table.

TABLE 1.—*Strategic and critical materials inventories (all grades), February 1964 (showing by commodity net changes during the month in terms of cost value and quantity, and excesses over maximum objectives in terms of quantity as of the end of the month)*—Continued

Commodity	Cost value			Quantity					
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Maximum objective [1]	Excess over maximum objective
Rutile:									
National stockpile	$2,070,100	$2,070,100		Short dry ton	18,599	18,599			
Defense Production Act	2,725,100	2,725,100		do	17,410	17,410			
Supplemental—barter	1,061,300	1,061,300		do	11,632	11,632			
Total	5,856,500	5,856,500		do	47,641	47,641		65,000	[4]
Sapphire and ruby:									
National stockpile	190,000	190,000		Carat	16,187,500	16,187,500		18,000,000	[4]
Selenium:									
National stockpile	757,100	757,100		Pound	97,100	97,100			
Supplemental—barter	1,515,831	1,515,794	−$37	do	272,502	272,502			
Total	2,272,931	2,272,894	−37	do	369,602	369,602		400,000	[4]
Shellac:									
National stockpile	8,430,100	8,413,700	−16,400	do	16,815,131	16,782,495	−32,636	[2] 8,300,000	8,482,495
Silicon carbide, crude:									
National stockpile	11,394,500	11,394,500		Short ton	64,697	64,697			
Supplemental—barter	26,803,600	26,803,600		do	131,805	131,805			
Total	38,198,100	38,198,100		do	196,502	196,502		100,000	96,502
Silk noils and waste:									
National stockpile	1,272,100	1,272,100		Pound	1,005,344	1,005,344		970,000	35,344
Silk, raw:									
National stockpile	486,600	486,600		do	113,515	113,515		120,000	[4]
Sperm oil:									
National stockpile	4,775,400	4,775,400		do	23,442,158	23,442,158		[2] 23,400,000	42,158
Talc, steatite block and lump:									
National stockpile	496,800	496,800		Short ton	1,274	1,274		300	974
Talc, steatite ground:									
National stockpile	231,200	231,200		do	3,901	3,901		[3]	3,901
Tantalum:									
National stockpile	10,992,700	11,267,800	+275,100	Pound	3,445,451	3,446,919	+1,468		
Defense Production Act	9,734,400	9,734,400		do	1,530,567	1,536,023	+5,456		
Supplemental—barter	21,100	21,100		do	8,036	8,036			
Total	20,748,200	21,023,300	+275,100	do	4,984,054	4,990,978	+6,924	2,420,000	2,570,978
Thorium:									
Defense Production Act	42,000	42,000		do	848,354	848,354			
Supplemental—barter	17,965,490	17,933,268	−32,222	do	8,620,525	8,602,375	−18,150		
Total	18,007,490	17,975,268	−32,222	do	9,468,879	9,450,729	−18,150	[3]	9,450,729
Tin:									
National stockpile	798,371,900	795,932,800	−2,439,100	Long ton	328,342	327,355	−987		
Supplemental—barter	16,404,000	16,404,000		do	7,505	7,505			
Total	814,775,900	812,336,800	−2,439,100	do	335,847	334,860	−987	[2] 200,000	134,860
Titanium:									
Defense Production Act	176,098,200	176,062,600	−35,600	Short ton	22,371	22,366	−5		
Supplemental—barter	32,097,700	32,097,700		do	9,021	9,021			
Total	208,195,900	208,160,300	−35,600	do	31,392	31,387	−5	[3]	31,387
Tungsten:									
National stockpile	369,128,200	369,128,200		Pound	120,071,339	120,071,094	−245		
Defense Production Act	317,204,400	317,204,400		do	77,787,101	77,787,101			
Supplemental—barter	18,651,400	18,651,400		do	5,774,827	5,774,827			
Total	704,984,000	704,984,000		do	203,633,267	203,633,022	−245	50,000,000	153,633,022
Vanadium:									
National stockpile	31,567,900	31,567,900		do	15,730,893	15,730,893		2,000,000	13,730,893
Vegetable tannin extract, chestnut:									
National stockpile	11,890,900	11,835,100	−55,800	Long ton	42,620	42,420	−200	30,000	12,420
Vegetable tannin extract, quebracho:									
National stockpile	49,070,700	49,008,700	−62,000	do	198,327	198,076	−251	180,000	18,076
Vegetable tannin extract, wattle:									
National stockpile	9,826,900	9,826,900		do	38,962	38,962		39,000	[4]
Zinc:									
National stockpile	364,345,900	364,319,300	−26,600	Short ton	1,256,845	1,256,776	−69		
Supplemental—barter	79,588,400	79,588,400		do	323,896	323,896			
Total	443,934,300	443,907,700	−26,600	do	1,580,741	1,580,672	−69	[2] 0	1,580,672
Zirconium ore, baddeleyite:									
National stockpile	710,600	710,600		Short dry ton	16,533	16,533		[3]	16,533
Zirconium ore, zircon:									
National stockpile	127,000	127,000		do	2,152	2,152		[3]	2,152
Total:									
National stockpile	5,745,501,600	5,737,864,200	−7,627,400						
Defense Production Act	1,480,852,400	1,479,097,500	−1,754,900						
Supplemental—barter	1,356,779,689	1,359,304,909	+2,525,220						
Total, strategic and critical materials	8,583,133,689	8,576,266,609	−6,867,080						

[1] Maximum objectives for strategic and critical materials are determined pursuant to the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98–98h). The Office of Emergency Planning is currently in the process of revising stockpile objectives. (See app. B, p. 10050.)

[2] New objective. (See app. B, p. 10050.)

[3] No present objective.

[4] Not in excess of maximum objective.

[5] Represents transfer of surplus material from the Atomic Energy Commission, pursuant to the provisions of 50 U.S.C. 98(e)(a).

Source: Compiled from report submitted by the General Services Administration and the Department of Agriculture.

TABLE 2.—*Agricultural commodities inventories, February 1964 (showing by commodity net changes during the month in terms of cost value and quantity)*

Commodity	Cost value			Quantity			
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month
Price-support inventory:							
Basic commodities:							
Corn	$1,016,907,227	$983,429,239	−$33,477,988	Bushel	825,324,743	798,137,165	−27,187,578
Cotton, extra-long staple	9,810,963	9,810,740	−223	Bale	37,068	37,068	
Cotton, upland	929,604,996	888,762,150	−40,842,846	do	5,623,901	5,374,922	−248,979
Peanuts, farmers' stock	10,289	11,662	+1,373	Pound	87,969	101,904	+13,935
Peanuts, shelled	10,351,279	11,353,708	+1,002,429	do	61,390,163	67,928,733	+6,538,570
Rice, milled	225,135	137,448	−87,687	Hundredweight	23,615	14,805	−8,810
Rice, rough	7,899,895	7,441,728	−458,167	do	1,484,591	1,400,577	−84,014
Wheat	1,901,173,623	1,840,918,476	−60,255,147	Bushel	947,038,282	915,950,871	−31,087,411
Bulgur	174,732	172,909	−1,823	Pound	3,181,444	3,147,600	−33,844
Total, basic commodities	3,876,158,139	3,742,038,060	−134,120,079				
Designated nonbasic commodities:							
Barley	34,423,085	31,103,423	−3,319,662	Bushel	38,487,536	34,214,476	−4,273,060
Grain sorghum	630,930,219	618,668,008	−12,262,211	do	566,166,341	553,337,409	−12,828,932
Milk and butterfat:							
Butter	105,629,393	101,066,100	−4,563,293	Pound	181,916,133	174,029,187	−7,886,946
Butter oil	60,219,343	52,073,709	−8,145,634	do	77,345,353	67,256,889	−10,088,464
Cheese	15,101,581	11,835,345	−3,266,236	do	39,555,044	30,832,331	−8,722,713
Ghee	2,154,697	3,330,075	+1,175,378	do	2,773,631	4,292,093	+1,518,462
Milk, dried	73,455,488	69,584,421	−3,871,067	do	500,417,124	473,238,343	−27,178,781
Oats	11,237,280	11,217,472	−19,808	Bushel	18,701,761	18,667,334	−34,427
Rye	845,840	841,441	−4,399	do	825,026	820,719	−4,307
Total, designated nonbasic commodities	933,996,926	899,719,994	−34,276,932				
Other nonbasic commodities:							
Beans, dry, edible	636,328	320,515	−315,813	Hundredweight	80,446	44,074	−36,372
Cottonseed oil, refined, other		55,696	+55,696	Pound		578,660	+578,660
Cottonseed oil, refined, salad oil [1]	338,844	195,775	−143,069	do	1,970,917	1,141,443	−829,474
Flaxseed	8,298,988	8,133,688	−165,300	Bushel	2,823,053	2,766,938	−56,115
Soybeans	483,682	239,360	−244,322	do	218,502	108,780	−109,722
Vegetable oil products	732,003	547,559	−184,444	Pound	4,498,467	3,459,378	−1,039,089
Total, other nonbasic commodities	10,489,845	9,492,593	−997,252				
Total, price support inventory	4,820,644,910	4,651,250,647	−169,394,263				
Inventory transferred from national stockpile: [2]							
Cotton, Egyptian	88,657,945	86,741,049	−1,916,896	Bale	104,943	102,674	−2,269
Cotton, American-Egyptian	23,578,228	23,578,228		do	46,878	46,878	
Total, inventory transferred from national stockpile	112,236,173	110,319,277	−1,916,896	do	151,821	149,552	−2,269
Total, agricultural commodities	4,932,881,083	4,761,569,924	−171,311,159				

[1] Reported as "cottonseed oil, refined," prior to February 1964.
[2] Transferred from General Services Administration pursuant to Public Law 85-96 and Public Law 87-548. (See app. A, p. 10049.)

Source: Compiled from reports submitted by the Department of Agriculture.

TABLE 3.—*Civil defense supplies and equipment inventories, February 1964 (showing by item net changes during the month in terms of cost value and quantity)*

Item	Cost value			Quantity			
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month
Civil defense stockpile, Department of Defense:							
Engineering equipment (engine generators, pumps, chlorinators, purifiers, pipe, and fittings).	$10,075,570	$10,072,456	−$3,114	10 mile units	45	45	
Chemical and biological equipment	1,802,056	1,802,056		(1)			
Total	11,877,626	11,874,512	−3,114				
Civil defense medical stockpile, Department of Health, Education, and Welfare:							
Medical bulk stocks, and associated items at civil defense mobilization warehouses.	141,086,585	141,576,248	+489,663	(1)			
Medical bulk stock at manufacturer locations	5,327,314	5,324,343	−2,971	(1)			
Civil defense emergency hospitals	37,322,911	37,345,255	+22,344	Each	1,930	1,930	
Replenishment units (functional assemblies other than hospitals).	12,136	12,136		(1)			
Supply additions (for civil defense emergency hospitals).	10,924,414	10,924,414		(1)			
Total	194,673,360	195,182,396	+509,036				
Total, civil defense supplies and equipment	206,550,986	207,056,908	+505,922				

[1] Composite group of many different items.

Source: Compiled from reports submitted by the Department of Defense and the Department of Health, Education, and Welfare.

TABLE 4.—*Machine tools inventories, February 1964 (showing by item net changes during the month in terms of cost value and quantity)*

Item	Cost value			Quantity			
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month
Defense Production Act:							
In storage	$21,400		−$21,400	Tool	7		−7
On lease	2,144,300	$2,144,300		do	103	103	
On loan	42,900	42,900		do	7	7	
Total	2,208,600	2,187,200	−21,400	do	117	110	−7
National Industrial Reserve Act:							
In storage	77,918,100	77,643,900	−274,200	do	6,917	6,909	−8
On lease	27,500	27,500		do	1	1	
On loan to other agencies	2,820,600	2,914,800	+94,200	do	328	338	+10
On loan to school programs	9,405,500	9,395,000	−10,500	do	2,219	2,218	−1
Total	90,171,700	89,981,200	−190,500	do	9,465	9,466	+1
Total, machine tools	92,380,300	92,168,400	−211,900	do	9,582	9,576	−6

Source: Compiled from reports submitted by the General Services Administration.

TABLE 5.—*Helium inventories, February 1964 (showing by item net changes during the month in terms of cost value and quantity)*

Item	Cost value			Quantity			
	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month	Unit of measure	Beginning of month, Feb. 1, 1964	End of month, Feb. 29, 1964	Net change during month
Helium:							
Stored aboveground	$253,604	$216,266	−$37,338	Cubic foot	22,400,000	19,300,000	−3,100,000
Stored underground	24,071,574	26,949,121	+2,877,547	do	2,410,800,000	2,673,000,000	+262,200,000
Total, helium	24,325,178	27,165,387	+2,840,209	do	2,433,200,000	2,692,300,000	+259,100,000

Source: Compiled from reports submitted by the Department of the Interior.

APPENDIX A—PROGRAM DESCRIPTIONS AND STATUTORY CITATIONS

STRATEGIC AND CRITICAL MATERIALS

National stockpile

The Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98–98h) provides for the establishment and maintenance of a national stockpile of strategic and critical materials. The General Services Administration is responsible for making purchases of strategic and critical materials and providing for their storage, security, and maintenance. These functions are performed in accordance with directives issued by the Director of the Office of Emergency Planning. The act also provides for the transfer from other Government agencies of strategic and critical materials which are excess to the needs of such other agencies and are required to meet the stockpile objectives established by OEP. In addition, the General Services Administration is responsible for disposing of those strategic and critical materials which OEP determines to be no longer needed for stockpile purposes.

General policies for strategic and critical materials stockpiling are contained in DMO V–7, issued by the Director of the Office of Emergency Planning and published in the Federal Register for December 19, 1959 (24 F.R. 10309). Portions of this order relate also to Defense Production Act inventories.

Defense Production Act

Under section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and Executive Order 10480, as amended, the General Services Administration is authorized to make purchases of or commitments to purchase metals, minerals, and other materials, for Government use or resale, in order to expand productive capacity and supply, and also to store the materials acquired as a result of such purchases or commitments. Such functions are carried out in accordance with programs certified by the Director of the Office of Emergency Planning.

Supplemental—barter

As a result of a delegation of authority from OEP (32A C.F.R., ch. I, DMO V–4) the General Services Administration is responsible for the maintenance and storage of materials placed in the supplemental stockpile. Section 206 of the Agricultural Act of 1956 (7 U.S.C. 1856) provides that strategic and other materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural products, unless acquired for the national stockpile or for other purposes, shall be transferred to the supplemental stockpile established by section 104 (b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1704(b)). In addition to the materials which have been or may be so acquired, the materials obtained under the programs established pursuant to the Domestic Tungsten, Asbestos, Fluorspar, and Columbium-Tantalum Production and Purchase Act of 1956 (50 U.S.C. App. 2191–2195), which terminated December 31, 1958, have been transferred to the supplemental stockpile, as authorized by the provisions of said Production and Purchase Act.

AGRICULTURAL COMMODITIES

The price-support program

Price-support operations are carried out under the charter powers (15 U.S.C. 714) of the Commodity Credit Corporation, Department of Agriculture, in conformity with the Agricultural Act of 1949 (7 U.S.C. 1421), the Agricultural Act of 1954 (7 U.S.C. 1741), which includes the National Wool Act of 1954, the Agricultural Act of 1956 (7 U.S.C. 1442), the Agricultural Act of 1958 and with respect to certain types of tobacco, in conformity with the act of July 28, 1945, as amended (7 U.S.C. 1312). Under the Agricultural Act of 1949, price support is mandatory for the basic commodities—corn, cotton, wheat, rice, peanuts, and tobacco—and specific nonbasic commodities; namely, tung nuts, honey, milk, butterfat, and the products of milk and butterfat. Under the Agricultural Act of 1958, as producers of corn voted in favor of the new price-support program for corn authorized by that act, price support is mandatory for barley, oats, rye, and grain sorghums. Price support for wool and mohair is mandatory under the National Wool Act of 1954, through the marketing year ending March 31, 1966. Price support for other nonbasic agricultural commodities is discretionary except that, whenever the price of either cottonseed or soybeans is supported, the price of the other must be supported at such level as the Secretary determines will cause them to compete on equal terms on the market. This program may also include operations to remove and dispose of or aid in the removal or disposition of surplus agricultural commodities for the purpose of stabilizing prices at levels not in excess of permissible price-support levels.

Price support is made available through loans, purchase agreements, purchases, and other operations, and, in the case of wool and mohair, through incentive payments based on marketings. The producers' commodities serve as collateral for price-support loans. With limited exceptions, price-support loans are nonrecourse and the Corporation looks only to the pledged or mortgage collateral for satisfaction of the loan. Purchase agreements generally are available during the same period that loans are available. By signing a purchase agreement, a producer receives an option to sell to the Corporation any quantity of the commodity which he may elect within the maximum specified in the agreement.

The major effect on budgetary expenditures is represented by the disbursements for price-support loans. The largest part of the commodity acquisitions under the program result from the forfeiting of commodities pledged as loan collateral for which the expenditures occurred at the time of making the loan, rather than at the time of acquiring the commodities.

Dispositions of commodities acquired by the Corporation in its price-support operations are made in compliance with sections 202, 407, and 416 of the Agricultural Act of 1949, and other applicable legislation, particularly the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691), title I of the Agricultural Act of 1954, title II of the Agricultural Act of 1956, the Agricultural Act of 1958, the act of August 19, 1958, in the case of cornmeal and wheat flour, and the act of September 21, 1959, with regard to sales of livestock feed in emergency areas.

Inventory transferred from national stockpile

This inventory, all cotton, was transferred to Commodity Credit Corporation at no cost from the national stockpile pursuant to Public Law 85–96 and Public Law 87–548. The proceeds from sales, less costs incurred by CCC, are covered into the Treasury as miscellaneous recipts; therefore, such proceeds and costs are not recorded in the operating accounts. The cost value as shown for this cotton has been computed on the basis of average per bale cost of each type of cotton when purchased by CCC for the national stockpile.

CIVIL DEFENSE SUPPLIES AND EQUIPMENT

Civil defense stockpile

The Department of Defense conducts this stockpiling program pursuant to section 201 (h) of Public Law 920, 81st Congress, as amended. The program is designed to provide some of the most essential materials to minimize the effects upon the civilian population which would be caused by an attack upon the United States. Supplies and equipment normally unavailable, or lacking in quantity needed to cope with such conditions, are stockpiled at strategic locations in a nationwide warehouse system consisting of general storage facilities.

Civil defense medical stockpile

The Department of Health, Education, and Welfare conducts the stockpiling program for medical supplies and equipment pursuant to section 201(h) of Public Law 920, 81st Congress, as delegated by the President following the intent of Reorganization Plan No. 1, 1958. The Department of Health, Education, and Welfare plans and directs the procurement, storage, maintenance, inspection, survey, distribution, and utilization of essential supplies and equipment for emergency health services. The medical stockpile includes a program designed to preposition assembled emergency hospitals and other medical supplies and equipment into communities throughout the Nation.

MACHINE TOOLS

Defense Production Act

Under section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and Executive Order 10480, as amended, the General Services Administration has acquired machine tools in furtherance of expansion of productive capacity, in accordance with programs certified by the Director of the Office of Emergency Planning.

National industrial equipment reserve

Under general policies established and directives issued by the Secretary of Defense, the General Services Administration is responsible for care, maintenance, utilization, transfer, leasing, lending to nonprofit schools, disposal, transportation, repair, restoration, and renovation of national industrial reserve equipment transferred to GSA under the National Industrial Reserve Act of 1948 (50 U.S.C. 451–462).

HELIUM

The helium conservation program is conducted by the Department of the Interior pursuant to the Helium Act, approved September 13, 1960 (Public Law 86–777; 74 Stat. 918; 50 U.S.C. 167) and subsequent appropriations acts which have established fiscal limitations and provided borrowing authority for the program. Among other things, the Helium Act authorizes the Secretary of the Interior to produce helium in Government plants, to acquire helium from private plants, to sell helium to meet current demands, and to store for future use helium that is so produced or acquired in excess of that required to meet current demands. Sales of helium by the Secretary of the Interior shall be at prices established by him which shall be adequate to liquidate the costs of the program within 25 years, except that this period may be extended by the Secretary for not more than 10 years for funds borrowed for purposes other than the acquisition and construction of helium plants and facilities.

This report covers helium that is produced in Government plants and acquired from private plants. Helium in excess of current demands is stored in the Cliffside gasfield near Amarillo, Tex. The unit of measure is cubic foot at 14.7 pounds per square inch absolute pressure and 70° F.

APPENDIX B—NEW STOCKPILE OBJECTIVES

The Office of Emergency Planning is in the process of establishing new objectives for strategic and critical materials. Table 1 of this report reflects the new objectives for 19 materials: aluminum, beryl, cadmium, castor oil, chromite (metallurgical grade), copper, feathers and down, fluorspar (acid grade), fluorspar (metallurgical grade), lead, magnesium, mercury, molybdenum, nickel, opium, shellac, sperm oil, tin, and zinc.

The following excerpts from OEP statements dated July 11 and 19, 1963, and February 28, 1964, set forth the new policy with respect to objectives for strategic and critical materials:

"The Office of Emergency Planning is now conducting supply-requirements studies for all stockpile materials which will reflect current military, industrial, and other essential needs in the event of a conventional war emergency. On the basis of recently completed supply-requirements studies for the foregoing materials, the new stockpile objectives were established with the advice and assistance of the Interdepartmental Materials Advisory Committee, a group chaired by the Office of Emergency Planning and composed of representatives of the Departments of State, Defense, the Interior, Agriculture, Commerce, and Labor, and the General Services Administration, the Agency for International Development, and the National Aeronautics and Space Administration. Representatives of the Bureau of the Budget, the Atomic Energy Commission, and the Small Business Administration participate as observers.

"These new objectives reflect a new policy to establish a single objective for each stockpile material. They have been determined on the basis of criteria heretofore used in establishing maximum objectives, and reflect the approximate calculated emergency deficits for the materials for conventional war and do not have any arbitrary adjustments for possible increased requirements for other types of emergency.

"Heretofore, there was a 'basic objective' and a 'maximum objective' for each material. The basic objectives assumed some continued reliance on foreign sources of supply in an emergency. The former maximum objectives completely discounted foreign sources of supply beyond North America and comparable accessible areas.

"Previously, maximum objectives could not be less than 6 months' normal usage of the material by industry in the United States in periods of active demand. The 6-month rule has been eliminated in establishing the new calculated conventional war objectives.

"The Office of Emergency Planning also announced that the present Defense Mobilization Order V–7, dealing with general policies for strategic and critical materials stockpiling, was now being revised to reflect these new policies. When finally prepared and approved, the new order will be published in the Federal Register.

"New conventional war objectives for the remaining stockpile materials are being developed as rapidly as new supply-requirements data become available. They will be released as they are approved.

"The Office of Emergency Planning is also making studies to determine stockpile needs to meet the requirements of general nuclear war and reconstruction. Stockpile objectives for nuclear war have not previously been developed. Some commodity objectives may be higher and others may be lower than the objectives established for conventional war.

"After the nuclear war supply-requirements studies are completed, stockpile objectives will be based upon calculated deficits for either conventional war or nuclear war, whichever need is larger.

"The Office of Emergency Planning stressed that any long-range disposal programs undertaken prior to the development of objectives based on nuclear war assumptions would provide against disposing of quantities which might be needed to meet essential requirements in the event of nuclear attack. While the disposal of surplus materials can produce many problems which have not heretofore arisen, every effort will be made to see that the interests of producers, processors, and consumers, and the international interests of the United States are carefully considered, both in the development and carrying out of disposal programs. Before decisions are made regarding the adoption of a long-range disposal program for a particular item in the stockpile, there will be appropriate consultations with industry in order to obtain the advice of interested parties."

STATEMENT BY SENATOR BYRD OF VIRGINIA

The cost value of Federal stockpile inventories as of February 29, 1964, totaled $13,664,227,228. This was a net decrease of $175,044,008 as compared with the February 1 total of $13,839,271,236.

Net changes during the month are summarized by major categories as follows:

Major category	Cost value, February 1964	
	Net change during month	Total, end of month
Strategic and critical materials	−$6,867,080	$8,576,266,609
Agricultural commodities	−171,311,159	4,761,569,924
Civil defense supplies and equipment	+505,922	207,056,908
Machine tools	−211,900	92,168,400
Helium	+2,840,209	27,165,387
Total	−175,044,008	13,664,227,228

These figures are from the February 1964 report on Federal stockpile inventories compiled from official agency data by the Joint Committee on Reduction of Nonessential Federal Expenditures, showing detail with respect to quantity and cost value of each commodity in the inventories covered.

STRATEGIC AND CRITICAL MATERIALS

So-called strategic and critical materials are stored by the Government in (1) the national stockpile, (2) the Defense Production Act inventory, and (3) the supplemental-barter stockpile.

Overall, there are now 93 materials stockpiled in the strategic and critical inventories. Maximum objectives—in terms of volume—are presently fixed for 76 of these 93 materials. Of the 76 materials having maximum objectives, 60 were stockpiled in excess of their objectives as of February 29, 1964.

The Office of Emergency Planning is in the process of establishing new objectives for strategic and critical materials. This report contains pertinent agency explanation and reflects the new objectives for 19 materials—7 of which appear in the February report for the first time.

Increases in cost value were reported in 19 of the materials stockpiled in all strategic and critical inventories, decreases were reported in 24 materials, and 50 materials remained unchanged during February.

National stockpile

The cost value of materials in the national stockpile as of February 29, 1964, totaled $5,737,864,200. This was a net decrease of $7,637,400 during the month. The largest de-

creases were $4,813,300 in rubber and $2,439,100 in tin.

Defense Production Act inventory

The cost value of materials in the Defense Production Act inventory as of February 29, 1964, totaled $1,479,097,500. This was a net decrease of $1,754,900. The larger decreases were in aluminum, copper, and lead.

Supplemental-barter

The cost value of materials in the supplemental-barter stockpile as of February 29, 1964, totaled $1,359,304,909. This was a net increase of $2,525,220. The largest increases were in asbestos and manganese.

OTHER STOCKPILE INVENTORIES

Among the other categories of stockpiled materials covered by the report, the largest is $4.8 billion in agricultural commodities. Major decreases in agricultural commodities during February were reported for wheat, cotton, and corn.

Inventories of civil defense supplies and equipment showed increases in medical stocks; the machine tools inventories showed a net decrease; and the helium inventories showed a net increase during February.

REPORT OF JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES—FEDERAL EMPLOYMENT AND PAY

Mr. BYRD of Virginia. Mr. President, as chairman of the Joint Committee on Reduction of Nonessential Federal Expenditures, I submit a report on Federal employment and pay for the month of March 1964. In accordance with the practice of several years' standing, I ask unanimous consent to have the report printed in the RECORD, together with a statement by me.

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

FEDERAL PERSONNEL IN EXECUTIVE BRANCH, MARCH 1964 AND FEBRUARY 1964, AND PAY, FEBRUARY 1964 AND JANUARY 1964

PERSONNEL AND PAY SUMMARY

Information in monthly personnel reports for March 1964 submitted to the Joint Committee on Reduction of Nonessential Federal Expenditures is summarized as follows:

Total and major categories	Civilian personnel in executive branch			Payroll (in thousands) in executive branch		
	In March numbered—	In February numbered—	Increase (+) or decrease (−)	In February was—	In January was—	Increase (+) or decrease (−)
Total [1] [2]	2,470,045	2,468,430	+1,615	$1,261,566	$1,418,920	−$157,354
Agencies exclusive of Department of Defense	1,432,755	1,430,229	+2,526	731,183	822,765	−91,582
Department of Defense [2]	1,037,290	1,038,201	−911	530,383	596,155	−65,772
Inside the United States	2,302,942	2,300,684	+2,258			
Outside the United States	167,103	167,746	−643			
Industrial employment	553,702	553,296	+406			
Foreign nationals	152,282	154,664	−2,382	27,201	[3] 28,497	−1,296

[1] Exclusive of foreign nationals shown in the last line of this summary.
[2] The Department of Defense has advised the Committee that for security reasons personnel information for "classified activities" is omitted, beginning with the report for March 1964. Comparative figures in this report have been adjusted accordingly.
[3] Revised on basis of later information.

Table I, below, breaks down the above figures on employment and pay by agencies.

Table II breaks down the above employment figures to show the number inside the United States by agencies.

Table III breaks down the above employment figures to show the number outside the United States by agencies.

Table IV breaks down the above employment figures to show the number in industrial-type activities by agencies.

Table V shows foreign nationals by agencies not included in tables I, II, III, and IV.

TABLE I.—*Consolidated table of Federal personnel inside and outside the United States employed by the executive agencies during March 1964, and comparison with February 1964, and pay for February 1964, and comparison with January 1964*

Department or agency	Personnel				Pay (in thousands)			
	March	February	Increase	Decrease	February	January	Increase	Decrease
Executive departments (except Department of Defense):								
Agriculture	96,536	96,671		135	$48,237	$56,723		$8,486
Commerce	31,066	31,071		5	19,307	21,862		2,555
Health, Education, and Welfare	82,562	82,397	165		42,126	46,771		4,645
Interior	62,068	[1] 61,358	710		33,846	39,395		5,549
Justice	31,881	31,649	232		20,277	23,200		2,923
Labor	9,283	9,270	13		5,645	6,456		811
Post Office	587,491	587,160	331		275,613	311,345		35,732
State [2] [3]	42,116	42,074	42		21,407	23,642		2,235
Treasury	90,475	90,542		67	51,241	56,009		4,768
Executive Office of the President:								
White House Office	353	360		7	249	275		26
Bureau of the Budget	487	481	6		421	493		72
Council of Economic Advisers	45	48		3	37	52		15
Executive Mansion and Grounds	78	78			44	48		4
National Aeronautics and Space Council	26	27		1	25	29		4
National Security Council	41	41			35	40		5
Office of Emergency Planning	351	339	12		327	369		42
Office of Science and Technology	85	64	21		36	41		5
Office of the Special Representative for Trade Negotiations	27	30		3	24	27		3
President's Commission on Registration and Voting Participation [4]		4		4	3	3		
President's Commission on the Assassination of President Kennedy	20	20			24	18	$6	
President's Committee on Consumer Interests [5]	6	[1] 1	5		(6)			
President's Committee on Equal Opportunity in Housing	6	6			4	4		
Independent agencies:								
Advisory Commission on Intergovernmental Relations	30	28	2		23	25		2
American Battle Monuments Commission	427	412	15		90	92		2
Atomic Energy Commission	7,256	7,262		6	5,334	6,079		745
Board of Governors of the Federal Reserve System	616	619		3	405	460		55
Civil Aeronautics Board	839	838	1		636	726		90
Civil Service Commission	3,943	3,960		17	2,211	2,666		455
Civil War Centennial Commission	5	5			4	[1] 5		1
Commission of Fine Arts	6	6			5	6		1
Commission on Civil Rights	72	72			40	44		4
Delaware River Basin Commission	2	2			2	3		1
Export-Import Bank of Washington	294	293	1		199	227		28
Farm Credit Administration	238	238			169	195		26
Federal Aviation Agency	45,212	45,324		112	31,714	36,221		4,507
Federal Coal Mine Safety Board of Review	7	7			4	5		1
Federal Communications Commission	1,471	1,463	8		1,008	1,148		140
Federal Deposit Insurance Corporation	1,287	1,242	45		806	911		105
Federal Home Loan Bank Board	1,236	1,239		3	854	955		101
Federal Maritime Commission	237	237			176	203		27
Federal Mediation and Conciliation Service	407	401	6		351	398		47
Federal Power Commission	1,063	1,073		10	755	884		129
Federal Radiation Council	4	4			4	4		
Federal Trade Commission	1,148	1,146	2		812	1,002		190
Foreign Claims Settlement Commission	197	184	13		94	103		9
General Accounting Office	4,333	4,360		27	2,832	3,268		436
General Services Administration	33,817	33,402	415		15,820	17,741		1,921
Government Printing Office	7,327	7,307	20		3,962	4,513		551
Housing and Home Finance Agency	13,801	13,833		32	8,452	9,645		1,193
Indians Claims Commission	21	21			22	24		2
Interstate Commerce Commission	2,383	2,383			1,625	1,865		240

See footnotes at end of table.

TABLE I.—*Consolidated table of Federal personnel inside and outside the United States employed by the executive agencies during March 1964, and comparison with February 1964, and pay for February 1964, and comparison with January 1964*—Continued

Department or agency	Personnel				Pay (in thousands)			
	March	February	Increase	Decrease	February	January	Increase	Decrease
Independent agencies—Continued								
National Aeronautics and Space Administration	31,039	30,575	464		$23,653	$25,467		$1,814
National Capital Housing Authority	437	425	12		197	228		31
National Capital Planning Commission	58	59		1	41	48		7
National Capital Transportation Agency	53	57		4	48	53		5
National Gallery of Art	315	313	2		132	150		18
National Labor Relations Board	1,993	1,986	7		1,389	1,586		197
National Mediation Board	143	138	5		123	143		20
National Science Foundation	1,072	1,037	35		674	807		133
Panama Canal	14,918	14,974		56	8,277	5,606	$2,671	
President's Committee on Equal Employment Opportunity	57	54	3		35	39		4
Railroad Retirement Board	1,861	1,886		25	1,047	1,206		159
Renegotiation Board	212	212			178	201		23
St. Lawrence Seaway Development Corporation	157	161		4	92	102		10
Securities and Exchange Commission	1,370	1,376		6	940	1,076		136
Selective Service System	7,044	6,955	89		2,134	2,432		298
Small Business Administration	3,299	3,306		7	2,133	2,472		339
Smithsonian Institution	1,496	1,497		1	763	900		137
Soldiers' Home	1,071	1,063	8		366	374		8
Subversive Activities Control Board	27	27			23	25		2
Tariff Commission	275	276		1	201	223		22
Tax Court of the United States	156	155	1		128	140		12
Tennessee Valley Authority	16,524	16,102	422		9,408	10,787		1,379
U.S. Arms Control and Disarmament Agency	167	171		4	152	148	4	
U.S. Information Agency	11,966	12,056		90	5,395	5,746		351
Veterans' Administration	173,277	173,228	49		76,034	86,445		10,411
Virgin Islands Corporation	1,086	1,088		2	283	141	142	
Total, excluding Department of Defense	1,432,755	1,430,229	3,162	636	731,183	822,765	2,823	94,405
Net change, excluding Department of Defense			2,526				91,582	
Department of Defense:								
Office of the Secretary of Defense	2,056	2,115		59	1,656	1,982		326
Department of the Army	368,138	368,511		373	182,872	200,583		17,711
Department of the Navy	334,067	334,551		484	180,171	204,121		23,950
Department of the Air Force	298,942	299,020		78	147,847	170,402		22,555
Defense Atomic Support Agency	1,976	1,973	3		946	1,081		135
Defense Communications Agency	816	791	25		522	545		23
Defense Supply Agency	29,721	29,667	54		15,239	16,141		902
Office of Civil Defense	1,043	1,043			846	975		129
U.S. Court of Military Appeals	40	40			33	37		4
Interdepartmental activities	8	8			4	6		2
International military activities	59	58	1		39	45		6
Armed Forces information and education activities	424	424			208	237		29
Total, Department of Defense [7]	1,037,290	1,038,201	83	994	530,383	596,155		65,772
Net decrease, Department of Defense			911				65,772	
Grand total, including Department of Defense [7 8 9]	2,470,045	2,468,430	3,245	1,630	1,261,566	1,418,920	2,823	160,177
Net change, including Department of Defense			1,615				157,354	

[1] Revised on basis of later information.
[2] March figure includes 16,406 employees of the Agency for International Development, as compared with 16,522 in February and their pay. These AID figures include employees who are paid from foreign currencies deposited by foreign governments in a trust fund for this purpose. The March figure includes 4,275 of these trust fund employees and the February figure includes 4,330.
[3] March figure includes 1,100 employees of the Peace Corps as compared with 1,063 in February and their pay.
[4] Agency abolished Mar. 30, 1964, pursuant to Executive Order 11134, dated Dec. 20, 1963.
[5] New agency, created pursuant to Executive Order 11136, dated Jan. 3, 1964.
[6] Less than $500.
[7] The Department of Defense has advised the committee that for security reasons personnel information for "classified activities" is omitted, beginning with the report for March 1964. Comparative figures in this report have been adjusted accordingly.
[8] Exclusive of personnel and pay of the Central Intelligence Agency and the National Security Agency.
[9] March figure includes 134 employees in the Interior Department employed under the Public Works Acceleration Act (Public Law 87-658). No employment was reported under this act for the month of February.

TABLE II.—*Federal personnel inside the United States employed by the executive agencies during March 1964, and comparison with February 1964*

Department or agency	March	February	Increase	Decrease
Executive departments (except Department of Defense):				
Agriculture	95,362	95,479		117
Commerce	30,418	30,430		12
Health, Education, and Welfare	81,900	81,743	157	
Interior	61,433	[1] 60,729	704	
Justice	31,530	31,296	234	
Labor	9,203	9,190	13	
Post Office	585,914	585,591	323	
State [2 3]	10,770	10,685	85	
Treasury	89,823	89,894		71
Executive Office of the President:				
White House Office	353	360		7
Bureau of the Budget	487	481	6	
Council of Economic Advisers	45	48		3
Executive Mansion and Grounds	78	78		
National Aeronautics and Space Council	26	27		1
National Security Council	41	41		
Office of Emergency Planning	351	339	12	
Office of Science and Technology	85	64	21	
Office of the Special Representative for Trade Negotiations	27	30		3
President's Commission on Registration and Voting Participation [4]		4		4
President's Commission on the Assassination of President Kennedy	20	20		
President's Committee on Consumer Interests [5]	6	[1] 1	5	
President's Committee on Equal Opportunity in Housing	6	6		
Independent agencies:				
Advisory Commission on Intergovernmental Relations	30	28	2	
American Battle Monuments Commission	7	7		
Atomic Energy Commission	7,220	7,226		6
Board of Governors of the Federal Reserve System	616	619		3
Civil Aeronautics Board	839	838	1	
Civil Service Commission	3,939	3,956		17
Independent agencies—Continued				
Civil War Centennial Commission	5	5		
Commission of Fine Arts	6	6		
Commission on Civil Rights	72	72		
Delaware River Basin Commission	2	2		
Export-Import Bank of Washington	294	293	1	
Farm Credit Administration	238	238		
Federal Aviation Agency	44,118	44,228		110
Federal Coal Mine Safety Board of Review	7	7		
Federal Communications Commission	1,469	1,461	8	
Federal Deposit Insurance Corporation	1,285	1,240	45	
Federal Home Loan Bank Board	1,236	1,239		3
Federal Maritime Commission	237	237		
Federal Mediation and Conciliation Service	407	401	6	
Federal Power Commission	1,063	1,073		10
Federal Radiation Council	4	4		
Federal Trade Commission	1,148	1,146	2	
Foreign Claims Settlement Commission	160	147	13	
General Accounting Office	4,252	4,278		26
General Services Administration	33,791	33,377	414	
Government Printing Office	7,327	7,307	20	
Housing and Home Finance Agency	13,601	13,634		33
Indian Claims Commission	21	21		
Interstate Commerce Commission	2,383	2,383		
National Aeronautics and Space Administration	31,024	30,560	464	
National Capital Housing Authority	437	425	12	
National Capital Planning Commission	58	59		1
National Capital Transportation Agency	53	57		4
National Gallery of Art	315	313	2	
National Labor Relations Board	1,960	1,953	7	
National Mediation Board	143	138	5	
National Science Foundation	1,059	1,023	36	
Panama Canal	167	159	8	
President's Committee on Equal Employment Opportunity	57	54	3	
Railroad Retirement Board	1,861	1,886		25

See footnotes at end of table.

TABLE II.—*Federal personnel inside the United States employed by the executive agencies during March 1964, and comparison with February 1964*—Continued

Department or agency	March	February	Increase	Decrease
Independent agencies—Continued				
Renegotiation Board	212	212		
St. Lawrence Seaway Development Corporation	157	161		4
Securities and Exchange Commission	1,370	1,376		6
Selective Service System	6,894	6,805	89	
Small Business Administration	3,244	3,250		6
Smithsonian Institution	1,479	1,480		1
Soldier's Home	1,071	1,063	8	
Subversive Activities Control Board	27	27		
Tariff Commission	275	276		1
Tax Court of the United States	156	155	1	
Tennessee Valley Authority	16,523	16,101	422	
U.S. Arms Control and Disarmament Agency	167	171		4
U.S. Information Agency	3,412	3,399	13	
Veterans' Administration	172,287	172,233	54	
Total, excluding Department of Defense	1,368,063	1,365,345	3,196	478
Net increase, excluding Department of Defense			2,718	
Department of Defense:				
Office of the Secretary of Defense	2,004	2,063		59
Department of the Army	317,169	317,201		50
Department of the Navy	310,273	310,750		477
Department of the Air Force	271,417	271,371	46	
Defense Atomic Support Agency	1,976	1,973	3	
Defense Communications Agency	767	745	22	
Defense Supply Agency	29,721	29,667	54	
Office of Civil Defense	1,043	1,043		
U.S. Court of Military Appeals	40	40		
Interdepartmental activities	8	8		
International military activities	37	36	1	
Armed Forces information and education activities	424	424		
Total, Department of Defense [6]	934,879	935,339	126	586
Net decrease, Department of Defense			460	
Grand total, including Department of Defense [6]	2,302,942	2,300,684	3,322	1,064
Net increase, including Department of Defense			2,258	

[1] Revised on basis of later information.
[2] March figure includes 2,868 employees of the Agency for International Development as compared with 2,844 in February.
[3] March figure includes 707 employees of the Peace Corps as compared with 672 in February.
[4] Agency abolished Mar. 30, 1964, pursuant to Executive Order 11134, dated Dec. 20, 1963.
[5] New agency, created pursuant to Executive Order 11136, dated Jan. 3, 1964.
[6] The Department of Defense has advised the committee that for security reasons personnel information for "classified activities" is omitted, beginning with the report for March 1964. Comparative figures in this report have been adjusted accordingly.

TABLE III.—*Federal personnel outside the United States employed by the executive agencies during March 1964, and comparison with February 1964*

Department or agency	March	February	Increase	Decrease
Executive departments (except Department of Defense):				
Agriculture	1,174	1,192		18
Commerce	648	641	7	
Health, Education, and Welfare	662	654	8	
Interior	635	629	6	
Justice	351	353		2
Labor	80	80		
Post Office	1,577	1,569	8	
State [1 2]	31,346	31,389		43
Treasury	652	648	4	
Independent agencies:				
American Battle Monuments Commission	420	405	15	
Atomic Energy Commission	36	36		
Civil Service Commission	4	4		
Federal Aviation Agency	1,094	1,096		2
Federal Communications Commission	2	2		
Federal Deposit Insurance Corporation	2	2		
Foreign Claims Settlement Commission	37	37		
General Accounting Office	81	82		1
General Services Administration	26	25	1	
Housing and Home Finance Agency	200	199	1	
National Aeronautics and Space Administration	15	15		
National Labor Relations Board	33	33		
National Science Foundation	13	14		1
Panama Canal	14,751	14,815		64
Independent agencies—Continued				
Selective Service System	150	150		
Small Business Administration	55	56		1
Smithsonian Institution	17	17		
Tennessee Valley Authority	1	1		
U.S. Information Agency	8,554	8,657		103
Veterans' Administration	990	995		5
Virgin Islands Corporation	1,086	1,088		2
Total, excluding Department of Defense	64,692	64,884	50	242
Net decrease, excluding Department of Defense			192	
Department of Defense:				
Office of the Secretary of Defense	52	52		
Department of the Army	50,969	51,292		323
Department of the Navy	23,794	23,801		7
Department of the Air Force	27,525	27,649		124
Defense Communications Agency	49	46	3	
International military activities	22	22		
Total, Department of Defense	102,411	102,862	3	454
Net decrease, Department of Defense			451	
Grand total, including Department of Defense	167,103	167,746	53	696
Net decrease, including Department of Defense			643	

[1] March figure includes 13,538 employees of the Agency for International Development as compared with 13,678 in February. These AID figures include employees who are paid from foreign currencies deposited by foreign governments in a trust fund for this purpose. The March figure includes 4,275 of these trust fund employees and the February figure includes 4,330.
[2] March figure includes 393 employees of the Peace Corps as compared with 391 in February.

TABLE IV.—*Industrial employees of the Federal Government inside and outside the United States employed by the executive agencies during March 1964, and comparison with February 1964*

Department or agency	March	February	Increase	Decrease
Executive departments (except Department of Defense):				
Agriculture	3,894	3,899		5
Commerce	5,728	5,724	4	
Interior	8,874	8,737	137	
Post Office	266	268		2
Treasury	5,343	5,333	10	
Independent agencies:				
Atomic Energy Commission	271	270	1	
Federal Aviation Agency	2,736	2,831		95
General Services Administration	1,916	1,920		4
Government Printing Office	7,327	7,307	20	
National Aeronautics and Space Administration	31,039	30,575	464	
Panama Canal	7,395	7,388	7	
St. Lawrence Seaway Development Corporation	156	157		1
Tennessee Valley Authority	13,286	12,878	408	
Virgin Islands Corporation	1,086	1,088		2
Total, excluding Department of Defense	89,317	88,375	1,051	109
Net increase, excluding Department of Defense			942	
Department of Defense:				
Department of the Army:				
Inside the United States	[1] 136,502	[2] 136,524		22
Outside the United States	[1] 4,703	[2] 4,734		31
Department of the Navy:				
Inside the United States	189,666	190,144		478
Outside the United States	1,268	[2] 1,269		1
Department of the Air Force:				
Inside the United States	129,542	129,529	13	
Outside the United States	1,019	1,023		4
Defense Supply Agency:				
Inside the United States	1,685	1,698		13
Total, Department of Defense	464,385	464,921	13	549
Net decrease, Department of Defense			536	
Grand total, including Department of Defense	553,702	553,296	1,064	658
Net increase, including Department of Defense			406	

[1] Subject to revision.
[2] Revised on basis of later information.

TABLE V.—*Foreign nationals working under U.S. agencies overseas, excluded from tables I through IV of this report, whose services are provided by contractual agreement between the United States and foreign governments, or because of the nature of their work or the source of funds from which they are paid, as of March 1964 and comparison with February 1964*

Country	Total		Army		Navy		Air Force	
	March	February	March	February	March	February	March	February
Canada	9	9					9	9
Crete	86	84					86	84
England	2,898	2,931			120	122	2,778	2,809
France	18,569	19,241	15,089	15,620	9	10	3,471	3,611
Germany	75,720	76,761	64,239	64,900	82	83	11,399	11,778
Greece	300	297			34	33	266	264
Japan	47,373	48,026	16,110	16,524	13,658	13,845	17,605	17,657
Korea	6,131	6,141	6,131	6,141				
Morocco	690	695			690	[1] 694		1
Netherlands	54	53					54	53
Thailand	25						25	
Trinidad	427	426			427	426		
Total	152,282	154,664	101,569	103,185	15,020	15,213	35,693	36,266

[1] Revised on basis of later information.

FOREIGN NATIONALS

Table V segregates and accounts for certain categories of personal services rendered to the U.S. Government overseas, which cannot be regarded as ordinary direct employment.

This personal service is rendered to U.S. agencies overseas under agreements with the foreign governments. In most cases the employment is indirect. The foreign governments hire the employees. The U.S. military agencies in most cases administer or direct the activity.

Personnel hired and used under such circumstances cannot be properly considered in the same category as regular employment, but they are used and should be counted for what they are.

For this reason the Joint Committee on Reduction of Nonessential Federal Expenditures counts employees of this type along with, but separate from, regular U.S. employment overseas.

STATEMENT BY SENATOR BYRD OF VIRGINIA

Executive agencies of the Federal Government reported civilian employment in the month of March totaling 2,470,045 as compared with 2,468,430 in February. This was a net increase of 1,615, including a net increase of 134 in temporary employment under the public works acceleration program authorized by Public Law 87-658.

Civilian employment reported by the executive agencies of the Federal Government, by months in fiscal year 1964, which began July 1, 1963, follows:

Month	Employment	Increase	Decrease
July 1963	2,518,857	9,149	
August	2,515,033		3,824
September	2,492,170		22,863
October	2,494,175	2,005	
November	2,493,379		796
December	2,487,856		5,523
January 1964	2,473,546		14,310
February	2,468,430		5,116
March	2,470,045	1,615	

Total Federal employment in civilian agencies for the month of March was 1,432,755, an increase of 2,526 as compared with the February total of 1,430,229. Total civilian employment in the military agencies in March was 1,037,290, a decrease of 911 as compared with 1,038,201 in February. (Totals have been adjusted to exclude Defense Department figures for classified activities, beginning with February.)

Civilian agencies reporting larger increases were Interior Department with 710, National Aeronautics and Space Administration with 464, Tennessee Valley Authority with 422, and General Services Administration with 415.

In the Department of Defense the largest decreases in civilian employment were reported by the Department of the Navy with 484 and the Department of the Army with 373.

Inside the United States civilian employment increased 2,258 and outside the United States civilian employment decreased 643. Industrial employment by Federal agencies in March totaled 553,702, an increase of 406.

These figures are from reports certified by the agencies as compiled by the Joint Committee on Reduction of Nonessential Federal Expenditures.

FOREIGN NATIONALS

The total of 2,470,045 civilian employees certified to the committee by Federal agencies in their regular monthly personnel reports includes some foreign nationals employed in U.S. Government activities abroad, but in addition to these there were 152,282 foreign nationals working for U.S. agencies overseas during March who were not counted in the usual personnel reports. The number in February was 154,664. A breakdown of this employment for March follows:

Country	Total	Army	Navy	Air Force
Canada	9			9
Crete	86			86
England	2,898		120	2,778
France	18,569	15,089	9	3,471
Germany	75,720	64,239	82	11,399
Greece	300		34	266
Japan	47,373	16,110	13,658	17,605
Korea	6,131	6,131		
Morocco	690		690	
Netherlands	54			54
Thailand	25			25
Trinidad	427		427	
Total	152,282	101,569	15,020	35,693

BILLS INTRODUCED

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

By Mr. KEATING (for himself and Mr. JAVITS):

S. 2806. A bill to amend the Internal Revenue Code of 1954, to provide for the deduction from gross income by teachers of the expenses of education (including certain travel) undertaken by them, and for other purposes; to the Committee on Finance.

(See the remarks of Mr. KEATING when he introduced the above bill, which appear under a separate heading.)

By Mr. BYRD of Virginia (for himself and Mr. ROBERTSON):

S. 2807. A bill to fix the boundary of Shenandoah National Park in the Commonwealth of Virginia, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. KEATING:

S. 2808. A bill for the relief of Mother Estella Mary de San José (née Matilde Gandarillas Sigler); to the Committee on the Judiciary.

By Mr. ALLOTT:

S. 2809. A bill to amend section 37 of the Mineral Lands Leasing Act of February 25, 1920, relating to disposition only as provided in such act of deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas in lands valuable for such minerals, except as to valid claims pursuant to laws under which initiated and existing at the date of the passage of such act, which claims may be perfected under such laws; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. ALLOTT when he introduced the above bill, which appear under a separate heading.)

CONCURRENT RESOLUTION

PRINTING OF ADDITIONAL COPIES OF HEARINGS ON INTERAGENCY COORDINATION IN ENVIRONMENTAL HAZARDS (PESTICIDES), PART I (INCLUDING EXHIBITS)

Mr. KENNEDY (for Mr. RIBICOFF) submitted the following concurrent resolution (S. Con. Res. 83); which was referred to the Committee on Rules and Administration:

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Committee on Government Operations two thousand additional copies of its hearings on "Interagency Coordination in Environmental Hazards (Pesticides), Part I (Including Exhibits)".

RESOLUTION

TO PRINT AS A SENATE DOCUMENT A COMPILATION ENTITLED "THE WAR ON POVERTY, THE ECONOMIC OPPORTUNITY ACT OF 1964"

Mr. MCNAMARA. Mr. President, I submit, for appropriate reference, a resolution authorizing the printing as a Senate document the committee print entitled "The War on Poverty, the Economic Opportunity Act of 1964, a Compilation of Materials Relevant to S. 2642," of the 88th Congress, 2d session.

This resolution would authorize the printing of this document as a Senate document and provide the Committee on Labor and Public Welfare with 9,000 additional copies. The original printing was delivered to the Committee on Labor and Public Welfare on March 24 of this year. The committee received 8,000 copies, of which there are less than 300 remaining.

The requests for this document which are on file already far exceed the number available. For this reason, we are urgently in need of additional copies.

The PRESIDING OFFICER. The resolution will be received and appropriately referred.

The resolution (S. Res. 322) was referred to the Committee on Rules and Administration, as follows:

Resolved, That there be printed as a Senate document the committee print entitled "The War on Poverty, the Economic Opportunity Act of 1964, a Compilation of Ma-

terials Relevant to S. 2642", of the Eighty-eighth Congress, second session; and that there be printed nine thousand additional copies of such document for the use of the Committee on Labor and Public Welfare.

DEDUCTION FROM GROSS INCOME OF CERTAIN TEACHERS' EDUCATIONAL EXPENSES

Mr. KEATING. Mr. President, in behalf of my able and distinguished colleague from New York [Mr. JAVITS] and myself, I introduce, for appropriate reference, a bill to provide for the deduction of teachers' educational expenses.

Under existing law, a deduction is allowed for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Over the years, the standards applied to determine whether certain trade or business expenses qualify for the deduction, and the rules and regulations pertaining to verification of such expenses, have developed primarily in the context of profitmaking commercial and professional enterprise. Little or no regard has been paid to the development of a sound and consistent body of principles to govern the ordinary and necessary expenses incurred by the members of this country's most important public profession, our Nation's teachers.

As in many other professions, a teacher's education today does not end with receiving the bachelor's degree and a certificate or license to teach. An ever-expanding body of human knowledge, coupled with revolutionary progress in the techniques of teaching, requires every teacher, if he is to serve his country and community best, to continue his education beyond the first degree. At the very least, he will often be called upon by school authorities to attend refresher courses in the evenings or during summer recess. More often, he may be required to matriculate for an advanced degree in education or in his substantive field of teaching interest in order to retain his position within the system and to bring greater skill to bear upon his central task of classroom teaching. And regardless of any requirements which may be imposed by school authorities, every teacher has a duty to his students and to himself to achieve greater teaching competence and mastery in his chosen field.

No physician or attorney or accountant today could afford to neglect his continuing education in the subject matter of his profession. Were he to do so, his clients would soon take their business elsewhere. Schoolchildren, however, rarely have such freedom of choice.

The Nation's educational system can be only as good as the teacher's education and his skills make it. Yet it is probably true of no other profession that the need for continuing education outpaces the financial ability to pursue it without personal and family hardship.

The bill that is being introduced today would establish standards for the allowance of a deduction for teachers' educational expenses. Basically, it would permit teachers to deduct whatever ordinary and necessary expenses are paid or incurred for education that is appropriate and directly related to their teaching employment, or that is required of them by school authorities, in order to maintain or improve their skills. Classroom teachers are only one category among a number of educational personnel categories that would be covered. Educators serving in administrative, guidance, library, and other capacities in the modern school would also be entitled to deductions if the educational activities they pursue are appropriate.

The bill contains no formal requirements for proof and verification of educational expenses incurred by teachers. Within the statutory definitions as to who may be eligible for the deduction and the type of educational activities that would qualify, the Secretary of the Treasury would be free to promulgate rules and regulations to carry out the intent of Congress as in other areas of the tax law. The provisions of this bill are also intended not to rule out the possibility of a teacher's qualifying for a deduction of other expenses under existing sections of the Internal Revenue Code.

Mr. President, it is my hope that this measure will receive favorable consideration by the Committee on Finance both as a legitimate solution to the need for equitable tax relief and as a matter of sound educational policy.

I ask unanimous consent, Mr. President, that the text of the bill be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and without objection the bill will be printed in the RECORD, as requested by the Senator from New York.

The bill (S. 2806) to amend the Internal Revenue Code of 1954, to provide for the deduction from gross income by teachers of the expenses of education (including certain travel) undertaken by them, and for other purposes, introduced by Mr. KEATING (for himself and Mr. JAVITS), was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 162 of the Internal Revenue Code of 1954 (relating to deduction for trade or business expenses) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) EDUCATIONAL AND RELATED EXPENSES OF TEACHERS.—

"(1) IN GENERAL.—The deduction allowed by subsection (a) shall include the ordinary and necessary expenses (including related expenses described in subsection (a)(2)) paid or incurred by a teacher during the taxable year for his education.

"(2) Nothing in this subsection shall be construed to deny to a taxpayer any deduction otherwise available to him under this section.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'teacher' means an individual employed by a school for not less than 6 months during his taxable year as a classroom teacher, or as a supervisor, administrator, or adviser or in any other professional capacity related to the instructional program (including but not limited to guidance counselors and librarians);

"(B) the term 'school' means an educational organization described in section 503 (b) (2); and

"(C) the term 'education' includes any course, travel, or other educational activity which is undertaken by a taxpayer after becoming employed as a teacher and which—

"(i) is required by the teacher's employer to meet the express requirements of his employment as a teacher; or

"(ii) is within the area of employment (including the subject area, grade level, or other area) in which the teacher performs his duties as such, or is directly related to such area; or

"(iii) is directly related to maintaining or improving the teaching, administrative, or other skills of the teacher, including but not limited to courses in education, psychology, sociology, anthropology, English, the language of the students involved where English is a second language, guidance, administration, library, science, and audiovisual techniques; or

"(iv) is allowed by the institution of higher education at or by which it is offered or made available as a credit toward an advanced degree in the area in which the teacher is employed.

Such term does not include any course, travel, or other activity if it is undertaken primarily for the purpose of qualifying for a type of employment which is different from that in which the teacher is engaged at the time it is undertaken."

SEC. 2. Paragraph (2) of section 62 of the Internal Revenue Code of 1954 (relating to definition of adjusted gross income) is amended by adding at the end thereof the following new subparagraph:

"(e) EDUCATIONAL EXPENSES OF TEACHERS.—The deduction allowed by section 162 for the educational (and related) expenses of a teacher."

SEC. 3. The amendments made by this Act shall apply only with respect to taxable years ending after the date of the enactment of this Act.

MULTIPLE USE OF SURFACE OF THE SAME TRACTS OF PUBLIC LANDS—ADDITIONAL COSPONSOR OF BILL

Mr. CANNON. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from Utah [Mr. BENNETT] may be added as an additional cosponsor of Senate bill 2765, to amend the act relating to the multiple use of the surface of the same tracts of the public lands in order to provide that certain varieties of sand and gravel shall be considered as valuable mineral deposits under the mining laws of the United States, which was introduced by me on April 23, 1964.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE OF HEARING ON NOMINATION OF EUGENE A. GORDON TO BE U.S. DISTRICT JUDGE, MIDDLE DISTRICT OF NORTH CAROLINA

Mr. ERVIN. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Wednesday, May 13, 1964, at 9:15 a.m., in room 2228, New Senate Office Building, on the nomination of Eugene A. Gordon, of North Carolina, to be U.S. district judge, middle district of North Carolina, vice L. Richardson Preyer, resigned.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from South Carolina [Mr. JOHNSTON], the Senator from Nebraska [Mr. HRUSKA], and myself, as chairman.

AUTHORIZATION FOR SECRETARY OF COMMERCE TO ACCEPT GIFTS AND BEQUESTS FOR THE PURPOSES OF THE DEPARTMENT OF COMMERCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 964, Senate bill 2049.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 2049) to authorize the Secretary of Commerce to accept gifts and bequests for the purposes of the Department of Commerce.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, with an amendment, on page 2, after line 15, to insert a new section, as follows:

SEC. 4. (a) The following provisions of law are repealed:

(1) Section 11 of the Act entitled "An Act to establish the National Bureau of Standards" approved March 3, 1901, as amended (15 U.S.C. 278a);

(2) Section 7 of the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883g);

(3) Subsection (g) of section 216 of the Merchant Marine Act, 1936 (46 U.S.C. 1126 (g)).

(b) All gifts and bequests received under the provisions of law repealed by subsection (a) of this section and all funds held on the date of enactment of this Act in the United States Merchant Marine Academy general gift fund, established by subsection (g) of section 216 of the Merchant Marine Act, 1936, shall be transferred to the fund authorized by this Act and shall be administered in accordance with the provisions of this Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce is hereby authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of Commerce. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary of Commerce. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

SEC. 2. For the purpose of Federal income, estate, and gift taxes, property accepted under section 1 shall be considered as a gift or bequest to or for the use of the United States.

SEC. 3. Upon the request of the Secretary of Commerce, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund authorized herein. Income accruing from such securities, and from any other property accepted pursuant to section 1, shall be deposited to the credit of the fund authorized herein, and shall be disbursed upon order of the Secretary of Commerce.

SEC. 4. (a) The following provisions of law are repealed:

(1) Section 11 of the Act entitled "An Act to establish the National Bureau of Standards" approved March 3, 1901, as amended (15 U.S.C. 278a);

(2) Section 7 of the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883g);

(3) Subsection (g) of section 216 of the Merchant Marine Act, 1936 (46 U.S.C. 1126 (g)).

(b) All gifts and bequests received under the provisions of law repealed by subsection (a) of this section and all funds held on the date of enactment of this Act in the United States Merchant Marine Academy general gift fund, established by subsection (g) of section 216 of the Merchant Marine Act, 1936, shall be transferred to the fund authorized by this Act and shall be administered in accordance with the provisions of this Act.

The amendment was agreed to.

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

The title was amended so as to read: "A bill to authorize the Secretary of Commerce to accept gifts and bequests for the purposes of the Department of Commerce, and for other purposes."

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may have printed in the RECORD at this point an excerpt from the report.

There being no objection, the extract from the report (No. 1019) was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The bill (S. 2049) provides that the Secretary of Commerce may accept, hold, administer, and utilize gifts and bequests of property for the purpose of aiding or facilitating the work of the Department of Commerce. Any gifts received under the authority of the bill would be deposited in a separate fund in the Treasury and disbursed upon the order of the Secretary of Commerce. Upon request of the Secretary of Commerce, the Secretary of the Treasury may invest any moneys so deposited in securities of the United States or securities guaranteed by the United States. Any gift or bequest accepted under the bill would be considered as a gift or bequest to, or for the use of, the United States. In addition, funds derived from the sale of any real or personal property received as a gift or bequest would be deposited in the separate fund.

REASON FOR THE BILL

At present the Secretary of Commerce is authorized to receive gifts only for the use of the National Bureau of Standards, the Coast and Geodetic Survey, and the Merchant Marine Academy.

Recently the Department has been offered as a gift a number of travel movie films which it desired to accept for showing abroad to stimulate interest on the part of foreign viewers in visiting the United States. It was determined that this gift could not be accepted without authorizing legislation even though the films offered would have been of great use to the Department in its Visit U.S.A. program.

The Department requested enactment of departmentwide legislation to meet this specific need and to obviate the necessity of seeking further specific legislation in the event a similar situation arises with respect to other bureaus of the Department. The Department in the draft submitted by it did not recommend that the existing gift authorities to the National Bureau of Standards, Coast and Geodetic Survey, and the Merchant Marine Academy be repealed. The committee has adopted amendments recommended by the General Accounting Office repealing these three existing authorities in order to eliminate any possibility of confusion as to the legislation controlling with respect to gifts made to any one of these three bureaus. The Department of Commerce has advised that they would not object to these amendments.

TWO MYTHS BEHIND CIVIL RIGHTS BILL OPPOSITION

Mr. JAVITS. Mr. President, southern opponents of the bipartisan civil rights bill repeatedly try to shift attention from the social order in their States, which in many cases is built upon denying the Federal constitutional rights of Negroes, by regaling the Senate with horror stories about conditions in the North in general and in New York City in particular. These attempts occasionally become so misleading that they must and should be answered. Two such cases have arisen repeatedly in debate in recent weeks.

Opponents of the bill have, in the course of their lengthy discussions of title VII, the equal employment opportunity title of the bill, referred to U.S. Bureau of the Census statistics which indicate that unemployment rates are higher for nonwhites in some Northern States which already have FEP laws than in some Southern States, which do not and in which discriminatory hiring policies are pursued. What they conveniently fail to point out is the difference in computing the unemployment statistics for States which have basically agricultural economies as compared with States which have basically industrial economies. Sharecroppers and other farmworkers in Southern States are included among the employed in the Census Bureau statistics even though they often work only 1 or 2 days a week and are often living at a bare subsistence level.

I have asked the Census Bureau to confirm this and have received from the Bureau a letter quoting from a forthcoming report entitled "Farm Population, Series Census-ERS (P–27), No. 34." This report will be released jointly by the Economic Research Service of the Department of Agriculture and the Bureau of the Census. The Bureau's letter quotes from the report as follows:

Unemployment rates are typically about twice as high in the nonfarm population as in the farm group. The general explanation offered is that the large proportion of self-employed persons among farm people results in a low formal unemployment even

during periods of economic difficulty. Also farmers who combine part-time farming with off-farm work are still technically employed (through their farming) if they lose their nonfarm job.

The relevant and revealing statistics are those which show the median income of whites and nonwhites in the several States and the estimated lifetime earnings matched against the years of school completed for whites and nonwhites in the several States. As the Senators in charge of title VII of the bill—Senators CASE and CLARK—have shown, the statistics which correctly measure the real difference between the economic opportunities for Negroes in the Southern and Northern States do support our contention that fair employment practice laws are helpful in assuring equality of earning opportunity. The figures show that the discrepancy between the median earnings of white workers and those of nonwhite workers has been increasing in recent years and that this difference is much more pronounced in the South than in other parts of the country. They also show that, while in the Nation as a whole the lifetime earnings of nonwhites are 40 percent of those of whites, in the South they are 32 percent.

Another favorite diversion of the bill's opponents consists of alluding to crime rates in major northern cities, with special emphasis on New York City. The facts are carefully ignored in these flights of rhetoric, which usually dwell on the general proposition that everyone in New York City fears to venture forth on the streets at night.

No one deprecates crime more than I do, or the failure of citizens to assist the police in apprehending criminals, as in the recent Genovese case, which has been cited, for example. But that should not obscure the fact that the Federal Bureau of Investigation crime statistics indicate clearly that the streets of New York City are actually safer than those of a number of southern cities, including Atlanta and Savannah, in Georgia, from which some of the severest criticism on this issue has been directed toward us.

I would not cite these figures—for I am proud of every part of our country—except for what has been stated in this debate about crime in certain cities.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent for 2 additional minutes.

According to the FBI's latest uniform crime reports, issued in July 1963, and covering calendar year 1962, New York City's crime rate for serious offenses, including murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny of $50 and over, and auto theft, per 100,000 inhabitants was 1,509.7. What the southern Senators fail to note is that the crime rate was higher in the following 18 southern metropolitan areas, which constitute more than a fourth of the southern metropolitan areas for which statistics are collected.

I ask unanimous consent that they be listed in the RECORD at this point.

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

Amarillo, Tex., 1,751.1; Atlanta, Ga., 1,796.3; Baton Rouge, La., 1,654; Charleston, S.C., 1,891.2; Charlotte, N.C., 1,592.9; Corpus Christi, Tex., 1,920.6; Fort Lauderdale, Hollywood, Fla., 1,778.6; Galveston-Texas City, Tex., 1,529.5; Greenville, S.C., 1,639.1; Houston, Tex., 1,637.2; Jacksonville, Fla., 1,584.7; Laredo, Tex., 1,645.7; Lubbock, Tex., 1,713.9; Miami, Fla., 2,322.2; Pensacola, Fla., 1,631.5; Richmond, Va., 1,593; San Antonio, Tex., 1,579.2; Savannah, Ga., 1,513.4.

Mr. JAVITS. The point is not that New York City's crime rate is satisfactory. The point is that New York City's crime rate is irrelevant to its efforts to eliminate racial discrimination. These efforts certainly do not put it at any disadvantage on this score as compared with many southern cities, and it is about time that the Southern opponents of the civil rights bill began to talk about reality.

As the filibuster proceeds, it becomes even more critical that each argument asserted in opposition to the bill, in an apparent effort to justify the filibuster, should be nailed to the facts. I believe that the more dedicated we are to this policy, the sooner we will obtain a decided and overwhelming national consensus that the bill must be passed and the filibuster ended by cloture, the time for all reasonable debate now clearly drawing to a close.

U.S. CHAMBER OF COMMERCE DECLARATION ON EAST-WEST TRADE

Mr. JAVITS. Mr. President, the U.S. Chamber of Commerce, at its 52d annual meeting on April 29, issued several policy declarations on issues of national importance. Among the most important of these is the chamber's policy declaration on "Trade With the U.S.S.R. and Its European Satellites."

In the declaration the chamber takes the position that the United States should "undertake a prompt reexamination and reevaluation of the present system of [U.S.] export controls with the objective of strengthening some controls and of eliminating others which are not necessary to the security of the United States and which result in discrimination harmful to its competitive position." It also calls for the coordination of the policies of the United States and that of other free world nations with regard to Communist bloc trade.

I congratulate the chamber of commerce for its constructive contribution to public debate on this vital question to this Nation. Its declaration comes at a time when U.S. policy designed to curb free world trade with the Soviet bloc is undergoing great strains. It is evident that our allies no longer accept our point of view which requires that in addition to no trade in strategic goods, nonstrategic trade be kept to a minimum.

Just last Thursday, April 30, the New York Times carried a story that NATO's embargo on sales of strategic products to Soviet bloc countries is to be further liberalized, although only moderately. A few days before that President Johnson indicated that the administration is willing to consider proposals for expanded trade with Communist countries. Britain and the U.S.S.R. are reportedly nearing agreement on a new major trade deal including longer term credits. The French are about to conclude the sale of 15 to 20 locomotives to Cuba.

I believe that the time has come for a full scale review of U.S. policies dealing with Soviet bloc trade in nonstrategic goods. This review is long overdue and must take place with the active participation of the Congress and responsible private organizations. Without public understanding and support the changes initiated by the executive branch in the administration of laws dealing with United States-Soviet bloc trade, these changes will be untenable.

While on the basis of concessions outlined in my October 3, 1963, speech on the subject, I am in favor of a reasonable increase of United States-Soviet trade in nonstrategic goods. I firmly believe that before we enter into expanded trade with the European Soviet bloc we, in the Congress, must reexamine our entire trade policy toward the Communist bloc and make a judgment as to under what conditions and under what agreement should such increased trade take place.

I ask unanimous consent that the chamber of commerce policy declaration on East-West trade, along with a thorough analysis of the background and issues involved in East-West trade prepared by the chamber, a New York Times editorial of April 27 on this same issue, along with several news articles on recent developments in this field, may be printed in the RECORD at the conclusion of my remarks.

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

POLICY DECLARATION ON TRADE WITH THE U.S.S.R. AND ITS EUROPEAN SATELLITES

(Approved by vote of the delegates at the policy luncheon, 52d annual meeting of the national chamber, on April 29, 1964)

With respect to export trade with the U.S.S.R. and its European satellites, the U.S. Government should adopt programs, consistent with the national interest, which have the following objectives:

1. In coordination with other free world countries, to improve agreed and enforcible trade policies and measures which will effectively inhibit and prevent the buildup of Communist warmaking potential. These policies and measures should prevent sales that increase the capacity of the Soviet Bloc to disrupt free world economic and military security, or provide long-term credits.

2. To undertake a prompt reexamination and reevaluation of the present system of export controls with the objective of strengthening some controls and of eliminating others which are not necessary for the security of the United States and which result in discriminations harmful to its competitive position.

COMMUNIST BLOC TRADE

(Approved on April 29, 1964)

The United States should take all suitable measures, including contingency planning, through its own foreign economic policy and in concert with other free world nations, to

minimize disruption by the Communist bloc of the normal flow of trade and its use of trade as a political weapon, particularly with respect to the developing free world economies.

EAST-WEST TRADE

Background and status

Although East-West trade has been extensively debated and explored during the past decade (since Stalin's death in 1953) the issue has been forced into sharp focus by developments in the last 4 months. Proposals by the Soviets for cash purchases of large quantities of wheat to meet serious crop failures in Russia and East Europe have highlighted the prospect of East-West trade on a broader scale. These developments, beginning in mid-September appeared to take the administration, Congress, and many segments of American business by surprise.

At about the same time, at a White House Conference on Export Expansion (September 17–18), business leaders in foreign commerce were invited to assist the administration in considering added means to expand U.S. exports and help correct the persistent balance-of-payments deficit. Significantly, 4 of the 11 committees organized at this Conference to explore independently various facets of the foreign trade problem, suggested that clarification of the East-West trade issue would be particularly helpful. This reflects a widespread opinion that U.S. policies and practices in trade with the Communist bloc have notably lacked definition with resulting inconsistency of administration. A divergence in the economic policies pursued by the United States and other members of the Atlantic Alliance vis-a-vis the Sino-Soviet bloc further complicates the problem.

An unavoidable fact is that the issue of engaging in commerce with an avowed enemy is fraught with moral, emotional, and political factors which cannot be discussed in purely economic terms. During recent years the United States has depended less and less on the Sino-Soviet bloc as a source of supplies. Even before the cold war, trade between the United States and Russia had been minor except for the period during World War II. Most of the goods the U.S.S.R. wants, outside of the bloc trading area, have been obtained from West Europe. Even under most favorable conditions no dramatic expansion of United States-Soviet trade should be expected. On the other hand, should the United States cut off all trade with the Soviet bloc, the impact in terms of the East-West contest might be minimal.

Although the United States has been less tempted by trade overtures from the Soviet bloc, it should be noted that other nations of the West derive considerable short-term advantages from such trade. In contrast to the U.S. "hard line" policy, the West Europe countries appear to rationalize their expanding trade with the bloc using the argument "a fat Russian is not a belligerent Russian." On the other hand, under their totalitarian system, there is a strong likelihood that a larger portion of such trade would go to the biceps rather than the belly of Communist society.

Under present conditions of somewhat relaxed tensions, indications are that East-West trade will probably retain the current patterns and tempo of growth. The problem confronting the United States might be stated as how to realize the economic advantages of such trade and at the same time to minimize the disruptive impact of Communist tactics and bilateralism within a stable, open, and multilateral framework of world commerce. The ability of the Soviets to influence the trade climate around the world, is out of all proportion to the size of its trade performance, and stems from the basic condition of the Communist economy—a state of permanent mobilization. It is a conspicuous fact that economically the Western World is not organized to wage the intense, drawn-out contest with communism which lies ahead. In spite of the West's possession of overwhelming superiority in material and industrial resources, it lacks unity of policies on trade matters in commercial dealings with the Soviet bloc.

The key to an effective strategy is the coordination of economic policies toward the Communist bloc. As a replacement of the present patchwork of individual and often contradictory national policies, consideration might be given to the following courses:

1. Coordination of security measures in East-West trade, including establishment of more realistic and effective multilateral controls on the export of strategic goods and on extension of export credits which help to build the bloc's military and industrial power base.

2. Formulation of a set of common ground rules designed to expose and remove:

(a) The distortions and inequalities which arise in commercial relations between free market economies on the one hand, and the closed, ultra protectionist Communist economies on the other hand; and

(b) The disruptions and dislocations which increasingly accompany the massive intervention of total State monopolies in world markets.

The great trading nations of the West which are at the core of world trade have the responsibility and the means to compel adequate observance of established norms of commercial behavior.

3. Immunization of the more vulnerable free world economies against the danger of selective trade and aid penetration aimed at building politically motivated dependence on bloc markets and supplies. This effort must be multilaterally coordinated. The necessary framework must be provided to utilize the existing large potential of private industry, and in general enlist the productive capacity, the trading experience and the plurality of means available in the free economic systems of the industrialized West.

4. Coordination of contingency planning designed to muster maximum economic leverage against the bloc with a view to implanting restraints in its general foreign policy and in specific East-West encounters. What is contemplated here is not a trade rupture but a state of allied readiness to face emergencies and exploit opportunities. Rather than continue the monotonous pattern of reaction to Soviet initiatives, our economic and industrial superiority should be employed to shape events in support of Western objectives. In particular, economic tools should be utilized for dealing in a flexible manner with individual countries within the bloc.

Evolution of United States-Soviet trade policy

America's normal policies of progressively expanding mutually beneficial commercial relations with all countries has conspicuously excluded the Soviet bloc. This restrictive trade policy with Communist nations currently in force did not spring up overnight. It is often overlooked, however, that the United States has maintained trade relations with the Soviets even prior to official recognition in 1933.

Hard learned lessons in commercial dealings with the Soviets over the years has resulted in a certain degree of wariness on the part of the U.S. Government. Fluctuating zigs and zags of Communist strategy have revealed their use of trade as an important political weapon in complete disregard of the basic concepts of the free-enterprise system. In spite of periodic lulls in the cold war, engineered by the Soviets, which often are popularly welcomed by war-weary segments of the free world, there has developed in America a deeply ingrained skepticism toward any normal relations with the Soviet bloc. Political support for trade restrictions has therefore been consistently strong in the United States cutting across party lines and economic groups.

United States-Soviet trade prior to World War II was small although relatively more active. But even though most-favored-nation treatment was provided Russia, the United States found repugnant disruptive state-trading methods employed by its Communist form of government. At its zenith, in 1936–38, this prewar trade amounted to only 1.6 percent of all U.S. exports of merchandise. (Significantly, the volume of U.S. exports to Russia jumped to 24.3 percent during World War II, in support of the war effort.)

After World War II

Immediately following V–J Day, the Soviet leaders dramatically publicized their world conquest goal by territorial expansion, utilizing all facets of political, military, and economic forces to achieve their objectives. The United States responded by establishing a system of security controls over trade, denying export of strategic goods to U.S.S.R. and her European satellites. The objective was to make this control effective rather than symbolic.

These controls were tightened further as a result of Communist invasion of Korea. All former commercial treaties and tariff concessions (including most-favored-nation treatment) to the Sino-Soviet bloc were revoked—making all Communist goods dutiable under the high rates prescribed in the Tariff Act of 1930. Strong bipartisan support was provided for this course of action.

Present U.S. policy on trade with Soviet bloc

A policy of selective restriction, rather than total embargo on trade with the Sino-Soviet bloc has been pursued in recent years. Flexibility in trade policy permits distinction between gradations of aggressive mindedness among countries in the Sino-Soviet bloc which may be exploited to the U.S. advantage in the contest between East and West. Some arguments in favor of this selective and flexible policy are that it:

1. Helps advertise to world the significant difference in the warlike policies of the two Communist powers, Russia and China.

2. Provides a lever for reprisals in the face of threatened actions by individual Communist countries.

3. Keeps lanes of trade open to less militant bloc countries, demonstrating U.S. willingness to work toward eventual normalization of trade relations.

4. Supports the free enterprise principle that interference in operation of private international trade must be held to minimum, consistent with national security requirements.

5. Provides some relief for pressures to keep people of bloc countries isolated by opening and maintaining relations with the people, culture, and ideas of the free world.

Growing trade between the Sino-Soviet bloc and U.S. allies, including Japan, points up the urgent desirability of achieving a higher degree of unity of policies and practices among free world nations on trade relations with Communist countries. The extent and nature of this East-West trade is summarized below.

Current anticipated action by the United States

In comments at a press conference concluding the 2-day White House Conference on Export Expansion, Wednesday, Septem-

ber 18, the Secretary of Commerce was asked to comment on the recommendations of several committees at the Conference that the Government reappraise its trade policies with the Soviet bloc.

The Secretary, in response, emphasized that the Government had come to no decision on this point and that he thought the Government "would take into consideration very seriously what has been suggested by the Conference, and take a look at its trade policies with the Soviet bloc."

He added, "Keep in mind very specifically, that, under no condition can we consider strategic items or anything of that character. We are only talking about normal trade."

It has been indicated that the State Department and the Senate Foreign Relations Committee will also reexamine the U.S. policy on trade with the Soviet bloc.

Background of chamber policy on East-West trade

In 1953, the national chamber's membership adopted a policy on East-West trade, which read as follows:

"The chamber supports collective measures on the part of the United States and allied nations of the free world to prevent Communist bloc countries from receiving strategic items which would contribute to their war potential.

"The Western World hopes for the ultimate freedom of captive countries of East Europe. Commerce, as a peaceful means of maintaining relationships with such countries, could be singularly effective in penetrating their isolation.

"Severance of all trade relations with those countries, however, would in some cases be more harmful to the free world than to the countries behind the Iron Curtain. The West obtains from the East commodities vital to its own defense and of value to its economic stability. The criterion of such trade must be one of net advantage. Full consideration must also be given to the alternatives and their implication.

"Absolute embargo of the Soviet bloc would be cited by the Kremlin and Communist elements in other areas and thus serve as a powerful propaganda weapon."

In 1956, the policy was revised to read as follows:

"The chamber supports collective measures on the part of the United States and allied nations of the free world to prevent Communist bloc countries from receiving strategic items which would contribute to their war potential.

"Severance of all trade relations, however, would in some cases be more harmful to the free world than to the countries behind the Iron Curtain. The criterion of such trade must be one of net advantage to the free world."

When the policy was subject to renewal in 1959 (under a 3-year duration rule then in effect), on recommendation of the Foreign Commerce Committee the policy was allowed to expire. The primary reason was that the intent of the first paragraph had been substantially achieved through the enactment of the so-called Battle Act (the Mutual Defense Assistance Control Act of 1951) and that the policy served no further useful purpose.

The current 1963–64 "Chamber Policy Declarations on World Affairs" contains the following statement:

"Communist bloc trade: The United States should take all suitable measures, through its own foreign economic policy and in concert with other free world nations, to minimize disruption by the Communist bloc of the normal flow of trade."

Following approval by the President, on October 9, 1963, for the sale of wheat to the U.S.S.R., the chamber issued the following press release:

"WASHINGTON, October 11.—Edwin P. Neilan, president of the Chamber of Commerce of the United States and president and chairman of the Bank of Delaware, Wilmington, today issued the following statement:

" 'The action of President Kennedy and Secretary of Commerce Luther Hodges in approving the sale of wheat to the Soviet Union through private commercial channels at the world price for cash or short-term credit is commendable. It will benefit the U.S. economy particularly in the area of reducing our balance-of-payments deficit and by providing an outlet for surplus wheat which is costing taxpayers enormous sums in storage charges.'

"It seems to be an opportune time to explore the possibility of broadened, liberalized trade with the Soviet Union in other nonstrategic goods under the same conditions as the wheat sale. Good two-way trade cements peaceful relations."

Conditions limiting potential United States-Soviet trade

Potentially, trade between two of the largest countries in the world would appear to be extensive. Highlighted here are significant conditions preventing development of extensive or normal trade.

1. Russia has been intentionally sheltered from contact with the free world. She is relatively self-sufficient in basic raw materials.

2. Russia operates on rigidly controlled, planned economy. Priority given to industrialization. Consumer goods production and marketing have been restricted. Even recent higher goals have been deferred.

3. Normal market forces do not operate. Foreign trade is subservient to overall economic and political plans.

4. Adequate protection is not provided for patents, trademarks, and copyrights.

5. State controlled mechanism for trading is complicated, strange, and obstructive for U.S. traders.

6. Commercial and market data is difficult or impossible to obtain (costing, prices, trade plans, investment criteria, other business factors).

7. Demands for long-term credit are difficult if not impossible to meet.

8. Shifting trade policies and uncertain long-range planning undermine required confidence and reliability for traders.

9. Trade has been arbitrarily concentrated by Soviets with Communist bloc countries.

10. Export-import controls severely restrict trade. Most of the items desired by Soviets are classified as having strategic significance, thus are prohibited.

11. In absence of trade agreements and "most-favored-nation treatment," Soviet goods are subject to high tariffs, making them noncompetitive in U.S. markets.

12. Nonsettlement of various claims between United States and Russia stemming from czarist regime and World War II has prevented extension of long-term credits. Treasury Department advises Soviets are still in default:

(a) From World War I, $621.4 million as of December 31, 1962.

(b) From World War II (lend-lease), $306.5 million as of June 20, 1963.

13. Detailed knowledge of Soviet markets and proficiency in operating under Soviet trading system would have not been developed by U.S. traders.

14. Hostile public opinion in the United States inhibits extensive trade.

Soviet pressures for more trade with United States

In recent years the Kremlin has stepped up its overtures for expanded trade with the United States and the free world. As demonstrated by the behavior of Mr. Mikoyan during his visit to the United States in 1958, the theme of profitable trade remains the key element in any political offensive against the West. Sweeping offers of trade cannot help but appear attractive, particularly when put forward vigorously during periods of unemployment and economic difficulties, such as persistent balance-of-payments deficits. They serve to stimulate dissatisfaction with Western policies which appear to inhibit the promotion of trade and to encourage sympathy for the view that those who are for unrestricted trade are for peace.

Proposals from Mr. Khrushchev to President Eisenhower for expanded trade between the United States and Russia included lists of commodities which could be traded. In the absence of any gesture or proposal for resolving related issues blocking United States-Soviet trade, such as settlement of Soviet debts to the United States, no progress was made on Khrushchev's overtures at that time.

Khrushchev's shopping list from the United States

Whole plants, manufacturing equipment, and/or patents and U.S. technical assistance for synthetic textile fibers, plastics, fertilizers, construction materials, textile plants, shoes, foods, packaging materials and equipment, TV, other consumer goods, and production equipment for consumer products such as sorting and weighing machinery.

Also pumps and compressors, mining equipment and machinery, construction equipment and materials handling equipment, hoists, nonferrous metals, piping for gas ducts in cities, chemical products mostly for agriculture—i.e., fertilizers and herbicides—and medical equipment and medicines.

Soviets want to sell to the United States

Minerals and metals—manganese, chrome ores, ferroalloys, platinum, palladium, asbestos, potassium salts, cheap iron ores; timber, cellulose, paper foods; some chemical products, mostly raw materials mined in U.S.S.R.; more furs.

Probable Soviet financing capability

Soviets can pay in gold up to a indeterminate point. Their annual gold production is estimated at around $300 million. Soviets have been paying out about $200 million in gold a year to meet free world obligations. Critical requirement for large purchases of wheat from the West in 1963 and 1964 has accelerated the loss of gold considerably.

Further trade expansion would necessitate either withdrawals from gold reserves (estimated anywhere from $2 to $12 billion); or arrangements for credits from Western traders. Many West Europeans have been extending credit to Soviets for terms up to 5 years. Strong pressures are being exerted by the Soviets as well as Western business to extend terms of credit to 8 or 10 years, especially for capital equipment.

RECENT TRENDS IN EAST-WEST TRADE

The percentage of total Sino-Soviet bloc exports compared to total exports for all countries in the world increased from 2.7 percent in 1950 to 3.9 percent in 1960. A similar comparison of total imports shows the Sino-Soviet bloc percentage increased from 2.9 percent to 3.6 percent over the same 10-year period.[1]

The trend in free world trade with the Sino-Soviet bloc is as follows (in millions of U.S. dollars).[2]

[1] Source: IMF, International Financial Statistics, June 1961.

[2] Source: 15th Report to Congress, Mutual Defense Assistance Control Act of 1951 and International Trade Analysis Division, BIC.

	Exports to bloc				Imports from bloc			
	1959	1960	1961	1962	1959	1960	1961	1962
Sino-Soviet bloc	3,691	4,420	4,512	4,669	3,729	4,276	4,518	4,763
U.S.S.R.	1,149	1,542	1,834	1,770	1,237	1,395	1,870	1,754
European satellites	1,853	2,170	4,384	4,406	1,774	2,103	2,373	4,072
Red China	670	688	742	661	693	754	638	657

Trade between the United States and Sino-Soviet bloc

[In thousands of U.S. dollars]

	Exports to bloc (including reexports)				Imports from bloc			
	1959	1960	1961	1962	1959	1960	1961	1962
Sino-Soviet bloc total	89,272	193,853	133,331	125,140	88,154	83,850	84,641	82,380
U.S.S.R.	7,398	38,440	42,662	15,253	28,611	22,629	23,228	16,180
European satellites	81,871	155,413	90,662	109,883	52,325	58,307	57,841	62,719
Red China	3		7	4	200	235	447	242

Source: BIC Oversea Business Reports 63-115, August 1963.

THE PROS AND CONS OF EAST-WEST TRADE

A review of the highly controversial issue of East-West trade among Americans reveals a great number of arguments for and against a more relaxed trade policy for the United States. Although many of these arguments are speculative and their validity must be questioned, the following is a summary of the pros and cons most frequently and recently used in the public debate on this question:

Arguments for expanded East-West trade

1. Current U.S. policy is negative and prevents normal trade. This "head-in-sand policy" is ineffective because Soviets get the goods they need by trading with other free world countries. Accordingly, the United States is losing out on good markets. Prospect is that United States could sell more than it buys, thus improving balance of payments. "One-nation blockade of communism won't work."

2. Western allies are continually improving their economic position in heavy competition with the United States and with the added advantage of increasing East-West trade. Examples:

(a) Japan-China trade is growing. New trade agreements for 1964 were recently signed.

(b) British trade with China continues brisk, with an 18-man trade delegation in Peiping during September–October 1963. Recent trade included Comet jets, Viscount turboprops, and nuclear radiation testing equipment.

(c) Soviet trade with Brazil increased 30 percent in 1963 over 1962.

(d) Indications are that the EEC will extend trade offer to Soviets involving 25-percent reduction in common-market tariffs.

3. Trade will make the Soviet bloc more dependent on the United States.

4. Improved commercial relations could upgrade Communist living standards and possibly contribute to an era of good feeling. This era of relaxed tensions is already begun as shown by the test ban treaty, the discontinuance of jamming Voice of America broadcasts, and the U.S. agreement to sell wheat to Soviets.

5. United States would gain economically by importing such strategic items as manganese, palladium, platinum-type ores, and chrome ores.

6. Purchases of large quantities of goods from United States and other nations may make it necessary for Soviets to sell more gold on world markets.

7. Inconsistency of restrictive U.S. trade policy versus liberal trade policies of its allies leads to disunity among free nations of the world.

8. Risk of Communist warlike moves may be diminished if trade relations were established and may pave way for long-range adjustment of other problems. Trade is a harbinger of peace, a sign of civilized cooperation among peoples of the world.

9. Failure to lift trade restrictions to meet Communist trade challenge may result in lost prestige for the United States in the world.

10. Restrictive U.S. trade policy will weld Soviet bloc countries closer together, isolating people behind Iron Curtain from beneficial contact with free world.

11. Restrictions or embargoes on trade can only slow up, not prevent, development of bloc military power.

Arguments against expanded East-West trade

1. As champion of the free world it is not only proper but essential that the United States exercise leadership in long-range contest with communism by following "hard line."

2. In the cold war, initiated by the Reds, no holds are barred as demonstrated by Communist use of economic, political, propaganda, and military forces. Soviets are not reluctant to use trade as political weapon. They can arbitrarily upset world markets by dumping and making sudden changes in trade practices.

3. Trade in food and nonstrategic goods releases more Russians to concentrate on weapons to "bury us." Thus any trade strengthens the enemy.

4. Basic Soviet policies obstruct free, fair, and mutually beneficial trade. Their complicated, monolithic state trading system assures maxim benefit to the Soviet economy, placing private traders of free world at a disadvantage particularly with respect to economic stability of their respective countries.

5. Dependable protection for patents, trademarks, and copyrights has not been provided by Soviets. On the contrary, in flagrant disregard of established conventions, Soviets have exploited technological developments reflected in a variety of products of the West, by copying, producing, and trading such articles in competition with the free world.

6. Soviet traders show little interest in consumer goods—they want industrial products of the West, which are included in the present restricted lists.

7. Russia has not settled U.S. claims stemming from World War I and World War II even though United States has reduced these very large debts to fractional balances due.

8. Indicative of Soviet trading strategy is current effort to weaken or destroy the GATT system, aimed at imposing state controls on free world trading systems.

9. Flow of business and economic data between Soviets and free world is largely a one-way street. Withholding or secretive control of market data from Russia places Western traders at distinct disadvantage.

10. Trade and credit policies including bilateral barter deals can be and are used by Soviets to penetrate less developed countries—threatening their growth and independence.

11. Increasing trade with Soviets invites danger of becoming unduly dependent on bloc supplies and markets.

12. Settlement of commercial disputes may be difficult and protracted.

13. Relaxing United States-Soviet trade policy would represent a major foreign policy switch with serious political and economic repercussions both internally and externally. Examples:

(a) Politically strong minority groups in the United States would oppose.

(b) Deeply ingrained opposition developed over long period among Americans cannot be ignored.

(c) Revision of current restrictions would involve congressional action with explosive results.

(d) Confusion and dissipation of Allies, particularly among the less developed countries, carefully helped through expensive foreign aid programs, may prove disastrous.

14. It is not illogical to assume that substantial increase in U.S. trade with Soviets would be at expense of exports from industrialized nations in West Europe as well as Japan to the Soviet bloc.

15. The quantity and types of commodities which United States can advantageously import from Soviet bloc are relatively small and would not significantly strengthen U.S. economy. Thus expectation of bonanza in trading based upon relaxing U.S. restrictions may be unrealistic.

U.S. EXPORT RESTRICTIONS

The principal U.S. laws and multilateral arrangements governing control of exports from the United States to the Sino-Soviet bloc countries are as follows:

A. The Export Control Act of 1949

The Export Control Act of 1949 is the basic statute providing for export restrictions. It was originally enacted as an emergency measure to control exports of domestically strategic goods in short supply, and threats of inflation created by abnormal foreign demand of U.S. products. An important relationship between exports, foreign policy, and national security is clearly recognized by the act. The last amendment, Public Law 87-515, extended the life of this act to June 30, 1965.

Legislative Background

Last year's extension of this basic law engendered acrimonious debate in Congress over the criteria for granting or denying license to export "strategic" goods and data to Communist-dominated nations. Both the Senate and the House expressed intent to tighten administration of controls under this act. The extension legislation injected two new criteria into the law requiring denial of licenses to any export which would (1) make a "significant contribution" to the economic as well as military potential of such nation, and (2) prove detrimental to the welfare as well as the national security of the United States.

The two legislative bodies, in fact, argued bitterly over the degree of application of these two new criteria, the House insisting that license should be denied unless the export was determined not to have the effect of either criterion, the Senate arguing that the license should be denied only if the export was found to have the undesirable

effects. The Senate version was adopted by final vote in both Houses.

Export Controls of the Department of Commerce

The export control regulations, administered by the Office of Export Control of the Department of Commerce, are contained in the Comprehensive Export Schedule, published annually by the Bureau of International Commerce (BIC) of the Department of Commerce.

Changes in these regulations are published regularly by BIC in current export bulletins. These publications set forth applicable requirements for the exportation of any given commodity to a specific destination. Quarterly reports submitted by the Secretary of Commerce to the President and to the Congress under the Export Control Act statistically review the activities of the Department of Commerce in carrying out the export control program, and summarize major policy changes.

Exports to all destinations, except Canada, are controlled either through the issuance of a validated export license or the establishment of a general license permitting such shipments.

A validated export license is a formal document issued to an exporter by the Department of Commerce which authorizes exportation within specific limitations as to destination, type of commodity and end use. Validated licenses are required for shipments to virtually all destinations for commodities identified in the Positive List of Controlled Commodities. This list is maintained on a current basis in the comprehensive export schedule.

Export controls are maintained by the Department of Commerce for short-supply reasons or for security reasons. Both export control policies are designed to reflect established U.S. foreign policy and international economic commitments.

The objective of security controls is to exercise necessary vigilance over exports from the standpoint of their significance to the national security. These controls are designed to prevent or restrict the exportation to the Soviet bloc of strategic commodities which are held to contribute to Soviet war potential. Shipments of all commodities to Communist China, North Korea, and Communist-controlled areas of Vietnam are embargoed. Shipments to other Soviet bloc destinations, except Poland, are either denied or restricted, with the exception of certain nonstrategic commodities which may be shipped to the European Soviet bloc under General License GLSA.

Since October 20, 1960, validated export licenses have been required for all U.S. exports to Cuba, except for medicines, medicinal supplies, and foodstuffs which are neither subsidized nor obtained directly or indirectly from Commodity Credit Corporation stocks.

Since August 29, 1957, in accordance with the U.S. Government's policy of facilitating exports of agricultural commodities and industrial equipment for the benefit of the Polish people and to assist in strengthening Poland's civilian economy, many commodities not on the positive list may be shipped to Poland under general license. However, shipments of positive list commodities and of a group of nonpositive list commodities of potential but not direct strategic value continue to require validated licenses .

In order to prevent unauthorized transshipment abroad of commodities of U.S. origin, the Department of Commerce regulates the movement of such commodities after they leave the United States. These "destination control" regulations prohibit the reexportation of "strategic" items from the country of ultimate destination unless prior written authorization from the Office of Export Control is obtained. The export control regulations also prohibit vessels, aircraft, or other carriers from delivering goods of U.S. origin to unauthorized destinations.

In addition to security controls, export controls for short-supply reasons are designed to protect the domestic economy of the United States from an excessive drain of scarce materials and to reduce the inflationary impact of abnormal demand. Such controls have been exercised through such means as quotas fixed by the Secretary of Commerce. At the present time there are no short-supply control.

Shipping Controls

Department of Commerce Transportation Order T–1 prohibits any U.S. registered vessel or aircraft authority to carry items (1) listed on the Positive List of Controlled Commodities, (2)arms, ammunition, and implements of war, or (3) fissionable material, to any Soviet-bloc destination, Hong Kong, or Macao without a validated license issued by the Department of Commerce or by another appropriate licensing agency, or without the express permission of the Under Secretary of Commerce for Transportation. This order includes shipments from foreign ports as well as from the United States. To implement further the U.S. Governments' support of the U.N. position that no military or paramilitary assistance should be sent to the Congo except through the United Nations, Transportation Order T–1 was amended on March 29, 1961, to prohibit U.S.-registered carriers from transporting certain specified military and paramilitary items to destinations in the Congo except by special authority or license granted by the Department of Commerce.

Department of Commerce Transportation Order T–2 prohibits the transportation of any commodities directly or indirectly to Communist China, North Korea, or areas under their control, by U.S.-registered vessels or aircraft. It also prohibits American ships and aircraft from calling at any point in Communist China, North Korea, or areas under their control.

American petroleum companies at certain foreign ports must obtain a Treasury Department authorization to bunker any vessel bound for a Communist Far Eastern port, or Macao, or which is carrying goods destined for Communist China or North Korea. Similar restrictions apply to the bunkering by these companies of vessels returning from Communist Far Eastern ports or Macao.

The primary shipping restrictions with Cuba are briefly as follows: U.S.-flag ships are prohibited from calling at Cuban ports, foreign-flag ships are prohibited from carrying arms and implements of war to Cuban ports, and no foreign-flag ship calling at Cuban ports may carry any commodities to any destination which are financed by U.S. AID program funds. Also foreign-flag ships which call at Cuban ports en route to or from other destinations may not be serviced at any U.S. port.

B. Trade control through multilateral cooperation

The United States was an original member of the Consultative Group and its operating agency, the Coordinating Committee (Cocom). This informal, and voluntary organization was formed in November 1949, for the purpose of developing a multilateral approach for the control of trade in strategic materials with the Soviet bloc. The organization is based in Paris. Original members were United Kingdom, France, Italy, the Netherlands, Belgium, Luxembourg, and the United States.

Membership in the group was expanded to include Norway, Denmark, Canada, and West Germany. Subsequently Portugal, Greece, Turkey, and Japan joined, bringing the current total membership to 15.

The Consultative Group is composed of representatives of participating countries at the ministerial level. The permanent working organization of the group is the Coordinating Committee (Cocom). The Group's function in relating to Cocom is to review the recommendations and activities of Cocom, to consider general policy matters and issues of policy arising in Cocom, to dispose of unresolved matters referred to it by Cocom, and to set the general frame of reference for future Cocom activities.

Cocom began functioning as the permanent working committee of the Consultative Group in January 1950. It considers and recommends specific control measures and their application and enforcement to the governments of the participating countries. Cocom has a permanent Chairman and a secretariat which operates under the direction of the Chairman. The Chairman's nomination is approved by the Consultative Group.

Technically, Cocom is only one of two committees under the Consultative Group. The other one is Chincom (China Committee) which was established under a separate Chairman in September 1952, with the adherence of Japan to the Consultative Group, as a forum for consideration of matters relating to special controls applied to Communist China and North Korea. All Consultative Group members participate in both Cocom and Chincom.

With the abandonment of special controls over exports to Communist China and related areas in 1957, a separate chairmanship of Chincom was discontinued. The Chairman of Cocom now heads both Committees. Meeting as Cocom, the Committee deals with international lists and enforcement matters having to do with the control system applicable to the Sino-Soviet bloc as a whole, as well as with cases of proposed exceptional shipments to the European bloc. Meeting as Chincom, the Committee handles control questions which specifically concern Communist China, North Korea, and North Vietnam.

The Consultative Group-Cocom-Chincom organization has no formal treaty or charter governing its operation and is not a part of any other international organization.

When the Battle Act became law (October 26, 1951) discussions in Cocom had resulted in the steady increase of controls, and the cooperating countries had adopted controls which included most of the items on the U.S. security lists.

In addition, progress was made in coordinating export licensing and customs procedures for the regulation of exports, and the foundation was laid for controlling the movement of strategic trade through free ports.

During 1953 and 1954 pressures for reappraisal and revision of the multilaterally agreed control lists became widespread and intense in many free world countries. A major revision of the Cocom embargo lists was made in 1954, the net effect of which was to narrow the scope of the controls in conformity with the "tighter and more selective" concept.

Another step in the same direction was taken in Cocom in 1958. During the 1958 list review the consultative group directed Cocom to keep the international lists up to date by annual review. They have kept the strategic lists up to date in terms of reflecting current conditions. While these reviews have resulted in the deletion of certain items which do not warrant continued embargo, the general size and scope of the lists have remained the same and items involving important advances in technology have been added. The current Cocom annual review has been underway in Paris since November 1963.

Cocom discussions have also made possible common procedures which supplement the exporting country's controls with additional

controls in the importing country or country of transit—controls which prevent unauthorized diversion of embargoed commodities.

C. The Battle Act (Mutual Defense Assistance Control Act of 1951)

This act, administered by State Department, is an integral part of the U.S. security trade-control program and represents a statement of U.S. economic defense policy. It leaves no doubt as to the intent of requiring friendly countries receiving American aid to support U.S. policies governing the export of both military and nonmilitary materials to nations which are "hostile" toward the United States. The U.S.S.R. and all countries "under its domination" are specifically included in the hostile category.

Under the terms of the act, two lists are maintained by the State Department:

(1) The A list consists of arms and implements of war, including atomic energy materials.

(2) The B list consists of nonmilitary items which nevertheless have strategic significance and might affect the security of the United States.

Aid from the United States to any country must automatically be terminated if it is found that such country is exporting any A list items to nations deemed to be threatening the security of the United States. Likewise, U.S. aid will be terminated to any country for similarly exporting B list items, unless the President determines that unusual circumstances require an exception in this latter requirement in any particular case.

Assistance From Cocom

The principle means of obtaining cooperation in the Battle Act embargo program by the major trading countries is through the multilateral Consultative Group and its permanent Coordinating Committee (Cocom) organization described above.

By providing a forum in which trade control questions can be cooperatively explored and in which decisions can be reached that will apply uniformly in all participating countries, the national interest of the United States is supported. While U.S. export licensing actions on non-Cocom items are more restrictive than those taken by cooperating countries, there has been a large measure of agreement on the part of allied and friendly nations with the basic export control policies of the United States.

D. The Mutual Security Act of 1954 (as amended) (Sec. 414 68 Stat. 848)

The State Department by delegation of the President is authorized under this act to control both export and import of traffic in arms, ammunition and implements of war, including related technical data, by any party other than a U.S. Government agency. Authority is also provided to designate what items shall be made subject to this control, and to require persons who have any dealings with regulated articles to register and comply with the control regulations. Penalties to compel compliance with this law range to $25,000 fine and/or 2 years' imprisonment.

Proposed Changes in Legislation

Pertinent changes to the Foreign Assistance Act of 1963 as reported out by the Senate Committee on Foreign Relations (Report No. 558) October 22, 1963, which relate to trade restrictions are as follows:

The Trade Expansion Act of 1962 is amended to authorize the President to extend most-favored-nation treatment to any Communist country or area when he determines that such action is important to the U.S. national interest and would promote the independence of that country or area from domination or control by international communism and reports this determination to Congress. The purpose of this amendment is to enable the President to extend most-favored-nation treatment to imports from Poland and Yugoslavia.

Tighter restrictions are imposed with respect to countries whose ships and aircraft engage in trade with Cuba.

E. The Atomic Energy Act of 1954

This act, which vests in the Atomic Energy Commission control over all items and materials relating to atomic energy, empowers the Commission to control such items by licensing exports and imports on the broad discretionary basis of determining in each case whether the issuance of a license will constitute an unreasonable risk to the common defense and security, or to the health and safety of the public.

The Commission is also given power to establish such advisory boards as it may desire to consult, in policy and administrative matters including the administration of its controls over the exportation of materials and facilities. Generally, penalties for violations of this act, besides sanctions such as the revocation of licenses and permits, are $5,000 fine and/or 2 years imprisonment (increased to $20,000 and/or 20 years if the offense was committed with intent to injure the United States or to secure an advantage for any foreign nation).

F. The Trading With the Enemy Act of 1917

This act confers on the President virtually unlimited power to regulate, "through any agency that he may designate, or otherwise," all transactions in foreign exchange or with any foreign country or foreign national, during periods when the country is at war or during which the President has declared a state of national emergency. Regulatory power under this section has been vested in the Secretary of the Treasury and the requisite finding of a national emergency has remained in force since December 16, 1950. Penalties for violating any regulations or licensing provisions authorized by this statute range to $10,000 fine and/or 10 years' imprisonment.

Financial and Transaction Controls

The Treasury Department has issued two sets of regulations under this law which relate to export controls.

The Foreign Assets Control Regulations in effect since 1950, amount to a total economic embargo of Communist China and North Korea by prohibiting except by license all financial or commercial transactions with those countries or their nationals by persons subject to the jurisdiction of the United States. However, the control of exports from the United States to these areas is actually exercised by the Department of Commerce under its export control regulations, since the Treasury Department Foreign Assets Control Regulations contain a general license permitting any export directly to those areas which is licensed by the Department of Commerce. Treasury has no significant role in the control of exports from the territory of the United States to Communist China and North Korea.

Since the inception of the Foreign Assets Control Regulations the only licensed exports from the United States to Communist China and North Korea have been publications, human remains for burial, and the personal effects of nationals of those countries returning to their homeland.

The Transaction Controls Regulations prohibit Americans, including foreign subsidiaries of U.S. firms, from participating in the purchase or sale of certain important commodities for ultimate shipment from any country outside the United States to the countries of the Soviet bloc. The regulations also cover any attempts to commit these prohibited acts.

G. The Johnson Act (18 U.S.C. 955)

This 1934 act prohibits certain financial transactions by U.S. citizens involving foreign governments (such as the U.S.S.R.) which are in default in the payment of their obligations to the United States. These prohibited transactions include the making of loans to, and the purchase or sale of bonds, securities, or other obligations of a foreign government which is within the statutory restriction. The nonsettlement of U.S. claims on the U.S.S.R. stemming from World War I and lend-lease claims following World War II, places the U.S.S.R. in the prohibited country category. In view of the resulting financial restrictions on United States-Soviet trade through the Johnson Act, and its possible applicability to the sale of wheat to the U.S.S.R. as approved by President Kennedy on October 9, 1963, a new interpretative opinion was rendered by the Attorney General.

The Attorney General concluded that the sale of wheat to the U.S.S.R. by American private dealers for U.S. dollars or gold, either cash on delivery or normal commercial terms was not prohibited by the Johnson Act.

II.—THE AGRICULTURAL ACT OF 1961 (SEC. a(c))

This section states the policy of Congress to "(c) expand foreign trade in agricultural commodities with friendly nations, as defined in section 107 of Public Law 480, 83d Congress, as amended (7 U.S.C. 1707), and in no manner either subsidize the export, sell, or make available any subsidized agricultural commodity to any nations other than such friendly nations and thus make full use of our agricultural abundance."

In the Attorney General's opinion (dated Oct. 9, 1963) this policy declaration "does not have the legal effect of prohibiting commercial sales of subsidized agricultural commodities to bloc countries at world market prices for U.S. dollars, gold, or convertible currencies. Declarations of policy in legislation, like preambles, and other introductory material, do not alter specific operative provisions of law." Also, "This rule is particularly relevant where, as here, the declaration of policy was not contemporaneous with the enactment of any of the basic pertinent statutes: The Export Control Act, the Agricultural Act of 1949, and the Commodity Credit Corporation Chart Act."

[From the New York Times, Apr. 27, 1964]

NEW LOOK AT SOVIET TRADE

President Johnson's indication that his administration is willing to consider proposals for expanded trade with Communist countries is another straw indicating a changing Washington atmosphere on this important and sensitive issue. Secretary of Commerce Hodges has made plain several times recently his own feeling that a new look is required at the highly restrictive policies this country now follows on trade with Eastern Europe and the Soviet Union. Several business groups, including the policy committee of the U.S. Chamber of Commerce, have spoken up in favor of easing the existing curbs.

At least two major factors underlie this long overdue shift of sentiment. One is the evident failure of the embargo policy to achieve its objective. When the United States and its allies decided almost a generation ago to restrict exports to the Communist bloc, the aim was to cripple seriously the growth of Soviet military and industrial power. This goal has not been attained in any substantial manner. In recent years, moreover, the diminution of cold war tensions has resulted in a sharp rise of Communist bloc trade with Western Europe and Japan. The one clear result of the uniquely restrictive American policy in this field has been to isolate this country's business community from one of the most rapidly growing areas of international trade. The wisdom of this course when the United States has been going through severe balance-of-pay-

ments problems has come increasingly under question.

In the face of this situation, some have urged that we increase our pressure on Japan and the nations of Western Europe to make their trade policies as restrictive as those we follow. But years of experience have demonstrated that this effort is not only fruitless but destructive of Western unity. It encourages discord and friction between the United States and its allies. The alternative, and wiser, course for this country is to reexamine its entire trade policy toward the Communist world in the light of present world conditions and present national needs. Such a reexamination, we believe, must conclude that a substantial liberalization of American policy in this area will serve the Nation's political and economic interests far better than does the obsolete existing attitude.

[From the New York Times, Apr. 19, 1964]

U.S. ASSAYS STAND IN RED BLOC TRADE—BUT JOHNSON GIVES NO SIGNS OF EARLY POLICY CHANGE

(By Max Frankel)

WASHINGTON, April 18.—President Johnson and his aids took a new look this week at the complex issues of Western trade with Communist nations. There were no signs of pending policy changes despite Mr. Johnson's new expressions of interest in generally better relations with the Soviet Union.

At a news conference today, the President said he planned to review his entire foreign policy in a very general statement to an Associated Press luncheon in New York Monday.

He will deal particularly with the Soviet Union, Communist China, Cuba, Vietnam, and Asia, Latin America, and the responsibilities of political candidates on the issues of war and peace, he said.

President Johnson termed "totally inaccurate" and premature a report that he would announce plans for a 45-percent reduction in the production of fissionable materials for nuclear weapons. Other sources here have said he was seriously considering a reduction beyond the 25 percent announced 3 months ago.

Mr. Johnson gave no details about his conversation yesterday with the Soviet Ambassador, Anatoly F. Dobrynin. He described it as a work meeting covering many subjects and said he hoped it would be helpful.

Everyone hopes for an easing of tensions, the President added at another point, so that there can be disarmament and diversion of resources now committed to the military.

More trade with Communist countries and fewer U.S. restrictions on such trade have been periodically recommended in some quarters as one way to improve East-West relations.

The subject was taken up in some detail last Thursday at an expanded meeting of the National Security Council. The President called together high officials from the Departments of State, Defense, Commerce, and Agriculture to determine what long-range planning was needed to establish more purposeful guidelines to govern trade with Communist countries.

Two considerations are said to have prompted this review.

One is the mounting disagreement about East-West trade among the Western allies.

The second is a growing feeling in the administration that there should be three principal trade policies toward the now-divided Communist world: continuation of the total embargo on trade with Communist China, Cuba, North Korea, and North Vietnam; selective controls and opposition to long-term credits in trade with the Soviet Union and promotion of trade with those Eastern European Communist nations that wish to reduce their dependency on the Soviet Union.

[From the Washington Post, Apr. 19, 1964]

ALLIED UNITY FAVORED IN RED TRADING

(By Stephen S. Rosenfeld)

A strong call for allied unity on trade with Communist countries is made in a report released today by the Center for Strategic Studies of Georgetown University.

The report suggests that the United States apply bargaining leverage to bring about a unified strategy in East-West trade.

It says that a unified economic high command in NATO or an affiliated institution should be established to administer that strategy and it proposes that the United States, Australia, and Canada immediately form a united trading organization to deal with Soviet grain buying.

Its position is that considerations of economic strategy should govern trade with the East, not just considerations of financial profit or no considerations at all.

Most of the 103-page report, called "East-West Trade—Its Strategic Implication," is an analytical summary of the many congressional documents on the subject since 1959.

The report was prepared by center staff members Samuel F. Clabaugh, a retired Army colonel, and Richard V. Allen, a Soviet affairs specialist. Clabaugh testified last year for the defeated Mundt bill that would have blocked Federal credit guarantees for wheat sold to Russia.

In a long general introduction, Clabaugh and Allen say the basic fact of East-West trade is that the Western Allies lack a concerted policy, an intention of formulating one and an instrumentality for putting one into effect.

The report reviews three possible strategies for East-West trade—blockade, limited controls and promotion of trade.

It dismisses blockade as ineffective without full alliance agreement and as adversely affecting the U.S. foreign trade position.

"Limited trade controls," the report says, "are difficult and expensive to administer and, as in the case of total boycott, they impose a penalty on the United States without comparable damage to the Communist countries."

Expansion of nonstrategic trade, would be a policy that rejects all economic countermeasures, says the report. Anyway, "it would appear to be sufficiently repugnant to the American people to be politically impossible."

The report plumps instead for an American effort to enforce a "united strategy" on its European Allies, stating that Washington has stressed defense factors but "has exerted little or no pressure on its Allies."

[From the New York Times, Apr. 30, 1964]

NATO WILL RELAX EMBARGO SLIGHTLY

(By Drew Middleton)

PARIS, April 29.—The North Atlantic alliance's embargo on sales of strategic products to Soviet bloc countries is to be liberalized moderately, authoritative sources disclosed tonight. The changes are not to be dramatic, it was emphasized. They do not reflect any significant alteration in political attitudes, but rather NATO's continuous review of the embargo lists. At the moment the consensus is that the moderate liberalization will not contribute to a stronger military position in any Communist bloc state or to the strength of the Moscow-led alliance as a whole. Some experts thought the changes disclosed some slight accommodation to economic pressures, particularly those for new markets, from nations in the alliance.

Assertions in London that the modifications in the strategic list represent a modest victory for British diplomacy are not, however, shared in informed circles in the rest of NATO.

The British have long maintained that as mercantile people they must seek trade wherever it is to be found and that gains the West may make by restricting sales of strategic goods are largely illusory.

Other members of the alliance, led by the United States, have argued vehemently against this position.

Their position seemed to be undercut last weekend when President Johnson said he would welcome all proposals for more trade with Communist countries.

One of the changes in the list involves the specifications on the types of oscilloscopes that may be sold to the Communist bloc. A wider market for these devices, which show visually the changes in an electric current, would clearly assist electronic industries in Western European countries.

The sale of boron, the element from which borax is extracted, also is to be liberalized, except in case of specially treated boron. Borax, a crystalline salt, has many industrial uses, among them the hardening of steel. British interests control the bulk of its production.

There also is a possibility that the embargo on the sale of cobalt will be liberalized.

Experts from 15 NATO governments and Japan have been reviewing the lists. The review will be concluded early next week. After the results have been communicated to governments concerned, the new lists will be published June 15.

The lists will bind the countries that belong to the Coordinating Committee for Export Controls—the 15 members of NATO and Japan.

FURTHER REVISIONS POSSIBLE

The revised list, sources emphasized, reflects only current thinking. Studies in the next year may require further liberalization or tightening.

Economic intelligence available to Western governments provides a surprisingly detailed picture of what items are essential to Communist military programs.

The products under consideration and the whole system of review are not directly concerned with continuing disputes in the North Atlantic Council over the wisdom of relaxing trade-credit restrictions on Communist-bloc countries.

The six members of the European Economic Community—France, West Germany, Italy, Belgium, the Netherlands, and Luxembourg—have set credit limit at 5 years. This position is supported by the United States.

Britain has never subscribed to this limitation. The constant fear of Common Market and U.S. experts is that the British Government will raise the credit limit to 10 or more years, thus starting a race for expanded trade in Eastern Europe on easier credit terms.

President Johnson's statement had encouraged those NATO governments that secretly share the British view that there should be a relaxation of the embargo and a general move to lift credit restrictions.

The situation among the NATO governments at the moment is that everyone is waiting for someone else to break the present credit barriers.

The West Germans, who do most trade with Eastern Europe, and the French, who are eager to do more, are scrutinizing every move in London in hope that a British action will give the rest of Western Europe a green light.

[From the Washington Post, Apr. 22, 1964]

BRITAIN, SOVIET NEAR ACCORD ON TRADE-BOOSTING DEALS

(By Arthur L. Gavshon)

LONDON, April 21.—Despite the sudden illness of the top Soviet negotiator, Britain and Russia neared agreement tonight on a series of big deals that will hoist their trade to record levels.

Talks have been taking place at three levels and British authorities gave this picture:

A new 5-year pact, due to be signed Thursday, sets the framework for increased quotas of consumer goods each will supply.

The Russians are negotiating a package deal directly with a group of private firms for the purchase of whole chemical, fertilizer, and synthetic fiber plants for their agricultural program. The British Government already has undertaken to guarantee the transaction for about $280 million worth of long-term credits.

Soviet aviation and shipping specialists have begun investigating prospects of buying flying equipment and ships from the British. A Russian civil aviation mission that includes Premier Khrushchev's son, Sergei, is touring the country. British shipbuilders have sent salesmen to Moscow.

As officials put finishing touches to the trade agreement, the chief Soviet negotiator became ill. Nikolai S. Patolichev, 56, Minister for Foreign Trade, was to meet with members of the government and with leading businessmen when he was stricken.

British and Soviet physicians attended him in his downtown hotel. Later a Soviet Embassy spokesman reported "there is no cause for anxiety." But he did not say what was wrong with Patolichev.

The Soviet negotiator, due to fly home Friday after a 10-day visit, canceled meetings with the president of the Board of Trade, Edward Heath; Foreign Secretary R. A. Butler, and Prime Minister Douglas-Home.

In the 5 years since 1959, the volume of British-Soviet trade has climbed from $272 million to $432 million. Value of that trade is bound to increase still more in the coming 5 years if negotiations for the purchase of British plants succeed.

As a measure of the scale of possible new business, Patolichev is known to have indicated informally to British ministers that Russia would like to negotiate an additional $560 million worth of new long-term credits. This would be over and above any nongovernmental credit arrangements which British firms might negotiate with London bankers.

The United States, West Germany, and other allied powers have objected to Britain's policy of granting long-term credits to Russia on grounds these might stave off the collapse of Premier Khrushchev's economic program.

But the British have countered with the argument that they have to export or bust and that anyway it's better for world peace to have a contented, well-fed Soviet society.

The team of Soviet aircraft designers and aviation specialists, now visiting key British aircraft, electronics, and airframe industries, foreshadows big advances in air cooperation between the two countries.

Among the likeliest results: permission for British airliners to fly to Asia by way of Moscow; Soviet purchase of British blind-landing equipment which authorities claim to be the best in the world; technical exchanges on supersonic jet airliner development.

[From the Wall Street Journal, May 1, 1964]

FRANCE IS SET TO SELL LOCOMOTIVES TO CUBA; MOVE WOULD WORSEN U.S.-FRENCH RELATIONS

(By Philip Geyelin)

WASHINGTON.—After an abrupt rebuff from Britain this week on the trading-with-Cuba issue, the United States seems headed for the same sort of row with France.

Word has reached here that the French have all but nailed down a sale of locomotives to Fidel Castro. By some estimates, the transaction involves 15 to 20 locomotives for Cuba's creaking rail network. Although few details are available, the assumption is that the transaction involves credit guarantees from the French Government to facilitate the financing.

What makes the French locomotive negotiations especially galling to U.S. diplomats is that a similar transaction involving British locomotive manufacturers appears to have fallen through or at least seems likely to be delayed, a circumstance that some officials credit to heavy U.S. diplomatic pressure. Now it appears the French have moved in to supplant the British in supplying Mr. Castro's vitally needed locomotives.

If the sale goes through as expected, it is certain to aggravate already blistered Franco-American relations.

The United States, campaigning hard against any Western trade ties with Cuba, has centered its argument on capital goods, and on locomotives in particular. The intensity of State Department and White House thinking on the subject is reflected in a speech last week by Under Secretary of State George Ball, cleared in advance by the White House, designed to set forth in detail U.S. policy on Cuba and the trade issue.

Mr. Ball noted that the United States strongly opposed the British sale of 450 buses to Cuba, saying that without them the "efficiency of the Cuban economy and the level of Cuban morale would be further impaired." Sales of locomotives to Cuba, Mr. Ball continued, "would have an even greater impact."

And he added:

"Movement of sugar to Cuban ports is almost entirely by rail, and the motive power of the Cuban railroad system is presently in a critical state of disrepair. In a late 1963 description of the 'desperate state' of the railroad system, a Cuban official organ estimated that only one-quarter as many locomotives were then in operating condition as in 1959.

"To replace even a part of this equipment would be a very big boon to the Cuban economy."

REBUFF FROM BRITAIN

The fact that France, rather than Britain, seems likely to sell locomotives to Cuba isn't likely to ease U.S. anger at the British, who are considered the pacesetters in burgeoning Western trade with Cuba.

Whatever may have happened to the British locomotive deal, Britain's Foreign Secretary, R. A. Butler, made it clear while visting here this week that his country intends to cling to its policy of selling whatever it can to Mr. Castro.

The British Government's argument advanced by Mr. Butler, in what were said to be heated exchanges with President Johnson and Secretary Rusk earlier this week, is that Britain lives by world trade; therefore, it cannot stand in the path of any commercial dealings by its businessmen, apart from the sale of strategic military goods to the Reds, which all the allies have agreed to forgo.

The British definitely don't classify buses or locomotives as "strategic." They also argue that economic warfare historically has little impact in undermining hostile governments. On the contrary, the British reason that trading helps soften up the Communist enemy. Fat Communists, the British are fond of repeating, are easier to get along with than lean ones.

The United States emphatically disagrees. In last week's speech Mr. Ball argued, in effect, that fat Cuban Communists would be a terrible example for other Latins who might be vulnerable to Red takeover and that a prosperous Cuba would also be better able to conduct costly subversion elsewhere in the hemisphere. "Economic denial," he declared, wasn't only the key weapon for the United States in containing the Cuban threat, but the only feasible one available.

CREDIT GUARANTEES ATTACKED

The United States concedes it may be difficult for some governments to interfere with private commercial transactions; it has accordingly centered its fire on government-furnished credit guarantees on trade with Cuba. In some recent exchanges with allies, the United States has bluntly termed this "foreign aid," and warned that the U.S. public opinion will react violently if it continues. In one such conversation recently, a high-ranking administration official told allied diplomats, including the British and the French:

"A government decision to guarantee credits to assist the Cuban acquisition of needed equipment appears as a political act in favor of the Castro government—whether or not it was so intended." Such an act, he added, "has the effect of defeating the principal instrument short of war available against a regime that seriously menaces free governments in the Western Hemisphere."

The United States has repeatedly warned the Allies in the past month or so that the Cuban trade problem, if not promptly resolved, can do serious harm to the spirit of the Western Alliance.

ALLIANCE BLOWUP COULD RESULT

This theme, it was learned, was stressed by President Johnson in his talk earlier this week with Mr. Butler, without visible success. Officials, who characterized this aspect of the Butler visit as "stormy" and "unsatisfactory," are saying a major alliance blowup may result if the anticipated French locomotive sale goes through. The hope had been that U.S. entreaties might encourage the allies to hold the line, rather than risk the ire of the U.S. Government and the U.S. public.

But even after this U.S. drive had reached its roughest point, there was word that a British concern, Steel & Co., was closing a sale to Castro of huge cranes for dockside use. The French locomotives promise to add further fuel to the fire. Worse, from the standpoint of U.S. strategy, it may serve to uncork a bigger flow of allied sales to Cuba.

"Other governments have made it clear that if one government breaks the line, they will be forced by the pressure of their own commercial interests to follow suit," a high U.S. official says.

So far, the outbreak of Western trade with Cuba has been relatively slight, by comparison with the volume of trade between Europe and Cuba before Castro. But Mr. Castro is reckoned to have as much as $100 million in foreign exchange piled up from last year's sugar revenue, which was inflated by high world sugar prices.

HISTORIC GATT TRADE TALKS BEGIN

Mr. JAVITS. Mr. President, May 4, 1964, may go down in history as one of the most important dates in the long struggle toward the economic integration of the free world and the expansion of world trade. May 4 marked the formal opening of trade negotiations under the Trade Expansion Act of 1962, when ministerial representatives of 62 GATT nations met in Geneva. Following their 2-day meeting actual negotiations will be turned over to the technicians who will work out the details and problems over the next 18 months or more.

The scope of the forthcoming talks is evident when they are compared to the most recent round of negotiations which were concluded in 1962. To obtain suitable concessions on less than 20 percent of its trade with negotiating partners, required that the United States be involved in 2 years of negotiations. The average concession was about 8 per-

cent. During the coming talks, the United States is seeking a 50-percent reciprocal reduction in duties on all but a handful of the U.S. tariff schedule items. About 80 percent of the world's $150 billion annual trade volume may be affected.

Politically, the negotiations are also of great significance. Successful trade talks could substantially reduce the chances of Western Europe splitting into two rival trade blocks—the EEC and the seven-country European Free Trade Association and would provide a unique opportunity to create closer trade ties between the developing nations of Latin America, Asia, and Africa, and the industrialized nations of the free world.

The success of the forthcoming talks depends to a large extent on the extent to which the United States and the EEC—two of the world's principal trading groups—are able and willing to settle their differences over such key issues as the "disparities" question—a question involving the existence of a wide gap between the tariffs of two countries on a given industrial product—trade in agricultural products and nontariff barriers to trade. An issue of equal importance to all GATT countries is whether or not to extend tariff preferences to developing nations and whether or not to extend tariff concessions agreed on to countries which abstain from the tariff cutting talks.

The outcome of the forthcoming talks is of direct economic consequence to the United States. Last year, U.S. exports totaled $21.9 billion, representing an increase of $1.4 billion over 1962. Of this increase, $560 million was due to the rise in the sale of agricultural products. In 1963 exports to the EEC alone totaled $3.9 billion or nearly one-fifth of our total exports. Close to one-third of these exports were in agricultural products. Should the forthcoming negotiations fully succeed, the benefit to the U.S. in terms of our balance of payments, employment and income would be substantial.

At these negotiations the United States should seek the attainment of the following objectives:

First. The substantial reduction of tariffs on industrial and agricultural products.

Second. The lowering of nontariff barriers to trade within the framework of an international convention to set uniform standards under GATT auspices.

Third. A full reappraisal of the most-favored-nation principle which binds all members of GATT to extend to all GATT members concessions made to any one of them.

Fourth. The resolution within the GATT framework of issues related to the deteriorating terms of trade of developing nations through such measures as the granting of tariff preferences for manufactured and semimanufactured products, commodity price stabilization through commodity agreements and the expanded use of the IMF's compensatory financing scheme, and the tying of U.S. concessions to industrialized nations to concessions granted by these countries to the products of developing nations.

Fifth. The negotiation of a code of trade practices to govern the trade of GATT nations with the Soviet bloc's state trading enterprises.

The fulfillment of these five basic objectives would constitute, in my view, a successful Kennedy round and would represent a major step forward toward an economically stronger and healthier community of free nations.

Despite the obvious lack of enthusiasm of France for the forthcoming negotiations we should press for the most comprehensive negotiations attainable. The stakes are much too high for the free world to allow us to be dismayed by the intransigence of one nation.

I ask unanimous consent that an article and an editorial from the New York Times dated May 3 and May 4, respectively, and an article dated May 1 from the Wall Street Journal, which suggest the implications and complexities of the forthcoming GATT trade negotiations, may be printed in the RECORD at the conclusion of my remarks.

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

[From the New York Times, May 3, 1964]

KENNEDY ROUND AIMS AT A GIANT STEP TO FREER TRADE—TARIFF PARLEY OPENS MONDAY FOR 70 NATIONS

(By Richard E. Mooney)

GENEVA, May 2.—The Kennedy round of tariff negotiations will begin formally Monday. But actually, they began long ago.

The beginning may have been when Europeans first started talking about uniting their continent, some years back. It may have been when unity began, with the creation of the European Common Market in 1958.

By late 1961, when the Kennedy administration was shaping its plans for the Trade Expansion Act of 1962, the negotiations were as good as underway.

Because the United States is the only country that legislates its tariff negotiators' authority in advance, the enactment of new U.S. authority virtually preordains a new negotiation. The legislation also has the effect of setting the limits on the deal that can be worked out.

In short, the world's mightiest industrial power calls the dance. Some countries welcome this. Others do not.

The broad objective of the Kennedy planners in drafting the most liberal negotiating authority that the country has ever known was to sponsor a giant step toward generally freer trade.

Their specific objective was to lay grounds for negotiating a substantial reduction in the common tariff around the Common Market countries—West Germany, France, Italy, Belgium, the Netherlands and Luxembourg. The aim was to assure that this new and stronger market would be open, not closed, to the products of the United States and the rest of the world.

Most other industrial countries—the world's substantial traders—supported this U.S. view from the start. The Common Market, particularly France and the bloc's Executive Commission in Brussels, has been less enthusiastic.

Even a Dutch official, than whom there are no more dedicated freetraders, has observed that substantial reductions in the common tariff are difficult at this very time that the Community is struggling hard to develop its unity internally.

UNDERWAY A YEAR

Actual and specific negotiating within the framework of the 1962 Kennedy legislation has been underway now for more than a year. These negotiations have been labeled "preliminary," though they have been just as important as anything to follow.

The trade ministers of 70-odd countries will gather in downtown Geneva Monday afternoon to proclaim their belief in trade liberalization and maybe, but only maybe, to do something about it.

The pact that brings them together is the 17-year-old General Agreement on Tariffs and Trade (GATT). Christian A. Herter, who is President Johnson's Special Representative for Trade Negotiations, will head the U.S. delegation, accompanied by his chief on-the-spot negotiator, W. Michael Blumenthal.

The dimensions of the Kennedy round are greater than anything like it before. It will—barring unexpected failure—result in the greatest trade liberalization ever.

CAUTION URGED

But, beware. It will surely not result in so much liberalization as has been talked about. When all is negotiated and done, the world will not have been stripped of its trade barriers.

Cutting tariffs in half—as the Kennedy legislation authorizes—is difficult in itself, and will not be fully achieved.

Reducing trade barriers other than tariffs can be even harder. Some are even hard to detect. Italy, for instance, has just put a curb on imports of foreign automobiles—in the good name of fighting inflation—by shortening the period in which payment must be made.

The aforementioned three items—tariffs, nontariff restrictions, and agricultural products—are three of the four main items on the Kennedy-round agenda. The fourth is a special concession by industrial countries for underdeveloped countries.

To add to the drama of the days immediately ahead, the United Nations' 3-month conference on how to improve the trading opportunities of the world's underdeveloped countries is underway at this very moment here in Geneva. The U.N. conferees and the Kennedy-round conferees are very much aware of each others' presence.

As indicated above, the bargaining actually began last year, some time in advance of a meeting that the trade ministers held here last May. All of these preliminary negotiations have been dedicated to drawing up automatic rules—the general rule that tariffs be cut by 50 percent, for instance, a special rule for cases where tariffs in key countries are disproportionately high, and other supplementary rules.

The idea was to avoid the item-by-item horse trading of the past. In theory the rules drawn up in advance would be applied, and tariffs would be cut accordingly. Exceptions would be limited and subject to further bargaining.

The hitch is that, in more that 12 months of working at it, the negotiators have been unable to come to any but the most general agreements. The detail, by and large, has not been settled, and in the field of agriculture not even general agreement has been reached.

The ministers' meeting last May set the date for the meeting that is coming up now. The ministers presumed a year ago that the rules would have been written by now and they, the bargainers, could proceed to apply them and strike their bargains on exceptions.

This, more than anything else, is why the coming meeting is being held. It is not the beginning of anything. It is, rather, a milestone in a historic negotiation that has proved to be more difficult than its designers ever expected.

[From the New York Times, May 4, 1964]

THE KENNEDY ROUND OPENS

Reciprocal tariff-cutting negotiations traditionally are long-drawn-out affairs. The Kennedy round, the most ambitious yet attempted, is no exception. Its formal opening in Geneva today comes 19 months after passage of the late President's Trade Expansion Act. It will be another year to 18 months, at a minimum, before agreement can be reached.

As an opening meeting, today's session comes both too late and too soon. Discussion of the key issues has been underway since a preparatory meeting a year ago. But the United States and the Common Market are not yet ready for detailed bargaining. It will be September before Washington has prepared its list of exceptions to the projected 50-percent, across-the-board tariff cut for industry; and ground rules for agriculture and for industrial tariff disparities, 8 months overdue, have yet to be concluded.

Nevertheless, there has been progress. The once-angry issue of tariff disparities has been narrowed substantially. The United States has agreed that the Common Market may reduce by only 25 percent those of its industrial duties that are half or less of various high American tariffs. Washington is merely trying to limit the number of these items and to assure their selection by an automatic rule. Both this country and the Europeans now recognize that very small quantities of American exports would be affected.

The U.S. industries protected by high tariffs generally export little because they are noncompetitive. They would not benefit much, it suddenly was realized, even if the Common Market fully matched the 50-percent tariff cut the United States is offering. Third countries that are major exporters of these products, such as Sweden, Switzerland, and Austria, have the real problem. Their negotiations with the Common Market are the chief reason for delay now.

On agriculture, in contrast, the United States and the Common Market remain at dead center. Neither side is willing to compromise on its negotiating proposals until Europe's uniform grain price is set. The level of that price will determine Europe's output and the market that will remain for American and Commonwealth farmers.

Germany's five partners have proposed a moderate price, about midway between the high German and the low French prices. But that would mean a 10-percent cut in the price German wheatgrowers would receive. Chancellor Erhard, facing an election next year, has been unwilling to challenge the German farm bloc.

Neither this issue nor that of tariff disparities will be negotiated formally in Geneva this week. The hope is that private bilateral talks among the Ministers will produce some pointers on how to move ahead. But the real test may come when Dr. Erhard visits President Johnson in June. Germany, it is now clear, holds the key.

[From the Wall Street Journal, May 1, 1964]

FOCUS ON TARIFFS—WORLD TRADE BARGAINING OPENS MONDAY; CHANCE FOR SUCCESS IMPROVES—LENGTHY GATT PARLEY COULD CUT INDUSTRIAL TARIFFS 50 PERCENT; FARM ISSUES ARE TOUGHER—THE BIG QUESTION: DE GAULLE

(By Ray Vicker)

GENEVA.—America may cut its tariffs in half, transforming itself from a medium- to a low-tariff country, in the round of trade negotiations opening here Monday.

It may bind its farmers in world price-setting commodity agreements, with grains, dairy products, and meat heading the list.

It may help create new foreign aid devices for fostering the economic well-being of underdeveloped nations.

These are some of the stakes in the trade negotiations being launched by economics ministers and other cabinet-level officials next week under the sponsorship of the General Agreement on Tariffs and Trade, the free world agency concerned with lowering trade barriers. About 80 percent of the world's $150 billion annual foreign trade could be affected. So far 40 of the 62 nations belonging to GATT have indicated an intention to participate in the negotiations.

The odds are considerably better than 50–50 that the tariff talks will succeed, though the negotiations promise to be difficult, with periodic crises threatening the collapse of bargaining. That is the opinion in chancelleries and ministries across Europe, from Rome to Copenhagen and from London to Vienna.

A WORKING HYPOTHESIS

It is generally accepted that next week ministers here will recommend adoption of a 50-percent across-the-board tariff reduction as "a working hypothesis." Actual negotiations will determine how this recommendation is to be carried out, with bargaining expected to last for 12 to 18 months. No official negotiations are scheduled next week.

However, preliminary negotiations have been underway for a year. After discounting bargaining bombast, it appears that a formula for handling tariff cuts on industrial products may be almost in sight. Even difficult agricultural negotiations are creeping forward.

"We already have made considerable progress," says W. Michael Blumenthal, chief negotiator for the United States. He is a man whom Europeans suspect of exuding pessimism at various times in the past as a ploy, the way a company industrial relations man might "talk poor mouth" before bargaining with a trade union.

"We see some light," says Jean Rey, a commissioner, and "foreign minister," of the Commission of the European Economic Community, or Common Market.

UNITED STATES, EEC PACE SETTERS

Because the United States and EEC are the free world's largest traders, the United States and the Six are negotiations pace setters. EEC is negotiating as one unit for its six members: France, West Germany, Italy, Belgium, Holland, and Luxembourg. But the coming negotiations are far more than just a United States-EEC exercise.

What would a successful round mean to U.S. tariffs? After reductions, roughly 70 percent of U.S. tariffs would have duties of less than 10 percent; 90 percent of U.S. tariffs would be below 20 percent; and only 2 percent of U.S. tariffs would have rates of 30 percent or more. In effect, the United States would swing from a medium tariff country to one with low tariffs. This should stimulate a higher inflow of imports, from British cashmere sweaters to Italian office equipment, and from Swiss power generating equipment to Japanese cameras.

Many American industries would face much more intensive import competition, forcing greater efficiency at home. U.S. consumers would have more goods for selection. As an example, the duty on $1,000 worth of Swedish modern furniture would drop from roughly $140 to about $70, while the duty on a $100 Italian-made man's suit would fall to $12.50 from $25.

U.S. exports, which hit an annual volume of $21 billion last year, should be stimulated, too, as overseas tariffs decline. This might create more domestic jobs.

POLITICAL EFFECTS

Politically successful tariff talks could reduce chances of Western Europe splitting into two rival trade blocs: EEC and the seven-country European Free Trade Association, composed of the United Kingdom, Denmark, Sweden, Norway, Switzerland, Portugal, and Austria, with Finland as an associate. Each bloc is eliminating internal tariffs, creating snug groupings which could be protectionist if external walls are not lowered, too.

The coming talks also are viewed as an opportunity to attach African, Asian, and Latin American underdeveloped countries closer to the West through trade deals favoring poor nations. One little publicized section of the negotiations is concerned with just that.

The coming round of trade negotiations is commonly referred to as the "Kennedy Round" because it was made possible by the U.S. Trade Expansion Act, passed under the Kennedy administration in 1962. The talks have four goals: Reducing industrial products tariffs by 50 percent across the board; reducing or eliminating nontariff trade barriers; reducing trade barriers to agricultural products so that net effects may be comparable to the trade stimulus of the industrial products tariff reductions (the United States is pressing especially hard for this); and stimulating trade of underdeveloped countries.

Preliminary negotiations focused most attention on industrial products. Problems developed when EEC raised the question of "disparities," or cases in which one country's tariff on a particular item is much higher than another nation's tariff on the same item. The United States has numerous such peaks, or "Matterhorns," as EEC negotiators call them.

EEC proposes that when a tariff rate of one country is double that of another, and when the difference is at at least 10 percentage points between the two rates, a disparity should be recognized. Then, the high tariff would be cut twice as much as the lower one; if the high tariff is cut 50 percent the low one would drop only 25 percent.

The United States agrees extra-high tariffs should be cut more than comparable low ones, but wants to set criteria to limit the number of disparity claims. Compromises seem possible on this question.

Some misunderstanding and pessimism have developed because of EEC's apparently rigid stand on disparities. It appears that the EEC Council of Ministers, the Common Market's "board of directors," have not given Common Market negotiators authority to make any compromises.

RETURN WITH COMPROMISE?

"But don't be misled," says one EEC source. "We never intended to tip our negotiating hand through discussions in the Council of Ministers, discussions which become public information for opposing negotiators. The Council won't send negotiators to Geneva to make compromises. It will work the other way around. Negotiators will return to Brussels with a compromise, and then the Council will act on it."

The hardest issue of all in the negotiations promises to be agriculture. The United States says it won't make any industrial tariff cuts unless farm trade barriers are lowered too. And this applies particularly to farm protectionist barriers of the Common Market.

EEC wants to freeze all world agricultural price-support plans at present levels, and seems reluctant to lower any farm trade barriers. "But we are flexible," says Sicco Mansholdt, Vice President of the Commission of EEC, and the Common Market's top farm expert. Sitting in his Brussels office at the head of a meeting table, he adds: "Our proposal is a formula for starting negotiations, a framework for discussion. We are willing to consider what else should be done to reach agreement.

COMMODITY AGREEMENTS

Key negotiators hope farm products may be included in commodity agreements which would set farm prices at levels that would discourage surplus production. Such agree-

ments may establish export trade limits for each major national producer of grains, dairy products, and meat, and may define amounts which may be accepted by major importing countries. (More detailed reports on the agricultural negotiation prospects and the disparities issue appear below.)

Opinion in Western Europe is that all technical problems in the Kennedy round can be surmounted by the negotiators, provided there is a political will to do so. Some people consider that the big question hanging over the negotiations is the attitude of French President de Gaulle. Will he throw a wrench into the Kennedy round as he did with Britain's bid to join the Common Market?

No one expects General de Gaulle to further the talks if they seem likely to dim his dreams of new world political glory for France. But if he torpedoes the Kennedy round, there's evidence that the reaction against him from within Western Europe and from Latin America, Africa, and Asia could be so strong as to smash those dreams altogether. This could prompt him to move carefully, perhaps even to help push the Kennedy round forward, at least at first.

CANADA'S ANTIDUMPING REGULATIONS

Mr. JAVITS. Mr. President, I have from time to time emphasized the great importance of the forthcoming round of trade negotiations under GATT which has come to be known as the Kennedy round. In particular, I have underlined the great importance of seizing the opportunity which these negotiations present in dealing with and resolving not only conventional problems of tariff barriers, but also—and sometimes even as, or more important—problems of nontariff barriers to trade. American exporters and foreign exporters to the United States have rightly emphasized that tariff reduction by itself is not sufficient and that other restrictions on trade have to be removed or rationalized if we are to enjoy the full benefits to the free world of trade expansion.

I have been dismayed to read from time to time in the public press, articles which undoubtedly emanate from official Government sources which indicate that the whole issue of nontariff barriers to trade has been assigned low priority by the U.S. Government in the forthcoming negotiations. Certainly the range of the problems in this area is wide and complex. This is not a conventional element of past trade negotiations. Because dealing with nontariff barriers to trade is new and challenging is not a reason for neglecting it. On the contrary, if we are to launch any real attack toward liberalizing trade we must apply ingenuity and intelligence to this range of problems.

A recent editorial in the American Metal Market demonstrates how the existence of a nontariff restriction to international trade—in this case, foreign antidumping laws and regulations—can affect not only American exports but have a direct bearing on pricing problems and domestic business decisions of American industry. The case in point is aluminum and the particular nontariff barriers in the Canadian antidumping law.

The aluminum industry is international in scope and the trade and tariff policies pursued by any one country can have repercussions on the aluminum industries throughout the world. On the whole, the United States affords a relatively open and accessible market to foreign aluminum producers whereas U.S. exports are faced with a variety of restrictions and impediments abroad, including high tariffs, special taxes, and severe antidumping regulations. In the case of our neighbor and close friend among nations, Canada—which is second only to the United States in the production of aluminum—antidumping regulations make any imports virtully impossible, whereas the Canadian industry has unencumbered access to the U.S. market. While technically legal under GATT, the Canadian antidumping regulations are in spirit running contrary to the GATT antidumping principles since they call for the application of antidumping duties against imports without the requirement of a finding that these imports are causing material injury to the domestic industry.

The problem of dumping is not unique to Canada. The whole question of antidumping policy has been a very active one in recent months and is bound to become even more active as competition internationally becomes keener. Surely this is an element of international trade policy that demands urgent consideration and treatment if we are to have an equitable international trading system and if the gains from freer trade are to be durable.

The most effective solution, it seems to me, is to negotiate an international convention on dumping among the major trading countries of the world. Such a convention would provide uniform standards and criteria and would offer means for consultation and adjudication of disputes. Enlightened leaders of American business have expressed themselves in support of such a convention, as have a number of European industrialists and statesmen. I am glad to note that during the past few days both Treasury officials and Governor Herter, the President's special representative for trade negotiations, stated publicly that consideration is now being given by the executive branch to an international conference to set worldwide antidumping standards.

Since the problem of dumping is to a very large extent one that confronts the industrialized countries, the Organization for Economic Cooperation and Development—OECD—would provide a very suitable framework for the negotiation of such a convention. Such negotiations would make a contribution not only to a sane and sensible solution and treatment of the problem of dumping in international trade, but would have other important advantages as well. The very act of negotiation and of the establishment of a system of consultation would make an important contribution to closer collaboration among the Atlantic countries. It is by dealing jointly with such practical problems on an Atlantic level that we can build the greater cohesion of the Atlantic community.

I ask unanimous consent that the editorial from the American Metal Market dated February 4, 1964, referred to above, along with a policy declaration on antidumping measures, approved by the 52d annual meeting of the U.S. Chamber of Commerce on April 29, may be printed in the RECORD at the conclusion of my remarks.

There being no objection, the editorial and the policy declaration were ordered to be printed in the RECORD, as follows:

[From American Metal Market, Feb. 4, 1964]

ALUMINUM AND ALCOA

The feeling of puzzlement, widely shared in the light metal industry following the recent abortive move to increase primary aluminum prices, is quite understandable. In rapid succession, Reynolds Metals and Kaiser Aluminum, supported by Aluminium, Ltd., announced plans to raise the price by a cent per pound; the proposed advance was called off when Aluminum Co. of America announced its opposition (for the second time in a month and a half) but coupled its announcement with further adjustment in prices of its mill products. All in all, it was a curious and—for the aluminum industry—an unprecedented affair.

In its brief statement of continued opposition to an ingot price increase at this time, Alcoa threw no new light on the situation. The company reiterated its belief that prices of fabricated products should be improved further before considering an increase in basic metal price. This added no new insight.

As further justification, Alcoa noted that Canadian and world prices were unchanged. At this point, it may be noted that the published world price, equivalent to the U.S. price, was not only unchanged but was reported as still soft in a few areas. As for Canada, however, Aluminium, Ltd., already had announced willingness to match the proposed increase in U.S. prices prior to the Alcoa announcement (adding to the puzzlement of observers). Moreover, Alcan's own domestic price (in Canadian currency) was high enough to be the equivalent of the proposed new U.S. price and would thus preclude bargain purchases at the border by U.S. consumers.

Without an increase in outside prices, Alcoa commented, "foreign producers could sell at their low price in the U.S. without violating our antidumping laws while, at the same time, because of the higher price in this country, American producers could not effectively compete lawfully in the foreign market." Apparently the key word in this statement was "effectively."

Norwegian, French, and Japanese aluminum has been sold in the U.S. market (the first two over long periods of time) at less than the domestic price without apparently contravening our antidumping laws.

And U.S. producers at times have sold domestically produced ingot in export markets at less than the American quotation without bringing down upon their heads legal sanctions, although such threats have been muttered by some foreign governments.

Nevertheless, it should be noted that in Canada the antidumping statutes are so stringent that it is virtually impossible for an outside producer to sell ingot in that market. These statutes require that for such a product as aluminum, the foreign seller quote the Canadian domestic selling price plus the import duty, clearly making the foreign product quite uncompetitive.

On the other hand, Canada is permitted to compete in the U.S. market at the U.S. price and to absorb the import duty for the customer. Even though Canada offers only a very limited opportunity as a market for U.S. aluminum ingot, it is not an equitable trading situation, and obviously is a source of some unhappiness, as reflected in the Alcoa statement.

Unquestionably, Alcoa continues to have logical reasons for opposing an ingot price increase in the United States and the company's recent price actions speak more eloquently than words. Some of these will be discussed tomorrow.

POLICY DECLARATION ON ANTIDUMPING MEASURES

(Approved by vote of the delegates at the policy luncheon, 52d annual meeting of the Chamber of Commerce of the United States, on April 29, 1964)

The U.S. antidumping statute is a law intended to prevent injurious dumping of merchandise from abroad. There is need for more clearly defining the term "dumping" as an unfair trading practice, and in this context the meaning of "fair value" and "injury." Every effort should be made to establish uniform antidumping laws and regulations among trading nations. Care should be taken, however, not to amend the U.S. law in a manner which would subject it to unduly protectionist interpretation or implementation which would impair the healthy expansion of trade or invite damaging retaliation by other countries.

CIVIL RIGHTS ACT OF 1963—ABUSE OF THE FRANKING PRIVILEGE

Mr. BAYH. Mr. President, I should like to speak on a matter of personal privilege. It is a serious matter. I speak with all respect. I invite the attention of the Senate to the action of a Member of the other body that I can only personally describe as being reprehensible.

Today, we in Indiana, both Republicans and Democrats, are going to the polls in a fundamental exercise of the democratic process. A large majority of the Democrats feel a real obligation to assist the President of the United States, Lyndon Johnson, since he is the man who can best represent our party.

Despite the feeling of most of the people in Indiana that this is the main issue of the current election, there are those who are trying to cloud and distort this issue.

For example, a Member of the other body to whom I have referred, has been flooding the State of Indiana with a grossly inaccurate and misleading commentary on the civil rights bill now being debated by Members of the Senate.

To make matters worse, the Member has been sending this commentary to thousands—literally thousands—of my constituents under his personal frank. As far as I am concerned, this is a clear abuse of the intent and purpose of the congressional franking privilege that we enjoy.

Yesterday's edition of the Evansville Press, Evansville, Ind., describes this situation and clearly indicates the intent of this widespread mailing at the taxpayers' expense to people other than this Member's own constituents.

Mr. President, I ask unanimous consent to have this article printed in the RECORD.

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

(By John V. Wilson)

WASHINGTON, May 4.—On the eve of Indiana's presidential primary, a southern lobby is flooding the State with a critical "analysis" of the civil rights bill at taxpayers' expense.

The literature, mailed out under the frank of Representative JOE D. WAGGONNER, JR., Democrat, of Louisiana, giving it free postage, has turned up in Indianapolis and Evansville, among other places.

Described as a "public document," the reprint of a full page of the Shreveport, La., Times, was prepared by the Coordinating Committee for Fundamental American Freedoms, a well-financed southern lobbying group.

Post Office Department attorneys approved the postage-free mailing of "thousands" of the reprints by WAGGONNER.

This use of the congressional franking privilege drew strong protests from Indiana Senators BIRCH BAYH and VANCE HARTKE and Representative WINFIELD K. DENTON, Democrat, of Evansville.

BAYH branded the reprint as "pure trash" and charged that "this type of practice completely contradicts the purpose behind the franking privilege."

DENTON declared "it is an abuse that has been practiced before" and which "causes people to criticize the franking privilege of Congressmen."

HARTKE said the reprint is "very definitely leading to the confusion in the State of Indiana." He added that it is "unfortunate it's being done in this manner to look as though it has the approval of the entire Congress."

The reprint, the size of a newspaper page, gives southern arguments against the civil rights bill in question-and-answer form.

WAGGONNER'S administrative assistant, David Kent, told the Evansville Press the reprint is being mailed "in the thousands."

Kent said he did not know the exact number since WAGGONNER "is not doing that portion."

The reprint was traced to the Fundamental American Freedoms group which operates out of the Carroll Arms Hotel near the Capitol.

Kent said the organization took the minority report of six southern Democrats on the House Judiciary Committee and rearranged the material as questions and answers. It was printed in the Shreveport newspaper February 16.

Later, Kent said, the newspaper article was printed in the CONGRESSIONAL RECORD, making it "in effect a Government document."

On March 2, Kent said, WAGGONNER sent a reprint to Post Office Department General Counsel Louis J. Doyle and asked for permission to mail it out under his frank.

On March 11, Doyle said an assistant counsel replied that it would be an "appropriate enclosure."

On April 28, Kent said, "to be triply sure," WAGGONNER had the reprint published again in the CONGRESSIONAL RECORD.

House rules give congressional free mailing privileges for any part of the CONGRESSIONAL RECORD, other public documents printed by order of Congress and official correspondence.

Kent was asked if the widespread mailing in Indiana was intended to help Alabama Gov. George Wallace, who is opposing Gov. Matthew E. Welsh in the presidential primary for the State's 51 votes in the Democratic national convention.

"I wouldn't want to comment on that," he replied. "It was designed to stir up resentment over the civil rights bill and give the other side of the story." Wallace said he was "not aware" of the Waggonner mailing but added, "Like any politician, I'll take any help I can get."

When he inserted it in the CONGRESSIONAL RECORD, WAGGONNER said he was doing it "so that it will have the distribution that the liberal-controlled press of the Nation will not give it."

Noting that WAGGONNER comes from Louisiana and the reprints are going to Indiana, BAYH said a "frank is a personal right an individual has to communicate with his constituents."

"Just because we disagree with someone, we don't want to gag them," he added, "but patently and obviously distorting the facts makes me lose all patience."

A Culver, Ind., woman, who received one of the reprints, wrote HARTKE that "it is a vicious piece of propaganda."

She said she and her husband are "disturbed because we fear that it and similar statements which distort the truth may influence uninformed people."

Mr. BAYH. Mr. President, the intent of this effort was obviously to drum up support through means of half-truths and outright inaccuracies for a candidate in Indiana's presidential primary. In other words, a Member of Congress was using his frank to support a man who is running for President in my State.

I have said often, and I repeat, that on the issue of civil rights, as on any great issue, I encourage full and free debate in this Chamber or anywhere else. I defend the right of any man to express his views on this or any issue—whether they agree with or are contrary to my views.

But I cannot, in good conscience, remain silent when an attempt is made at the taxpayers' expense to mislead the people of Indiana, or any other State, by distortion and misrepresentation of the civil rights bill in order to win votes for a candidate.

The document that this Member has sent to Indiana by the thousands, under his personal frank, purports to explain the civil rights bill. It purports to explain, for example, that freedom of speech and freedom of press would be denied by the civil rights bill in matters pertaining to discrimination or segregation.

As the reference for this charge, the document being mailed to my constituents points to sections 202 and 203 of the civil rights bill. These sections say that people will be entitled to be free from discrimination or segregation on the ground of race, color, religion, or national origin if such discrimination or segregation supposedly is required by State or local law. Further, it protects people from threats and intimidation if they attempt to exercise rights secured by this bill. Now, let me ask, Is this an abridgment of free speech or a free press? One of our great Supreme Court Justices once said that it is no abridgment of free speech to deny a person the right to yell "fire" in a crowded theater. Thus, it is hardly an abridgment of free speech to prevent people from attempting to curse, threaten, intimidate, or coerce an individual when they act in accordance with the law. In fact, nearly all localities have laws against this sort of behavior in any situation. It would be a sorry place in which to live that did not protect all its citizens against intimidation and coercion of this kind.

This is only one example of misrepresentation in the material which is being sent into my State.

Other obvious distortions need to be refuted as follows:

The civil rights bill does not permit the Federal Government to dictate to schools or teachers what they must teach, nor does it permit the Federal Government to interfere with the operations of schools, or with the job or seniority rights of teachers.

The civil rights bill does not permit the Federal Government to transfer students among schools to create a racial balance in classrooms or schools.

The civil rights bill does not permit the Federal Government to tell any homeowner, or apartment owner, or real estate dealer to whom he may sell, rent, or lease.

The civil rights bill does not permit the Federal Government to tell a bank, savings and loan company, or any other financial institution to whom it may or may not make a loan.

The civil rights bill does not permit the Federal Government to interfere with the day-to-day operations of a business or a labor union; nor does the bill require unions or employers to establish or maintain a quota from any particular minority group; nor does the bill permit any interference with the job or seniority rights of union or nonunion employees.

The civil rights bill does not permit the Federal Government to tell farmers that they must have quotas in their hiring policy.

The civil rights bill does not permit the Federal Government to tell any private club or organization whom they must serve or who can be a member. It does not interfere with or destroy the private property rights of individual businessmen. It does not tell lawyers, doctors, bankers or other professional men whom they must serve.

This commentary being sent to my State is filled with just that sort of intentional distortion—and is filled with many others which if time permitted I could read to the Senate.

Let us set the record straight. The authority granted to the Federal Government by the civil rights bill would fall far short of the authority already granted to the government of the State of Indiana by bills enacted by this State's general assembly.

Indiana is one of 32 States in the Nation with a public accommodations law more stringent and far reaching than a comparable section in the proposed civil rights bill. Indiana is one of 25 States in the Union with a fair employment provision more far reaching than that proposed in the civil rights bill.

I believe that it is this sort of action by a member of any body—particularly a Member of Congress—that lowers the prestige of the National Legislature in the eyes of the people.

Today, we are under attack from all sides. I believe it is imperative not only upon Senators, but all Members of Congress to take the necessary steps to protect and prevent abuse of certain privileges which we enjoy. I should like to ask Senators to join me in a search of their consciences to see if this type of use of the frank is not open to legitimate criticism and if it would not be wise to enact legislation designed to prohibit this kind of misuse of the frank.

LAW DAY U.S.A.

Mr. DOUGLAS. Mr. President, I wish to commend the Younger Lawyers Committee of the Federal Bar Association for its participation in the observance of Law Day U.S.A. on May 1, 1964.

It sponsored a program which brought this year's Law Day theme, "Observe the Law—Key to Order, Justice, Freedom," to 29 high schools in the Washington, D.C., suburban area.

The program utilized a unique approach by which the attorney speaker addressed individual classroom groups in an informal press conference style. This provided an opportunity for direct student participation. A variety of topics, such as legal rights of an accused person, and a comparison of American and Soviet legal systems, were discussed.

These presentations convincingly demonstrated to the students the importance of our legal heritage. The 70 volunteers who participated in the program are all younger attorneys working in various agencies of the Federal Government or in private practice.

As a Senator from Illinois, I am pleased that both Scott Hodes, national chairman of the Younger Lawyers Committee, and Julian Block, chairman of the committee's Law Day program, are former Chicagoans. I know that all Senators will agree with me when I say that these younger lawyers are to be commended for their efforts.

CIVIL RIGHTS ACT OF 1963—ALLEGED POLICE BRUTALITY

Mr. RUSSELL. Mr. President, there has come to my attention an able editorial dealing with the great responsibilities of police officers published by the Marple Community Record of Broomall, Havertown, and Newtown Square, Pa., on Thursday, April 30, 1964.

The editorial is entitled "Police Brutality?" On other occasions, I have stated on the floor of the Senate that it was expecting the impossible of the officers of the law to cope with widespread campaigns of civil disobedience and the violation of local laws without using such force as is necessary for self-protection and to effect the arrest of the offenders. This editorial deals with the difficulties being encountered by our law enforcement officers today in a realistic and factual manner. This editorial is in the best traditions of American life and is in sharp contrast with the criticisms of those who live in ivy-covered towers and who do not have firsthand knowledge of the very serious incidents which are occurring in many communities. These people seem to take the position that any police officer is a fair game for any group who may wish to demonstrate on the streets by blocking traffic or by preventing entrance into places where legal business is transacted.

The majority of our law enforcement officers in this country are good men whose primary aim is to preserve law and order in the communities where they work. In the very difficult task of coping with mass campaigns of civil disobedience and disruption of community life, they are entitled to the support of all good citizens.

Mr. President, I ask unanimous consent to insert the editorial in the RECORD.

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

[From the Marple Record, Apr. 30, 1964]

POLICE BRUTALITY?

We are, all of us, creatures of God. It behooves us to get along with each other as best as we can during our short stay on earth.

The Record feels it must depart from its generally local pattern of editorial voice, however, to argue about a term.

The term is "police brutality." The charge is made that this term is evident in the Chester, Pa., integration demonstrations, and we think it's about time someone took the side of "sweet reason."

Too often the police are getting the short end of the stick in the parade of alleged "peaceful integration demonstrations." The men who enforce our laws are booed, hissed, spat upon, defamed, taunted, and dared. Don't tell us it's not that way—we've been at these demonstrations, too. There seems to be something that maddens a young American(?) these days about a uniform, so that he has to bark his defiance and show that he's a libertarian of justice while all the police officers are, after all, "cops."

It's not enough that the men of the law are, for the most part, underpaid, overworked, and expected to risk their lives to carry out their duty and uphold the law as a matter of course. Now they're expected to be ambassadors of good will when someone is maliciously defying the law.

Yes, of course, we know there are the exceptions, the power-mad bozos who get behind a badge and become little Hitlers of power, but these are few indeed, and we are most fortunate that such men are not to be found in the constabularies of this area.

But in some 15 years of reporting on a number of daily and weekly sheets, we've come across a variety of police officers—and we can truthfully say most of them were decent, family-raising human beings.

They have the same hopes and fears and emotions as you and I have. And a good portion of them are considerably more active in community affairs, particularly in youth activities, than you and I because these are the men who run up against the seamy side of a community. Often they can see gaps of adult responsibility, and so they fill these gaps by coaching in athletic contests for youth, helping build athletic fields, teaching boys the law, and so on.

We can tick off countless police in the Marple-Newton-Haverford area who fit this category. Offhand we can't name one who would deliberately club a peaceful demonstrator, just for the joy of one-sided combat.

That's why the term "police brutality" riles us a bit. It shows up in mass picketing by unions, too. It's against the law to mass picket. You can stay off the job and carry a sign and yell "scab" at the folks who choose to cross the line all you want, but you cannot stop those people from crossing that line by throwing 2,000 union members at a gate. Still it happens.

When police move to break up such an act, we always hear the howls of "police brutality."

Now we don't know about you, but we got a hunch that many of the Chester police,

and those volunteers from other communities, have been pushed to the limit lately. All the things we said at the outset of this article have been happening to them, from the booing to the dares—and worse. We understand the rock throwing in the Chester vicinity hasn't begun to get wide newspaper coverage, for "big city" newspapers apparently prefer to sympathize with the lawbreaking mobs rather than wholeheartedly supporting the police in their efforts to maintain law and order. We equip our police with sidearms, blackjacks, and billy clubs and order them to go out and see that our laws are upheld—then, when riotous groups attack them or refuse to obey them, the police have no alternative than to use force. At this point, the sobsisters take over and decry the "police brutality."

Frankly, we believe that any and all means, without exception, should be taken by police in order to uphold law and order and in order for them to fulfill their oath of being "protectors of the law-abiding community."

We think it's about time someone stood up for the Chester police. The police are trying to do their job and uphold the law. They deserve better than a careless phrase. And this same defense applies to police departments in other communities, throughout the country, as well.

THE CIVIL RIGHTS ACT OF 1963—PRESIDENT SEEKS HELP OF SOUTHERN BAPTISTS

Mr. RUSSELL. Mr. President, some days ago, the President of the United States was visited by a large delegation of Southern Baptist leaders. The President, in speaking to them, urged them to support the so-called civil rights bill.

It is undoubtedly true, Mr. President, that many men of the cloth do support the bill, without regard to its impact on our system of government.

It is gratifying to note that some clergymen recognize what the bill presents: a political rather than a moral issue.

An editorial published in the Alabama Baptist for April 2, 1964, written by one of those who was present when President Johnson made his address to the Southern Baptists, has stated very succinctly the relationship of the Baptist Church to political activities in this editorial, entitled "President Seeks Southern Baptist Convention Help." I ask unanimous consent to have it printed in the RECORD.

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

PRESIDENT SEEKS SOUTHERN BAPTIST CONVENTION HELP

A Christian Life Commission seminar, composed of about 150 Southern Baptists, met in Washington, D.C., recently. President Lyndon Johnson appeared before this group to bring, what was thought to be, greetings. He used the opportunity to make a strong political appeal for the pulpits in America, especially those of Southern Baptists, to be turned into political rostrums to promote his proposed civil rights bill. He used phrases to describe the kind of approach he wanted the preachers to make, which would be inappropriate to be used in sermons. He told them, "to take up cudgels" to fight for the civil rights measure. He further talked about power structures and other terms which are far from the approach of the gospel to sin.

He asked the preachers to help him answer what he called half-truths and to answer the critics of this bill with truths and action. He made a direct appeal for Southern Baptist leaders to lead their congregations into the civil rights fold.

A news report stated that the Baptists hearing him responded with a warm applause. We cannot believe this was a response of agreement, but a politeness toward the President of the United States.

President Johnson evidently does not understand the position of Southern Baptists relative to making their pulpits political rostrums. We believe our members should be taught the scriptural expectation of God relative to man's citizenship and then go out and perform their duties in this area as individuals. We believe the pulpit should instruct members of the church in their duties as citizens, but the formation of power structures and the specifics in politics should be left to the individual.

Those who are seeking to get this bill passed are appealing to the churches by calling it a moral issue, but any kind of issue which involves politics does not always fall under morality, but this problem is specifically social and political.

We have no instances of Jesus' resorting to law to advance his kingdom. He was obedient to the state, but there is no instance where he shared in political activities. The worst thing we could do is to turn our pulpits into political rostrums to advance the ideas of one man, or group of men.

If a person believes in an all-powerful centralized Federal Government or in outright socialism, then we could see how he would pull for this bill. Gradually the country has slipped into Federal control through taxing the people and then giving it back to the States with Federal strings tied to it. We feel that this bill is one of the most critical challenges we have ever faced as far as the freedom of the individual is concerned. If this bill is passed, powers will be given the Attorney General in Washington which will be akin to the police state. Federal inspectors will be investigating nearly every area of our lives where any Federal funds are involved directly or indirectly. To be specific, if a farmer has financial dealings with the Farm Credit Administration, or any other Federal agency, he will be subject to the penalties prescribed in this bill. Anyone who borrows money from a bank insured by the Federal Deposit Insurance Corporation would fall under this bill.

The bill will forbid anyone from selling or renting his home freely to anyone. The right to private business and control would be destroyed in our public accommodations, like hotels and restaurants, and man would no longer have a right to choose his customers or associates in many areas of activity.

The Hill-Burton Act specifically states that anyone can borrow or receive grants from this fund, but the hospitals must provide equal facilities for whites and Negroes. The grant feature of this bill has already been ruled by the Federal court as unconstitutional, relative to the equal facilities, and this civil rights bill would make the same decision apply to any institution borrowing money in good faith from the Government. In other words, the very fact that a private college has borrowed in good faith money from the Hill-Burton funds does not mean a thing, if this law is passed, the Federal Government could enter in and control the school and its faculty. For instance, any teacher who taught in these schools anthropological history contrary to what the Federal Government thinks is true, the course could be cut out and the teacher fired. This is thought control pure and simple.

To sum up some of these things, it would mean that the Federal Government would control hiring, firing, promoting, demoting, payment of employees, and also give the Government power to destroy the seniority systems in our labor unions.

In fact, this is a sweeping bill which apparently was shielded from the people so they would not know the facts in it.

This bill would set up Federal courts and inspectors to punish any offenders whereby the individual would not have the privilege of a trial by jury.

The most objectionable features do not center around segregation and integration but around our basic freedoms and freedom of choice. It would make the Attorney General a dictator in large segments of our lives.

These are some of the things the President is asking the pulpits in America to defend and promote. All of us know that many socialistic policies have entered into our way of life, but if this bill is passed it will outsocialize the Socialists. We recommend that all of our Southern Baptist people write, wire, or call, the President of the United States and give him their honest views concerning what he is asking. We feel that our pulpits should be left free to proclaim the message of salvation and as centers of worship.

We do not know of any religious body which would benefit under a totalitarian government except those religions which are themselves totalitarian. Democratically operated religious bodies would lose greatly under any type of political authoritarianism. The civil rights bill must be in desperate straits for the President to call upon the pulpits of America to support his political and legislative programs in the name of morality and freedom for all. The Negro and white citizen will fall under these regulations, and it will be just as oppressive to one group as it is to the other.

ADDRESS BY SENATOR THURMOND OF SOUTH CAROLINA TO WALTER F. GEORGE SCHOOL OF LAW, MERCER UNIVERSITY, MACON, GA.

Mr. RUSSELL. Mr. President, on May 1, the distinguished Senator from South Carolina [Mr. THURMOND] was the speaker for the Annual Law Day ceremonies at the Walter F. George School of Law at Mercer University, in Macon, Ga.

The Senator delivered a very eloquent and thought-provoking address on the rule of law and the means by which the proper rules of law for the guidance of our lives are promulgated.

This address is well worth reading by anyone who is interested in the law as a vocation, as a legislator, or as a good citizen, and I ask unanimous consent that it may be printed in the RECORD.

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

ADDRESS OF SENATOR STROM THURMOND, DEMOCRAT, OF SOUTH CAROLINA, FOR THE ANNUAL LAW DAY AT THE WALTER F. GEORGE SCHOOL OF LAW, MERCER UNIVERSITY, MACON, GA., MAY 1, 1964

It is indeed a pleasure for me to be here with you today. I have many pleasant ties over the years with the State of Georgia and its citizens, not the least of which is my beneficial and gratifying association with your two distinguished Senators and great Americans, Senators DICK RUSSELL and HERMAN TALMADGE and the late Senator Walter George for whom this school is so appropriately named. The people of Georgia deserve congratulations on their splendid choice of Senators, for through their choice they have shared with the Nation the products of the best leadership abilities. Your Senators have made significant contribu-

tions to the Nation of which you can be confidently proud, and they stand stanchly for the rule of law, about which I shall address you today. In fact, Georgia has earned a well-deserved reputation for providing our Nation with outstanding leaders in the Congress including, as well as your distinguished Senators, the able dean of the House of Representatives, Congressman CARL VINSON of this district.

I am especially pleased to be able to speak to you on this Law Day, for I feel quite strongly, particularly at this time, about the necessity of a fuller understanding of, and dedication to, the principle of the rule of law.

The designation of "Law Day" on a national basis is a signal tribute to the success of our governmental system. There are few nations, indeed, where the "rule of law" has historically been such an established fact of life as to be in sufficient danger of being taken for granted by the majority of the society, that special attention to its function is felt necessary and desirable.

The extent to which such a special observance is justified, however, depends on the extent to which our society is brought to a deep and meaningful understanding of the rule of law in a civilized society. If we do no more than acknowledge the idea that the rule of law protects the traffic offender from the wrath of a judge who has burnt toast and weak coffee for breakfast, "Law Day," though it may be perpetuated, will serve no more useful purpose than does Halloween. If Law Day is to be of real significance, we must cultivate an understanding of the rule of law, including its values, its roots—and even its limitations.

Of all the essentials of domestic tranquillity, none is more essential than the rule of law. It is the prevalence of a rule of law that enables men in shaping their own destiny to predict with a reasonable degree of certainty the consequences of their conduct of relations with their fellow men. It is the rule of law that permits the peace of mind which comes from a sure knowledge that one has protection from the trespasses of other men. It is through the concept of the rule of law that men can realize and enjoy that impartiality of treatment which is so essential to human dignity.

For all the values which attach to the prevalence of the rule of law, it was by no means a concept simply and quickly conceived, nor easily implemented. As a fundamental prerequisite, a rule of law must have the support of society. The founder of international law, Grotius, concluded that society is "the source of law properly so called." In so concluding, he was not merely acknowledging the difficulty of enforcing a particular law which does not have the support of a large majority of society, such as that experienced by our own Nation with the 18th amendment; rather, he was confirming a particular conception of the nature of man which was originally that of the stoics, and later common to all Christians.

This concept attributes to man the power of reason by which he can achieve the society necessary for his existence.

It is through this power of reason that man forms fundamental ideas as to what is just and what is unjust; and in time, these fundamental ideas become beliefs, in the sense that although they can neither be proved nor disproved, they become, through the process of reason, reality.

Not every collection of human beings is susceptible to a rule of law. It is only when there is a community of beliefs that it becomes possible. This does not mean that all men must agree on all particulars, but it does mean that they must have common beliefs as to fundamentals of fairness and justice. Political differences may be settled peacefully and orderly, but only if there is agreement on the ground rules as to the methods by which such differences are to be resolved Thus have the Western societies, through reason, reached a community of beliefs that the Judaic-Christian teachings of morality and relations between men are just and have consequently incorporated them into their prevailing rule of law.

The prerequisite of a community of beliefs, in order that a rule of law prevail, by its very nature imposes certain limitations on the application of the rule of law. The degree of community of beliefs in any society depends on the diversity of its various heritages. Our own governmental system, inaugurated in the Constitution, seeks to minimize this inherent limitation by resort to the device of federalism. At the national level of government, where there was the narrowest scope of community of beliefs due to the diversities of heritages across the Nation, there was structured a rule of law which encompassed the most fundamental beliefs. The rule of law of broader scope, consistent with the wider community of beliefs within their boundaries, was wisely left structured within the several States.

In the process of erosion of the device of federalism which accompanies centralization of power in the National Government, the rule of law in our land will continue to be dissipated to the extent that it is sought to be applied in excess of the existing community of beliefs. It requires little insight to perceive that the powers exercised by the National Government have so far exceeded the community of beliefs in the Nation as to at least partially substitute the caprice of men for the rule of law.

Even more pertinent today than when uttered is the 1958 statement of the Chief Justices of the Supreme Courts of the States, in which they stated: "It has long been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast."

Even to the casual observer in 1964, it is not just the decisions of the Supreme Court that raise such doubts, although such decisions have by no means forfeited their title as the principal purveyors of doubt.

There is another primary limitation on the rule of law, which pertains to the breadth of its applicability. By its very nature, the rule of law is limited to legal, as contrasted to political, questions. The relations of man to man, and of individuals to society, are of such a nature as to be subject to a rule of law. There are other questions which must be resolved by society which are not by their nature adaptable to resolution by any rule of law. Among these political questions is the determination of what individuals shall be empowered to make and administer the law, although this is but an example. The line between legal and political questions is obviously often hard to define, but as a general rule, any question which involves policy, as distinguished from law, does not lend itself to resolution by a rule of law.

The series of decisions on legislative reapportionment are graphic evidence of our failure to make a distinction between legal questions, to which the rule of law is applicable, and political questions, the solutions to which do not by nature lend themselves to resolution by application of fixed rules such as those embodied in the rule of law.

Commonsense dictates that legislative districting is a matter which by its very nature does not lend itself to solution by application of any general rule, due to the infinite number of variables and diversities of circumstances involved in each particular case. Attempted judicial adjudication of such issues must, therefore, necessarily involve nothing more than a resort to rhetoric as a shield for the judgment in each case of the individual or individuals who decide it; rather than any application of a rule of law. By such excesses is the status of laws degraded and the concept of a rule of law defamed.

This is, of course, but one of the innumerable indications in contemporary times of the deterioration of the rule of law.

In no area is the breakdown more evident than in the controversial field misnamed "civil rights."

A few short years ago, there was initiated an organized campaign of something which the participants called "sit-ins." They began primarily as passive breaches of the law, a low-key campaign of civil disobedience. Although these demonstrations were intended to, and did, show that an organized group was in deliberate contempt of the rule of law, there was not in these early activities of civil disobedience any dire threat to the continued prevalence of the rule of law in our Nation. Our society is not so fragile that it is unprepared or incapable to meet even a conspiratorial effort to break the law; and had the law been permitted to take its normal course, these early campaigns of civil disobedience would have been adequately dealt with by society through the exercise of routine police powers.

Unfortunately, however, there was added to these sit-ins an additional ingredient which converted what was essentially a problem of law enforcement into a fundamental threat to the very existence of the rule of law in this Nation. This added ingredient was the condonement, attempted justification, and even encouragement of such organized lawlessness by leading public figures, both in and out of Government. Because these campaigns of civil disobedience occurred initially in the Southern States; because the bloc votes of Negroes in some sections of the country made it politically expedient; and because many altruistically motivated individuals let their emotions, rather than reason based on facts, rule their actions, a larger portion of the voice of society was raised in support of the idea that an individual was justified in making an individual judgment on which laws he would obey and which he would defy. Thus, what was initially little more than a strain on law enforcement capabilities was converted into a serious threat to the rule of law as an institution. This attempted justification of civil disobedience and departure from the rule of law seriously undermined the attempts at law enforcement and encouraged even more audacious organized attacks of civil disobedience. The misguided departures from support of the rule of law, whether motivated by political expediency, misguided altruism, emotion, or just plain animosity toward the South, have borne bitter fruits, not only in the South, but across the entire Nation. If one were inclined to be vindictive against such departures from the rule of law, he could rejoice in the fact that the chickens have come home to roost. Less we be tempted to indulge our own emotions, however, let us recall that we have nothing to gain, but indeed, have much to lose from the deterioration of the rule of law anywhere in our Nation.

There is small comfort, therefore, in seeing the double standard revealed in those who earlier condoned and encouraged lawless activities by their labeling as "civil wrongs" the same activities they had earlier viewed as "civil rights" when they occurred in someone else's backyard.

Unfortunately, these are by no means the only indication that understanding of and respect for the rule of law is rapidly deteriorating in these United States. It would be hard to find a more glaring departure from the rule of law than that evidenced by the so-called "civil rights" bill which has already passed the House of Representatives and which is now being debated in the U.S. Senate. I will mention briefly only two of

the many stark conflicts with the rule of law encompassed in this drastic piece of legislation.

The very antithesis of the rule of law are vagueness and discretion. The so-called "civil rights" bill is impregnated with both vagueness and discretion.

Under this legislative proposal, all persons would be forbidden from engaging, under threat of severe penalty, in what the bill calls "discrimination." The legislative proposal, however, does not even make an attempt to define this crime of discrimination. On the contrary, the determination of what constitutes this crime of "discrimination" is left to the discretion of an appointed commission, initially, and, ultimately, to the discretion of the Federal judiciary. When I used the word "discretion," let there be no misunderstanding; "discretion," so granted, includes the power to make a choice based on reason, but it also includes the power to decide on the basis of whim, or caprice, or emotion, or without any foundation whatsoever. This is the rule of man; it is the antithesis of the rule of law.

The so-called "civil rights" bill would vest the power in the bureaucracy of the National Government to grant or withhold funds from any recipient in order to prevent discrimination in the programs financed by such funds. This is a discretionary power of unimaginable import. It is an arbitrary power exceeding in magnitude possibly even the imagination of Lord Acton, who so wisely pointed out that "power corrupts; absolute power corrupts absolutely."

It is evident, therefore, that the deterioration of the rule of law has pervaded even the Halls of the highest legislative body in the land.

Until recent years, it would have been sufficient in any discussion of the concept of the rule of law to confine the consideration to its application in a society of any given nation-state. Today, the rule of law, as a concept, is being discussed and advanced in a new and different context. No contemporary contemplation of the rule of law would be complete without reference to its applicability on an international basis.

We have, of course, a body of rules, customs and general practices between nations that is referred to as "international law." By and large, it is of a nebulous character and is founded primarily on reciprocity and convenience. That it is "law" in the sense that nations generally abide by these rules on the relatively minor subjects covered thereby, and that the citizens of different nations customarily conduct their affairs with each other in accordance therewith for the sake of convenience, we all readily acknowledge—with gratitude for the benefits of this degree of cooperation between nations and their citizens. To the extent that a rule of law is constituted by a system of jurisprudence, however, there is no international rule of law which prevails today, nor, when we examine the requirements for an international rule of law, is there likely to be any such in the foreseeable future. Indeed, the expression of hope for "peace through an international rule of law" in our present world surely either belittles the stature of the rule of law or advertises the existing lack of reality in viewing world conditions.

In the first place, those differences between nations which give rise to frictions of the order which do, or might, precipitate war are almost invariably political in nature, rather than legal. Our own Constitution and structure of Government take this circumstance into consideration and provide accordingly. All domestic matters within the cognizance of the National Government, under the terms of the Constitution, are governed by laws enacted by the Congress. Foreign relations, however, involve political, rather than legal, questions and are conducted not by rules of law, but by policy, which is determined primarily by the executive, rather than the legislative, branch of the Government.

Even were all other factors permissive to the institution of an international rule of law, the political nature of the differences between States would preclude any securing of peace with freedom through this means. The political nature of almost all differences between nations is not the only factor which removes the hope for "peace through an international rule of law" from the realm of practicality, however.

There still remains unsatisfied the prerequisite for the community of beliefs fundamental to any rule of law. Quite obviously, any international rule of law, to be worth the effort, must be generally applicable. This means, in effect, that all powers who cannot be coerced without great damage to the remainder of the world, must agree and consent to the rule of law. Since any attempted coercion of the Communist countries would defeat the purposes of "peace through an international rule of law," the only remaining alternative would be for the Communist powers to concur in the beliefs on which the rule of law is founded. This precludes, for now and the foreseeable future, the institution of an international rule of law.

There is a vast gulf between Communist thinking and philosophy and that of the Western World which absolutely negates any community of beliefs. Through the process of reason, civilized societies accepted the Judaic-Christian teachings as fundamentally just. Not so the Communists. To understand the depth of difference on this one point, consider the negotiations on the wording to the Preamble of the Declaration of Human Rights included in the United Nations Charter. The American proposal was drawn from the Declaration of Independence, in the words: "All men are created equal," to which the Communists vigorously objected, and, incidentally, carried their point. The section, as adopted, uses the words, "All men are born equal."

The gulf is more fundamental than even this illustration would indicate, however. The rule of law which is utilized in traditional Western civilization is founded on a community of beliefs arrived at by the process of reason. The very existence of a community of beliefs is predicated, as Grotius concluded, on the concept of the nature of man which attributes to man the power of reason by which he can achieve the society necessary to his existence. It is at this fundamental level at which the breach between Communists and non-Communists appears, for the Communists deny the power of man to reason and thereby to develop concepts. This is not mere abstract theory of the Communists—it is a guide to their actions and thought which finds implementation, particularly, in their political orientation and structure.

This fundamental chasm as to the very nature of man absolutely precludes the community of beliefs essential to the applicability of the rule of law.

Not only are the Communists incapable of abiding by an international rule of law within their own areas of control, but indeed, they are intent on destroying the rule of law in the nations where it does apply, particularly in the United States.

As an example, the Communists have spared no efforts to infiltrate and influence the so-called "civil rights" movements in the United States, and, thereby, to intensify the campaigns of civil disobedience.

In testimony before the House Appropriations Committee released only last week, Federal Bureau of Investigation Director J. Edgar Hoover stated:

"Turning to the subject of Communist interest in Negro activities, the approximate 20 million Negroes in the United States today constitute the largest and most important racial target of the Communist Party, U.S.A. The infiltration, exploitation, and control of the Negro population has long been a party goal and is one of its principal goals today.

"The number of Communist Party recruits which may be attracted from the large Negro racial group in this Nation is not the important thing. The old Communist principle still holds: 'Communism must be built with non-Communist hands.' We do know that Communist influence does exist in the Negro movement and it is this influence which is vitally important. It can be the means through which large masses are caused to lose perspective on the issues involved, and, without realizing it, succumb to the party's propaganda lures."

How can we seriously believe that the Communists would adhere to an international rule of law when they so slavishly and dedicatedly follow an ideology which demands that they devote their lives and resources, not only to eradication of the rule of law in their own lands, but also that they devote a material part of their efforts to destroying the rule of law wherever it does exist, especially in our own country?

The existing, and the even greater deserved, faith in the rule of law in Western civilized nations can be destroyed by claims that there is ground for hope for peace through an international rule of law, for such claims can only lead to frustration and failure because, above all, of the absence of the prerequisite community of beliefs. There is no easy road to peace in a world where communism exists, except it be a peace without freedom; and to this, we can never submit.

In our Nation, the rule of law is one of the foundation stones of liberty. It is not just a theoretical principle to which we can pay verbal homage 1 day a year and continue to enjoy. It is a practical working device of society, the abandonment of which must invariably be paid for in liberties lost. It cannot prevail in the absence of active support from society.

Many forces of evil seek to undermine and hasten the deterioration of the rule of law. If you value the rule of law, in your own society, and desire to enjoy its manifold benefits, keep ever in mind that "for evil to triumph, it is only necessary that good men do nothing."

PULITZER PRIZE FOR GANNETT GROUP OF NEWSPAPERS

Mr. KEATING. Mr. President, a notable "first" in the annals of responsible journalism has been scored by the Gannett group of newspapers in winning a Pulitzer Prize in the form of a special citation for, and I quote:

A distinguished example of the use of a newspaper group's resources to complement the work of its individual newspapers.

The outstanding series, consisting of some 85 stories by 34 editors and reporters, was called "The Road to Integration" and illustrated both the problems and opportunities inherent in paving the way for equality and human rights.

Mr. President, I want to salute the Gannett group, its capable publisher, Paul Miller, and the diligent and resourceful reporting staff that has put together this important roundup of the struggle for civil rights. This is the fourth estate at its readable, influential, and enlightening best. The cause of dignity and freedom can have no support more effective and vital.

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

Mr. KEATING. I yield.

Mr. JAVITS. Mr. President, I join my colleague and congratulate him on his very fine statement with relation to the winning of the Pulitzer Prize by the Gannett group of newspapers. I point out that the Senator has the additional honor of having Mrs. Gannett, the widow of the former publisher, reside in his own home town of Rochester.

A TRIBUTE TO RUMANIAN INDEPENDENCE DAY

Mr. KEATING. Mr. President, each year, on May 10, we in the free world honor the anniversary of Rumanian independence; for on this day in 1877, the Rumanian people rose against their Turkish overlords to establish a free and sovereign nation. Guaranteed independence by the Treaty of San Stefan on March 3, 1878, and recognized internationally by the Treaty of Berlin on July 13 of that same year, Rumania became a member of the community of nations.

During the intervening years, the people of Rumania have undergone many hardships. The advent of World Wars I and II resulted in invasion and devastating occupation. With the Russian troops came a group of Communist-trained Rumanian nationals who, within 2 years following the surrender of Nazi Germany, succeeded in overthrowing the constitutional monarchy and establishing a Communist regime, built on terror, fear, and anarchy. This despotic government proceeded, then, to strangle the economy and national heritage of the Rumanian nation in its compliance with the dictates emanating from Moscow.

In recent years, though, there have been rapidly changing conditions occurring in Rumania, leading to outright defiance of Soviet policy. The Rumanians have closed down Russian bookstores and the Russian language is no longer compulsory in schools. By refusing to support the Soviet Union in its polemic dispute with Red China and by vetoing the Soviet plan to establish a central planning agency for all the satellites, the Rumanian Government has begun to turn more westward. Trade with the Western nations, once totaling only 20 percent, has grown to 35 percent.

These and other manifestations bring us to the hope that soon, the Rumanian people may be free again to choose their own leaders, to express themselves openly in public, to be proud of their homeland. Until these rights are enjoyed once more, we in the United States must continue to recognize the historic occasion of Rumanian independence, so that the spirit of freedom which still exists in the hearts of the enslaved Rumanian people will persist and triumph in its struggle against communism.

I am proud to take this occasion to offer my hopes and prayers for the ultimate freedom of Rumania and the full and independent blossoming of the manifold skills and talents of the people of Rumania.

REPRESENTATIVE ZABLOCKI CALLS FOR CHRISTIAN SPIRIT TOWARD CONSTITUTIONAL RIGHTS OF MINORITIES

Mr. PROXMIRE. Mr. President, all Senators have been receiving very heavy mail on the civil rights bill, pro and con.

We have all been impressed by the fact that many of those who have written letters have been honestly misled as to what the bill contains. Some of the letters have been vehement, violent, and abusive.

The senior member of the Wisconsin Democratic delegation in the House of Representatives, CLEM ZABLOCKI, has written to his constituents, in the wake of the showing of Governor Wallace in Wisconsin, what I think is one of the finest, most thoughtful, and forthright replies to people who have written these strenuously abusive letters.

It is such an impressive reply that I would like to quote briefly from what Representative ZABLOCKI has to say:

> It is shocking that individuals who consider themselves Christians, who express reverence for the principles of our Founding Fathers and Lincoln, who purport to cherish the Constitution and the Bill of Rights, and who proclaim the "Pledge of Allegiance," can be so un-Christian in spirit, so contemptuous of our national heritage, as to oppose the effective extension of constitutional rights to Negroes and other minorities in places where their rights are now denied. These individuals are failing to heed the Biblical injunction to "Love thy neighbor as thyself."

The editor of the Milwaukee Journal thought so highly of Representative ZABLOCKI's letter that he has written an editorial commending him on his reply.

Mr. President, I ask unanimous consent that this editorial from the Milwaukee Journal entitled "It Is Shocking," be printed at this point in the RECORD.

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

IT IS SHOCKING

In a recent letter to his constituents, Representative ZABLOCKI, Democrat of Wisconsin, blames a lot of the support that Governor Wallace of Alabama got in Wisconsin on the fact that many persons "honestly had been misled" about the civil rights bill. He blames their opposition to the bill which passed the House of Representatives on "lies and distortions" spread by Wallace and others.

There was opposition to the bill in the Congressman's own Fourth District. And ZABLOCKI says that his mail has been heavy and is about 50–50 pro and con. But he is dismayed at the tone of some of the letters in opposition to the bill and his own support of it. He faces the matter head on and says this:

"It is shocking that individuals who consider themselves Christians, who express reverence for the principles of our Founding Fathers and Lincoln, who purport to cherish the Constitution and the Bill of Rights, and who proclaim the 'Pledge of Allegiance,' can be so un-Christian in spirit, so contemptuous of our national heritage, as to oppose the effective extension of constitutional rights to Negroes and other minorities in places where their rights are now denied. These individuals are failing to heed the Biblical injunction to 'Love thy neighbor as thyself'."

To ZABLOCKI this is a moral issue. And he gives not an inch on it. His district has a right to be proud of him.

The PRESIDING OFFICER. Is there further morning business? If there is no further morning business, morning business is closed.

Mr. TALMADGE. Mr. President, do I correctly understand that the morning business is concluded?

The PRESIDING OFFICER. Morning business has been concluded.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 194 Leg.]

Aiken	Humphrey	Mundt
Allott	Inouye	Muskie
Bartlett	Jackson	Nelson
Bayh	Javits	Neuberger
Bible	Johnston	Pastore
Boggs	Jordan, N.C.	Pell
Burdick	Jordan, Idaho	Prouty
Cannon	Keating	Proxmire
Case	Kennedy	Randolph
Church	Kuchel	Russell
Clark	Long, Mo.	Saltonstall
Cooper	Magnuson	Scott
Cotton	Mansfield	Simpson
Dirksen	McCarthy	Smith
Dodd	McGee	Stennis
Dominick	McGovern	Symington
Douglas	McIntyre	Talmadge
Ellender	McNamara	Thurmond
Fong	Metcalf	Walters
Hart	Miller	Williams, N.J.
Hartke	Monroney	Williams, Del.
Hayden	Morse	Yarborough
Hickenlooper	Morton	Young, N. Dak.
Hruska	Moss	

The PRESIDING OFFICER. A quorum is present.

CIVIL RIGHTS ACT OF 1963

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. TALMADGE. Mr. President——

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. PELL, Mr. COOPER, and other Senators addressed the Chair.

Mr. TALMADGE. Mr. President, I ask unanimous consent that at this time I may yield to various Senators, to permit them to make insertions in the RECORD, to engage in colloquies, to propound interrogatories, or to make such other remarks as they may see fit to make, but without causing me to lose any right whatsoever to the floor, or without having my subsequent remarks considered as a second speech by me on House bill 7152.

The PRESIDING OFFICER. Without objection——

Mr. JAVITS. Mr. President, reserving the right to object—although I shall not object—I merely make the point, which several of us have made quite consistently, that we assume that such insertions will be of reasonable length, and will not constitute lengthy intercessions.

Mr. TALMADGE. I thank the Senator from New York.

Mr. President, is there objection to my request?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. TALMADGE. Mr. President, with that understanding, I yield first to the distinguished Senator from Rhode Island [Mr. PELL].

RHODE ISLAND INDEPENDENCE DAY

Mr. PELL. Mr. President, yesterday, May 4, was Rhode Island Independence Day; and a commemorative ceremony of that day was held in Statuary Hall, before the statue of Rhode Island's founder, Roger Williams.

From the days when Roger Williams pursued freedom of worship in the Massachusetts Bay Colony, and, not finding it there, found it in the wilderness that became Rhode Island, through the time of the Rhode Island Act of Independence of May 4, 1776, which cast off the shackles of British tyranny and oppression, to our own era of the defense of free institutions, Rhode Islanders have always cherished freedom and have fought for it.

The Rhode Island Act of Independence, passed on May 4, 1776, antedated by 2 months the Resolution of Independence adopted by the Continental Congress in Philadelphia. It also antedated the Virginia Bill of Rights. Thus, Rhode Island can justly claim to be the oldest independent State in the United States.

The qualities of courage and fierce independence that animated the Rhode Islanders of Revolutionary times were their heritage from Roger Williams. After his battle with the authorities in the Massachusetts Bay Colony for freedom of conscience had resulted in his expulsion, Williams, his wife Mary, their child whom they had christened "Freeborne," and five others who chose to share their exile, came to a place, chosen by Williams, which he had named Providence. There, on land given to them by a friendly Narragansett chief, they built a house, planted a crop, and began to lay the foundations for an authentic American commonwealth. Into its conception went the ideals of freedom which Roger Williams had for so long fervently preached. It was built in the likeness of the America that was to be, and of the Rhode Island that was one day to declare its independence.

Providence and the settlement that grew up around it became a refuge for the religiously scrupulous individuals known to history as dissenters. But though in its law the new settlement was lenient in matters of conscience, it required diligence of its citizens. As a result of their industry, their leader's shrewd bargaining with the Dutch and his friendly relations with the Indians, the new colony prospered, and was eyed enviously by neighboring Massachusetts. Williams forestalled any acquisitive zeal by Massachusetts when he went to England and secured from the king a charter for his colony.

Throughout his life, Roger Williams fought for freedom, for tolerance, and for the right to dissent. The chronicle of his many activities is too long to detail here. His death in 1683 is recorded in the town records of Providence. At the end of the page on which the entry was made is to be found the following:

The Venerable Remains of Mr. Roger Williams, the Father of Providence, the Founder of the Coloney and of Liberty of Conscience.

Founded by those to whom freedom of conscience was more precious than life itself, Rhode Island was necessarily to be found in the lead when it came to declaring independence from Great Britain. Rhode Islanders then, now, and in the future will always be found in the vanguard of the fighters for freedom.

COMPENSATION TO SENECA INDIANS FOR LOSS OF LANDS USED FOR KINZUA DAM PROJECT

Mr. PELL. Mr. President, on March 30, 1964, the Senate passed, by voice vote, H.R. 1794, a bill to provide compensation to the Seneca Indians for the loss of their tribal lands which are to be used for the construction of the Kinzua Dam project. The Senate version, as amended, reduced the amount of compensation from the House's figure of $20.15 million to $9.1 million. Most of the money cut would have gone to a rehabilitation program for the Senecas.

Our history, unfortunately, is replete with instances in which the Indians have come out on the short end in their dealings with the Federal Government. This may well be another chapter in that book. When the Government steps in and radically alters a way of life, through its activities, substantial effort should be made to construct a new and productive way of life. A well-grounded rehabilitation and education program for the Senecas would be such an effort. It may cost dollars and cents; but it will be a small measure, when we equate it with the loss of farming, hunting and fishing, recreational and gardening lands, and homesites. I am hopeful that the Senate-House conferees will reach a more equitable solution to the problem at hand.

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

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may yield for a colloquy between the Senator from New York and the Senator from Rhode Island.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JAVITS. I thank the Senator from Rhode Island for his interest in this matter. The Kinzua Dam project is located in the State of New York; and the Seneca Indians are constituents of my colleague's [Mr. KEATING] and mine, and, of course, both of us are very much interested in the bill which my colleague and I joined in sponsoring in the Senate.

So I thank the Senator from Rhode Island for his interest in these Indians.

Mr. PELL. I thank the Senator from New York. I suppose my interest in the Indians of New York stems in part from the fact that many years ago one of my ancestors was an Indian, a member of the Siwanoy Tribe, in the area now known as New York.

PRESIDENT JOHNSON'S SUPPORT OF THE CIVIL RIGHTS BILL

Mr. PELL. Mr. President, we are now engaged in a great debate on one of the most pressing moral issues this country has ever faced. The resolution of this debate on civil rights lies with the determination of men of good will and sound wisdom to do that which is necessary and right. It is a time for leadership and bipartisan cooperation. I believe we in Congress are cooperating in the very best traditions of nonpartisanship. And as the press is pointing out, President Johnson is lending the full weight and prestige of his office to this important task.

I ask unanimous consent that an article by Hedrick Smith, which appeared in the April 18 issue of the New York Times, entitled "Johnson Pleads for Civil Rights" be printed in the RECORD at this point.

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

[From the New York (N.Y.) Times, Apr. 18, 1964]

JOHNSON PLEADS FOR CIVIL RIGHTS—TELLS EDITORS NATION FACES TORMENTED EASE UNTIL MEASURE IS PASSED

(By Hedrick Smith)

WASHINGTON, April 17.—President Johnson told newspaper editors today that "our Nation will live in tormented ease" until the civil rights bill now before the Senate is written into law.

"The question is no longer will it be passed, but when, when, when will it be passed," Mr. Johnson said.

The President spoke at a White House reception for several hundred editors and their wives attending the annual convention of the American Society of Newspaper Editors. His speech was very serious, almost like a sermon.

Preaching the need for action on his poverty program and medical care legislation as well as the civil rights bill, Mr. Johnson told the editors:

"We must either love each other or we must die."

AN ITCH FOR HOOKY

The speech was the highlight of a lively day at the White House during which the President acted as if touched by spring fever and confessed that he had the schoolboy's itch to play hooky.

Four times the President stole into the blooming rose garden at the rear of the White House to address visiting groups and enjoy the bright, near 90° weather.

He told the Commission on Heart Disease, Cancer, and Stroke that "on beautiful days like this, the President and schoolboys have a hard time staying indoors."

After his talk, the President took his visitors and some reporters on a short tour of the rose garden, admiring the brilliant red

and yellow tulips blossoming beneath rows of white crabapple trees.

Pointing to the grape hyacinths along the edge of the flower beds, he said he was reminded of the bluebonnets growing in Texas.

"Mrs. Johnson loves those bluebonnets," he said, smiling, "but she gets mad at me because my sheep always eat them."

Earlier, the President played host to a group of 150 bearded Montanans dressed in western clothes. The visitors wore lapel pins saying "Big Sky Country" to advertise their State's centennial. Mr. Johnson told them he was pleased they could come to see him at "your White House."

The President even began his address to the newspaper editors in a joking mood. Poking fun at his own campaign to save electricity, he told the editors they were going into the White House soon, "so you can pick up your candles in a box over there."

JUSTICE, OPPORTUNITY, PEACE

Then the President turned solemn.

"We intend to seek justice because that is what the Nation needs," Mr. Johnson said. "We intend to create hope because that is what the Nation needs. We intend to build opportunity because that is what the Nation deserves. We intend to pursue peace relentlessly because that is what the world demands."

President Johnson called upon the newspaper editors, as community leaders and molders of opinion, to join him in an "adventure of leadership by example." He added:

"Somehow, we must ignite a fire in the breast of this land, a flaming spirit of adventure that soars beyond the ordinary and the contended, and really demands greatness from our society, and demands achievement in our Government."

The President preached a gospel of compassion and concern for the needy in the midst of a bountiful society, and responsibility toward future generations.

"Believe me, God is not mocked," he said. "We reap as we sow. Our God is still a jealous God—jealous for the last of the little ones who went unfed while the rich sat down to eat and rose up to play.

"And unless my administration profits the present and provides the foundations for a better life for all humanity, not just now but for generations to come, I shall have failed."

The President continued:

"If there is judgment in history, it rests on us, according to our generosity or our disdain. These are the stakes: to make a world in which all of God's children can live, or to go into the dark. For today, under the shadows of atomic power, it is not rhetoric but it is truth to say that we must either love each other or we must die."

After the speech, delivered in the rose garden, the President and Mrs. Johnson held a reception inside the White House for the editors and their wives and took them on a tour of the Executive Mansion.

ANNIVERSARY OF THE ADOPTION OF THE POLISH CONSTITUTION

Mr. PELL. Mr. President, Sunday, May 3, marked the anniversary of one of the most inspiring events in Polish history—the adoption of the May 3 constitution in 1791.

This meaningful document contains the following words:

All power in civil society should be derived from the will of the people, its end and object being the preservation and integrity of the state, the civil liberty, and the good order of society, on an equal scale and on a lasting foundation.

As citizens of the United States, we join with the more than 7 million Americans who are of Polish origin in celebrating this event. We are remined of the traditional bonds existing between our two countries—bonds strengthened by the principles of individual freedom expressed by the Polish Constitution and by our own, adopted just 2 years earlier in 1789.

We are reminded also of the tragedies which have overtaken the Polish nation since that time: the immense hardships of partition, the ravages of war, the repressions of Communist domination.

But we are reminded, too, of the value and perseverance of Polish ideals. This May marks the 600th anniversary of the founding of the University of Krakow, one of the oldest institutions of higher learning in Europe; and the 20th anniversary of the courage of Polish soldiers, who as gallant allies of our own forces, liberated the famous abbey of Monte Cassino during the bitterly fought Italian campaign of World War II.

The "lasting foundation" described in the Polish Constitution remains with us. As we commemorate its adoption, let us remember the spirit it exemplifies, and the deeply significant connotations it holds forth to all free men, and to their ultimate triumph.

MORALITY OF AMERICAN YOUTH TODAY

Mr. PELL. Mr. President, on April 6, there appeared an editorial in the New York Post entitled "Fathers and Sons (and Daughters)" relating to the recent comments of President Johnson on the morality of American youth today. It is an excellent editorial, and one which points out an important fact—that the youth of today do face problems whose solutions will not be found by a "do as I tell you" attitude. We as adults, must join with our young people to develop constructive programs and increased opportunities so that they will be prepared to meet these challenging years and serve themselves and their country in the best possible fashion.

I ask unanimous consent that the Post editorial be printed in the RECORD at this point.

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

FATHERS AND SONS (AND DAUGHTERS)

President Johnson's comments on the alleged loosening of morals among the young were notably free of middle-aged self-righteousness.

He thought the moral behavior of his daughters' generation an improvement over his own, the President, who is in his midfifties, said. Had he conducted himself as well when he was a teenager, he would have spared his parents a good deal of grief, he indicated.

These remarks were gracious and temperate. Adults are never more prone to cant and double-standard judgments than when they get onto the subject of the younger generation—especially its morals.

These are, of course, outbursts of antisocial behavior among young people that appall the community. The affair at Southampton last summer was a case in point. So was the recent outbreak of student rowdyism at the Commodore.

The youngsters involved in these escapades came from middle- and upper-class families. The parents must carry a large share of the responsibility. If they were doing their job at home, their children would find more meaningful ways of asserting and testing their identities, of getting "kicks," than vandalism and debauchery.

But too often when parents are lecturing on the subject of moral standards, they are in the equivocal position of appearing to tell their children: "Don't do as we do; do as we tell you." Faced with such hypocrisy it is little wonder the kids ignore and defy the community of adults.

The diagnosis is substantially different when it comes to the antisocial behavior of young people in the slums. Here society much more than the parent carries the major responsibility.

The President recognized this when he brought up his war on poverty program in connection with the alleged collapse of morality among young people. Youth joblessness, the President said, which was very high, contributed to situations among young people "that are not too pleasing."

There are young people, says Sargent Shriver, the President's poverty aid, who are prisoners of poverty. Their parents never graduated from grade school, rarely held a job. The youngsters are doomed to the same fate unless society opens up some "escape hatches" for them.

We cannot help feeling that if the national magazines were to devote to HARYOU's program for redeeming the youth of Harlem the space they are giving to adolescent immorality, the future of American civilization would be better served.

REPLY OF ATTORNEY GENERAL KENNEDY TO QUESTIONS RELATED TO CIVIL RIGHTS ASKED BY SENATOR COOPER

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

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may yield to the Senator from Kentucky with the same understanding under which I have previously yielded to Senators

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COOPER. I thank the Senator from Georgia.

Mr. President, several days ago I had printed in the RECORD a letter which I had written to the Attorney General of the United States. In my letter I asked for his comments on several questions that I addressed to him relating to titles III, IV, and VI of the pending bill. The Attorney General responded quickly, and I believe in a very informative and frank way. I ask unanimous consent that the letter of the Attorney General dated April 29 be printed in the RECORD.

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

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 29, 1964.

Hon. JOHN SHERMAN COOPER,
U.S. Senate, Washington, D.C.

DEAR SENATOR COOPER: This is in reply to your letter of April 21, 1964, asking a number of questions relating to H.R. 7152. For convenience, I shall repeat your question and follow it with my answer.

TITLE VI

1. Question. Title VI, section 602, provides in part that "each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity by way of grant, loan, or contract

other than a contract of insurance or guaranty." Would you list the kinds of "contracts of insurance or guaranty" which would be exempted under section 602 from the coverage of section 601?

Answer. Section 602 would not apply to any contracts of insurance or guaranty. Among the kinds of insurance and guaranty which are excluded from section 602 by the quoted language are insurance of bank deposits by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation; Federal crop insurance; national service life insurance; Federal employees group life insurance; and FHA and VA mortgage insurance and guaranties.

2. Question. Does the term "recipient" on line 16 of section 602 apply to private individuals, or does "recipient" include only Federal departments or agencies, States, or subdivision of States?

Answer. "Recipient" means generally the person or entity to whom a Federal grant or loan is made, or with whom a Federal assistance contract is entered into. It includes a State or local agency which receives and administers funds; it is in the course of such administration that discrimination most often occurs, if at all, and it is to discrimination by such State and local agencies that title VI is basically directed. A private person or organization may also be the recipient of a Federal grant or loan, as in the case of a Hill-Burton grant to a hospital. I am not aware of any situation in which a Federal department or agency would be the recipient of a Federal grant, loan, or assistance contract.

3. Question. Would section 602 cover an employer who receives funds under a Federal program, and who discriminates in his employment practices?

Answer. Generally, no. Title VI is limited in application to instances of discrimination against the beneficiaries of Federal assistance programs, as the language of section 601 clearly indicates. Where, however, employees are the intended beneficiaries of a program, title VI would apply. Thus, for example, creation of job opportunities is one of the major purposes of the accelerated public works program. Hence construction employees would be deemed beneficiaries of such a program, and section 602 would require the administering agency to take action to prohibit racial discrimination against them in such a program. On the other hand, the Agricultural Adjustment Act and acreage allotment payments under it is a commodity program having nothing to do with farm employment. Farm employees are not beneficiaries of that program, and section 602 would not authorize any action to require recipients of acreage allotments to refrain from racial discrimination in employment. See CONGRESSIONAL RECORD, March 30, 1964, page 6545 for further discussion of this point.

4. Question. Would section 602 apply to individuals who contract directly with a Federal agency? Would it apply to a corporation which contracts directly with a Federal agency?

Answer. Title VI does not apply to procurement contracts, or to other business contracts which do not involve financial assistance by the United States. It does apply to grant and loan agreements, and to certain other contracts involving financial assistance (for example, those research "contracts" which are essentially grants in nature). In those cases in which title VI is applicable, section 602 would apply to a person or corporation who accepts a direct grant, loan or assistance contract from the Federal Government. But, as indicated, the fact that the title applied would not authorize any action, except with respect to discrimination against beneficiaries of the particular program involved.

5. Question. Would title VI of the present bill supersede those arrangements which have been established under Executive Order No. 10925, March 6, 1961 (President's Committee on Equal Employment Opportunity)?

Answer. No.

6. Are there any Federal agencies which now have regulations which prohibit discrimination in their programs or activities covered by title VI? If so, which agencies, what are the regulations, and to what programs are these regulations directed?

A. Yes. The following are some examples of the actions which have been taken to preclude discrimination in Federal grant and loan programs:

(a) Executive Order No. 11114, 28 Federal Register 6485, June 23, 1963, prohibits discrimination in employment on construction financed in whole or in part by Federal grants or loans.

(b) Executive Order No. 11063, November 21, 1962, 27 Federal Register, 11527, prohibits discrimination in residential housing provided in whole or in part, by Federal grants or loans, and in residential housing under federally assisted urban renewal projects.

(c) Applicants for grants under the Federal Airport Act are required to furnish an assurance that neither the applicant nor any other person occupying space or facilities at the airport "will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the airport."

(d) The Department of Health, Education, and Welfare has refused to enter into contracts for teaching institutes under the National Defense Education Act with segregated institutions. See CONGRESSIONAL RECORD April 7, 1964, page 7102.

7. Question. Would persons who receive payments under various agricultural support and marketing programs be "recipients" under title VI? If so, what type of discrimination by these "recipients" under title VI would be grounds for cutting off their participation in a program? Would it include employment practices?

Answer. Farmers who receive Federal grants, loans, or assistance contracts would be "recipients" within the meaning of title VI. Title VI would protect such farmers, themselves, from being denied the benefits of such programs, or otherwise discriminated against under them, on grounds of race, color, or national origin. But, since such programs are basically commodity programs, and since individual farmers are the ultimate beneficiaries of such programs, title VI would not authorize imposition of any requirements on individual farmers participating in these programs. And, more particularly, it would not authorize imposition of any requirements with respect to farm employment, since farm employees are not beneficiaries of the programs referred to.

8. Question. Title VI would apparently enable such Federal department or agency to establish its own rules and regulations for cutting off Federal funds. How is it intended that a consistent set of regulations prohibiting discrimination in Federal financial assistance programs shall be established throughout all departments and agencies? What procedure is provided by title VI to secure consistent regulations pursuant to, and the uniform application of, title VI in each and every Federal financial assistance program?

Answer. Section 602 provides that each agency's rules and regulations must be approved by the President. The validity of such rules and regulations will be subject to judicial consideration in any judicial review proceeding. Any cutoff of funds must be reported to the appropriate congressional committees.

9. Question. Would you provide several examples of the kinds of discrimination in the administration of Federal financial assistance programs which have occurred? I would appreciate specific details and examples in this instance.

Answer. A number of examples, with supporting evidence, are set forth in the CONGRESSIONAL RECORD, March 30, 1964, page 6543 (Mr. HUMPHREY); April 7, 1964, pages 7054–7058 (Senator PASTORE); April 7, 1964, pages 7100–7103 (Senator JAVITS); CONGRESSIONAL RECORD, volume 109, part 18, page 23531 (Senator JAVITS). Among them are the following:

Under the Hill-Burton Act, between 1946 and December 31, 1962, grants totaling $36,775,994 were made to 89 racially segregated facilities. Of these, $4,080,308 went to 13 all-Negro facilities; the remainder went to all-white facilities.

Large grants have been made for construction and operation of racially segregated public schools in federally impacted areas, under Public Laws 815 and 879. For example, for fiscal year 1962 the following grants were made for construction and operation of public schools in impacted areas in five Southern States: Alabama, $6,948,061; Georgia, $6,200,863; Mississippi, $2,161,945; South Carolina, $4,331,576; Virginia, $15,639,603; total for the five States, $35,282,048. Yet for the school year 1962–63 Alabama, Mississippi, and South Carolina had no Negroes and whites together in any type of school. Georgia had only 44 Negroes in integrated schools, and only about one-half of 1 percent of Virginia's Negro children were in desegregated schools. Substantial Federal funds go to segregated schools in other States.

There is substantial evidence of exclusion of Negroes from training for higher skilled and better paid jobs under federally supported vocational training programs.

10. Question. Is it intended that the act of a Federal agency under title VI in cutting off funds in a program will take place only if discrimination within that particular program has occurred? Or would it be possible to cut off funds for a particular program to influence of termination of discriminatory practices to a State which is not covered by the particular program?

Answer. Funds could be cut off only under the particular program within which there is discrimination and only to the particular recipient who is doing the discriminating in this program. Section 602 makes this clear and express by providing, (1) that each agency responsible for a particular program of assistance adopt generally applicable rules, regulations, or orders with respect to discrimination in "such program," i.e., the particular program committed to its administration; and (2) that assistance may be terminated by such agency only for a violation of such a rule, regulation, or order, i.e., one relating to its own program and adopted with Presidential approval; and (3) that assistance may be terminated under a program only as to the particular recipient who is expressly found to have violated such rule, regulation, or order, i.e., to the person who is discriminating under a program in violation of a rule, regulation, or order applicable to that program. It would therefore not be possible to cut off funds under one program because of discrimination in another program, and assistance could be terminated only to the person or local agency which was discriminating. If only a single county in a State were discriminating, only that county could be cut off; there could be no cutoff to an entire State since the State had not violated any rule or regulation. It thus is clear from the present language of section 602 that any cutoff of funds must be limited to the particular situation in which discrimination has occurred, to the particular recipient who is discriminating, and to the particular program in which the discrimination exists. See House Report No. 914, part 2, pages 25–6; CONGRESSIONAL RECORD, April 7, 1964, page 7059 (Senators RIBICOFF and PASTORE).

11. Question. Would this title authorize the termination of school lunch programs to influence the desegregation of public schools within the State?

Answer. It would authorize termination of school lunch payments to segregated schools. However, in view of the availability of suits under title IV of H.R. 7152 as a means of achieving desegregation, it is not expected that such termination would occur. The intention is very clear that "fund cutoff is the last resort to be used if all else fails to achieve the real objective—the elimination of discrimination in the use and receipt of Federal funds." CONGRESSIONAL RECORD April 7, 1964 (Senator PASTORE).

12. Question. Under title VI, could such programs as the Federal-State highway program, and similar State aid programs, be terminated for the purpose of persuading or coercing the State or its subdivisions to end discrimination in public schools, public accommodations, or public facilities, etc.?

Answer. No. The reasons why this could not be done are explained above.

TITLE IV, SECTION 401(C)

Question. Would a privately endowed college which received 51 percent of its money each year from Federal grants qualify as a public college—operated predominantly through the use of Government funds? What is the test which would bring a private school within this section?

Answer. The intention by the "wholly or predominantly" phrase, is to include schools and colleges which are "private" in name only—i.e., to reach attempted evasions of the 14th amendment. If a school or college is genuinely "private" in origin and character, the fact that it received substantial Federal grants (for research, language institutes, text books, school lunches, etc.) would not bring it within section 401(c). It should be noted that title IV does not create new legal obligations; it merely authorizes suits by the Attorney General in those situations where private persons now have a right of action under the 14th amendment.

TITLE III

1. Question. Considering that H.R. 7152 would provide the Attorney General with authority to intervene in actions brought by individuals under titles I, II, and III(301), would section 302 provide the Attorney General with authority to intervene in cases arising under title VII?

Answer. No. Cases arising under title VII would be based on rights created by statute. Section 302 is limited to cases involving denials of the right to equal protection of the law under the Constitution. Intervention in cases brought under titles I and III could be possible because denials of the right to vote or of use of governmental facilities because of race, etc., is a denial of equal protection of the laws in violation of the Constitution. But, there would, under section 302, be no general right to intervene in cases brought by individuals under title II, except in instances in which there was sufficient State involvement in the conduct alleged to also violate the Constitution's equal protection clause.

2. Question. To what type of action, other than those specifically authorized in H.R. 7152, would section 302 be applicable? Would section 302 embrace cases brought by individuals against State officials, or individuals against individuals, claiming the denial of equal protection of the law?

Answer. Section 302 would allow intervention in cases commenced in Federal court seeking relief from a denial of equal protection of the laws only where such denial was on account of race, color, religion or national origin. Such a suit would be based on the 14th amendment and would normally be brought against a State official. It could be brought against a private individual only if sufficient "State action" were involved to constitute a constitutional violation.

3. Question. Would title III, section 302, permit the Attorney General to intervene in cases involving alleged denial of the first, fifth, and sixth amendments to the Constitution?

Answer. No.

4. Question. In what respect does section 302 differ from the old title III of the original civil rights bill of 1957?

Answer. Part III of H.R. 6127 (85th Cong., 1st sess.) as passed by the House, would have authorized suits by the Attorney General for injunctive relief from any actions which would give rise to a cause of action under 42 U.S.C. 1985; it would have authorized the Attorney General to initiate law suits to vindicate a very broad range of Federal rights, including, according to the testimony of then Attorney General Brownell, the right to be free from unlawful searches and seizures, the rights included within the broad concept of due process of law and rights of free speech, press, and religion. Section 302 differs from that provision in the following respects, inter alia: (1) it confers only a right of intervention, and not a right to initiate litigation; (2) it extends only to denials of constitutional rights, and not to denials of the additional statutory rights created by 42 U.S.C. 1985; (3) it extends only to denials of equal protection of the law on account of race, color, religion or national origin, and not to such denials on account of other considerations; and (4) it does not extend to denials of privileges and immunities. In short it is a much narrower provision.

I trust the foregoing will prove helpful in your further consideration of H.R. 7152.

Sincerely yours,

ROBERT KENNEDY,
The Attorney General.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. TALMADGE. Mr. President, I am amazed that the time and efforts of the U.S. Senate should have to be taken up in lengthy debate over whether a citizen of this country should have a jury trial when his liberty and property may be at stake.

It seems to me that this is so basic a right that there should be no question about how the issue should be resolved.

Ours is a government of laws and not of men.

In our free society, when a man is accused of a crime, he is presumed to be innocent until found guilty by fellow members of his community.

He has the constitutional right to a speedy and public trial.

He has the right to be confronted by his accusers.

He has the right to cross-examine those who testify against him.

Before he can be adjudged guilty as accused, evidence proving his guilt beyond a reasonable doubt must be presented.

He has the right, Mr. President, to have this evidence evaluated by 12 of his fellow citizens.

He has the right to a trial by a jury of his peers, and this, after all, is the most important of all the protections an accused person has in the administration of justice in our great Nation.

Mr. President, the bill is supposed to be a civil rights bill to protect the rights of all 190 million American citizens. It is a source of utter amazement to me how Senators and others can stand on the floor of the Senate and seriously argue in favor of a bill which in 5 of its 11 titles would deny the right of trial by jury to our citizens. I contend that that would restrict the rights of American citizens and would not enlarge or protect any rights.

Mr. President, the Constitution, in the third clause, section 2 of article III, provides:

> 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 committted; 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 sixth amendment further 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, 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 amendment requires 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, 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.

The eighth amendment provides:

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

Why is it so important, Mr. President, that in our society, American citizens be so well protected in our courts?

The answer is simple. It is because we are a free people.

It is because when a person is accused of a crime, his liberty and property, and indeed, his very life, may be taken from him.

It is because that under our Constitution, no American citizen may be deprived of his life, liberty, or property without due process of law, which is the bedrock for all of the freedoms that we hold dear in our country.

It is because, as the great Daniel Webster declared:

> Whatever government is not a government of laws is a despotism, let it be called what it may.

It is because our system of government was devised to place the authority of law over the authority of men, and not men over law.

Let us look to the wisdom of Thomas Jefferson for insight into this problem with which we are now confronted. It will be recalled that when Jefferson wrote the Declaration of Independence, one of the grievances he made against England was the fact that King George deprived citizens of the Colonies of a right to a trial by jury.

What would Mr. Jefferson say today if he were to witness the jailing of men without first affording them the benefit of a trial by jury? I think we know what he would say.

Shortly after the adoption of the Constitution, it became evident that certain protections of the rights and liberties of our people had not been included.

The right to a trial by jury, as I already have pointed out, was guaranteed in article III of the Constitution, but further protection from possible judicial tyranny was required, so the Bill of Rights, the first 10 amendments, were proposed and adopted. And as we have seen, included in the Bill of Rights were the fifth, sixth, and eighth amendments providing for safeguards against judicial abuse in the courts of our land.

Adoption of the constitutional guarantee to a trial by jury was not without opposition.

Then, as it is true today, there were those who opposed this principle. Just as some people are saying today, there were those who contended then that judges could be trusted not to abuse their authority.

If it were not for Thomas Jefferson, perhaps today the right to a trial by jury would not be included in our Constitution.

He brought this controversy clearly into focus. He argued that democratic government which failed to guarantee jury trials could not endure. He declared that the people should be "introduced into every department of government," and he included the courts, when he wrote that "this is the only way to insure a long-continued and honest administration of its powers."

This great Virginian added, and I quote:

> They [the people] are not qualified to judge questions of law, but they are very capable of judging questions of fact. In the form of juries, therefore, they determine all matters of fact, leaving to the permanent judges, to decide the law resulting from those facts.
>
> But we all know that permanent judges acquire an esprit de corps; that being known, they are liable to be tempted by bribery; that they are misled by favor, by relationship, by a spirit of party, by a devotion to the executive or legislative power; that it is better to leave a cause to the decision of cross and pile (head or tails), than to that of a judge biased to one side; and the opinion of 12 honest jurymen gives still a better hope of right than cross and pile does.
>
> It is in the power, therefore, of the juries, if they think permanent judges are under any bias whatever, in any cause, to take on themselves to judge the law as well as the fact. They never exercise this power but when they suspect partiality in the judges; and by the exercise power, they have been the firmest bulwarks of English liberty.

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

Mr. TALMADGE. I yield to the distinguished Senator from North Carolina for such questions as he may see fit to ask.

Mr. ERVIN. I ask the Senator from Georgia if he does not agree with the observations made by a distinguished U.S. circuit judge, Judge Caldwell, some years ago when he said that if the Congress of the United States continued to authorize equitable proceedings in Federal courts in which the right by trial by jury did not exist, it would have a tendency to destroy the confidence of the American people in the administration of justice in the courts of the United States?

Mr. TALMADGE. I fully agree with that statement.

Mr. ERVIN. Does the Senator from Georgia agree with the observation of Judge Caldwell to the effect that the right of trial by jury should be cherished and enlarged, rather than diminished, because it gave the people of the country an opportunity to participate in the administration of justice?

Mr. TALMADGE. I agree fully. The right of trial by jury is the greatest civil right that any one of the 190 million American citizens possesses. It is inconceivable to me that there should be enacted a so-called civil rights bill in which five titles further deny the right of trial by jury to all citizens of our country.

Mr. ERVIN. Does the Senator from Georgia agree with the further observation of Judge Caldwell to the effect that if Congress continued to enlarge the jurisdiction of the Federal courts by enlarging the jurisdiction of equity, the ultimate result would be that the administration of justice would be in the hands of one professional class in America; namely, the lawyers, rather than in the hands of the people generally?

Mr. TALMADGE. That is entirely correct. It would be restricted more than to lawyers alone. It would be restricted to judges; and they are appointed for life and can be removed from office only by impeachment.

Mr. ERVIN. Does the Senator from Georgia agree with the Senator from North Carolina that virtually all judges are selected from a single professional class; namely, the lawyers of the country?

Mr. TALMADGE. That is true.

Mr. ERVIN. Does the Senator from Georgia agree with the Senator from North Carolina that if the bill were passed in the form in which it was presented by its proponents—that is, without amendment—it would result in everyone, except those covered by voting rights cases and those covered by public accommodations cases, being placed in a situation in which there would be not only no indictment by a grand jury, no trial before a petit jury, no constitutional venue fixing the place of trial, where the witnesses would be readily available, no limitation of punishment, and no protection against not only double jeopardy, but triple jeopardy?

Mr. TALMADGE. The Senator is correct. The application of such provisions in the bill is intolerable in any enlightened country where justice is supposed to be supreme.

Mr. ERVIN. Does the Senator from Georgia agree with the Senator from North Carolina that section 1, title 18, of the United States Code, provides that every criminal act which is punishable either by death or by imprisonment in excess of 1 year in a Federal prison is a felony under Federal law?

Mr. TALMADGE. That is correct.

Mr. ERVIN. Does not the Senator from Georgia know that the Supreme Court of the United States held in the Green case that a man can be imprisoned for as much as 3 years when he is brought before a judge on a criminal contempt charge, without a jury, and that one of the lower Federal courts has held that a person tried on a criminal contempt charge by a judge, without a jury, can be imprisoned for as much as 4 years?

Mr. TALMADGE. The Senator is correct.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that the present Federal laws governing proceedings in criminal contempt cases prosecuted by the Government of the United States represent a disgrace to any system of justice which purports to be created for the purpose of administration of justice rather than compelling people to bend to the will of the Government?

Mr. TALMADGE. The Senator is correct. In my judgment, it is in clear violation of the provisions of the Constitution, which provides for mandatory jury trial in all criminal cases. It has reached the point where subterfuge is practiced, because the courts say it is not a crime. Yet, as the Senator has pointed out, the judge is the accuser, the judge is the prosecutor, the judge is the grand jury, the judge is the trial jury, the judge is the judge, and then the judge sentences. So every vestige of the operation of law is vested only in the hands and mind and bosom of a judge, and he can take whatever action he sees fit to circumvent the Constitution.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that the Supreme Court of the United States has been guilty of some inconsistency in saying that criminal contempt is not a crime, in that in the Gompers case the Court expressly held that criminal contempt was a crime against the Government and was subject to the statute of limitations prescribed by the act of Congress for criminal charges?

Mr. TALMADGE. It has been many years since I read that decision, but my recollection is that it held as the able Senator from North Carolina has said.

Mr. ERVIN. Does not the Senator from Georgia recall that in that case one of the great labor leaders, and one of the most patriotic labor leaders this country has ever known; namely, Samuel Gompers, was prosecuted on a criminal contempt charge in the courts merely because he truthfully said, in violation of the injunction issued by the district judge, that there was no compulsion on people to purchase ranges manufactured

by the particular corporation against which there was a labor dispute?

Mr. TALMADGE. That is my recollection of the situation.

Mr. ERVIN. Does not the Senator from Georgia recall that in that case the Supreme Court held that criminal contempt as a crime was barred by the statute of limitations?

Mr. TALMADGE. That is my understanding.

Mr. ERVIN. Can the Senator from Georgia understand how any man who loves the legal system of our country—based upon the theory that rules of procedure should apply alike to all litigants, regardless of whether they be the U.S. Government, a private corporation or a private individual—could support a bill of this nature?

Mr. TALMADGE. It is inconceivable to me how anyone who loves the system of justice devised by our Constitution could support such a bill.

Mr. ERVIN. Does the Senator from Georgia agree with the Senator from North Carolina that in cases such as those covered by title VI, in which a public official, a local official, or a State denies a citizen or an inhabitant of the United States the right to participate in a program, which right has been granted by Federal law, he would be guilty of a crime under title XVIII, section 242, of the United States Code?

Mr. TALMADGE. The Senator is correct.

Mr. ERVIN. Does the Senator from Georgia understand how anyone could support such a bill, which would authorize unlimited punishment, a denial of the right of venue where witnesses are available, and the denial of protection against double jeopardy, in proceedings for criminal contempt against State or local officials arising under title VI of the bill, when the statute fixes punishment in similar cases at not over a year's imprisonment, or a fine of $1,000, or both, and allows a trial by jury?

Mr. TALMADGE. Such an action would be inconceivable to me.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that the bill is iniquitous from a legal standpoint, in that it is a device, in the first place, to deny the right of trial by jury, by authorizing equity proceedings, and also by virtue of the fact that it would be enforced by criminal contempt procedures as well as by civil contempt procedure?

Mr. TALMADGE. I fully agree with the able Senator from North Carolina.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that the excuse made, that it is necessary to have a law like this in criminal contempt cases, in order to enable the court to enforce its judgment, is wholly without any foundation whatever in truth?

Mr. TALMADGE. I agree fully with the able Senator from North Carolina.

Mr. ERVIN. Does not the amendment which the Senator from Georgia submitted provide expressly that it would make no change in existing law with respect to civil contempt proceedings, and that civil contempt proceedings are designed to enable the court to enforce the bill and are effective for that purpose?

Mr. TALMADGE. The Senator is entirely correct. I should like to add that it makes no change in criminal contempt cases provided that the offense is committed in the presence of the judge, or within the vicinity of the judge, or if it affects the service of a writ of judicial process.

Mr. ERVIN. Is the Senator from Georgia cognizant of the fact that the able and distinguished Senator from Kentucky [Mr. COOPER] has submitted an amendment in the nature of a perfecting amendment to the amendment originally offered by the Senator from Georgia, which would authorize the right of trial by jury in so-called civil rights cases, except where a State or local official was involved?

Mr. TALMADGE. I am familiar with the amendment which the Senator from Kentucky has proposed. It is now lying on the table. I hope the Senator will not call it up, because it would be inconceivable to me to segregate certain classes of American citizens and to provide that one class of American citizens shall enjoy their constitutional rights, but if someone happened to be the trustee of a school, or holds office of any nature, he would be denied the constitutional rights enjoyed by every other American citizen.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that there is really no substantial basis for supposing that all local officials possess a superior knowledge of law and equity over private individuals?

Mr. TALMADGE. The situation in my State—and I am sure it is true in North Carolina, and perhaps elsewhere—is that many citizens hold such offices at great personal and financial sacrifice. The offices are usually held by substantial citizens in the community, business, or on the farm. By virtue of their character, their civic mindedness, their devotion, and their patriotism, they are usually induced to hold this kind of office, but this does not mean they have great knowledge of the law.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that many citizens occupy such offices as membership on school boards, membership on county boards of education, membership on boards of county commissioners, membership on boards of city commissioners and the like, on which they serve either without compensation or compensation which is too insignificant to be considered?

Mr. TALMADGE. That is quite true. They serve at great personal sacrifice. They must neglect their business, their duties, their farms, and spend their own money. Many of them lose business. It is my opinion that if we denied those citizens the constitutional rights which are extended to all other citizens, it would be difficult if not impossible to induce citizens to serve in those capacities.

Mr. ERVIN. I ask the Senator from Georgia if he does not agree with the Senator from North Carolina that it is difficult to understand how any man who has veneration for those who fought the Revolution and made this country free, could support a bill which would deny to any American, regardless of his status as a public official, or a private individual, such a basic civil right as the right of trial by jury, in any instance.

Mr. TALMADGE. I agree fully with the Senator from North Carolina. It is inconceivable to me how any Senator could take the view that some citizens should have preferential rights, or that some citizen should have lesser rights in the eyes of the law. To me, the Constitution treats all citizens alike. They stand equal before the law. If any citizen should be deprived of any right to which he contends he is entitled, he has an equal right to go into any American court and enforce his rights under the Constitution. As the able Senator from North Carolina knows, the Supreme Court and the Federal courts as presently constituted have been quick, indeed, to grant any rights, whether real or fancied.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina in the proposition that under existing acts of Congress, any person charged with criminal contempt, where the alleged contemptuous act or omission constitutes a crime, either under Federal or State law, automatically has the right to a trial by jury, except in cases brought in the name of the United States?

Mr. TALMADGE. The Senator is correct. Under that condition, he could be jailed for criminal contempt and then indicted for a crime, and be made to serve two sentences for the same offense.

Mr. ERVIN. If he were also charged with civil contempt, he could be made to serve three sentences.

Mr. TALMADGE. The Senator is correct. He could be jailed and sentenced three times for the same offense.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that it is an absolute disgrace, and inconsistent with a sound system of justice, to allow the United States a special procedural advantage over all other litigants in U.S. courts?

Mr. TALMADGE. It is inconceivable to me that a government over 190 million citizens, which spends in excess of $100 billion a year, should be entitled to procedural and judicial advantage over its most humble citizen.

To my mind, the more powerful the litigant, the more entitled the citizen should be to the constitutional protection which our forefathers provided. When the Government of the United States comes into court with all of its gigantic judicial, legal, and financial resources, it is inconceivable to me that the defendant in the case should be denied a jury trial. I believe the stronger the potential plaintiff, the greater the guarantee of justice to the defendant should be.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that under the existing Federal act, Congress makes an exception in cases prosecuted by the United States, and thereby deprives a person charged with criminal contempt in such cases of the right to a trial at a place where witnesses are readily available and the advantage of the protection of limited punishment?

Mr. TALMADGE. The Senator is entirely correct.

Mr. ERVIN. And does not the Senator from Georgia share the suspicion of the Senator from North Carolina that one of the motives which prompt the proponents of this bill to provide in virtually all of the sections that the action shall be prosecuted by the Attorney General in the name of the United States is for the purpose of robbing people of a right to a trial by jury which they would otherwise have; for the purpose of robbing them of the benefit of limited punishment, which they would otherwise have; and for the purpose of robbing them of the protection which they would have in respect to a venue which insures the availability of witnesses?

Mr. TALMADGE. The able Senator has correctly stated the situation, in my opinion.

Mr. ERVIN. Does not the Senator from Georgia recall from reading the book of Ecclesiastes in the Old Testament that the writer of that book said: "There is nothing new under the sun"?

Mr. TALMADGE. That is a correct statement.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that that statement is true in regard to the provisions of this bill which undertake to deny people the right of a trial by jury by expanding the power of equity to a point far beyond the ancient limits of equity?

Mr. TALMADGE. The Senator is entirely correct.

Mr. ERVIN. Does not the Senator from Georgia recall from history that when the British Parliament passed the Stamp Act and other revenue acts applicable to the Colonies, they took jurisdiction to try cases involving violations of those acts away from the criminal courts of the Colonies and vested that power in the court of admiralty because the court of admiralty provided no right to a trial by jury, as is the case in equity trials in Federal courts?

Mr. TALMADGE. That is entirely correct. Thomas Jefferson cited that as one of the reasons for the insurrection. And it was perhaps the foremost reason for writing the Declaration of Independence.

Mr. ERVIN. Does not the Senator from Georgia recall that between the passage of those laws and the writing of the Declaration of Independence, two gatherings of representatives of the Colonies, were held and that those two gatherings of representatives of the Colonies denounced the action of the British Parliament in denying the Colonies the right of a trial by jury? They asserted that every person who was a subject of England was entitled to the privilege of a trial by jury.

Mr. TALMADGE. The Senator is entirely correct.

Mr. ERVIN. Does not the Senator from Georgia view with more or less consternation the fact that a right for which the American colonies went to war in 1776 is a right which the proponents of this bill spurn now in the year of our Lord 1964?

Mr. TALMADGE. The Senator is entirely correct. It is utterly inconceivable to me that anyone should take that view.

Mr. ERVIN. Does not the Senator from Georgia agree with the Senator from North Carolina that the most efficacious way to insure that governmental tyranny can be practiced upon the people of America is to deny the right to a trial by jury to American citizens who are involved in a contest between the Federal Government and local officials or individual citizens?

Mr. TALMADGE. I agree entirely. I think the right of a trial by jury is the greatest civil right that all Americans possess. It ought to be more zealously defended than any other right we possess.

Mr. ERVIN. I thank the Senator.

Mr. TALMADGE. I thank the able Senator from North Carolina for his contribution. I regard him as the most able constitutional lawyer in the Senate. In my judgment, his questions have pointed out, to a great degree, the weaknesses of the bill.

Mr. President, with the same understanding with which I yielded previously, I yield first to the distinguished Senator from New Mexico.

PRESENTATION OF LANGLEY MEDAL TO ALAN B. SHEPARD, JR., MAY 5, 1964

Mr. ANDERSON. Mr. President, it was my pleasure to participate this morning at the Smithsonian Institution in the presentation of the Langley Medal to Comdr. Alan B. Shepard, Jr., who is in Washington with his wife and three daughters.

I ask unanimous consent that the remarks I made on that occasion be printed at this point in the RECORD.

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

One of the fascinations of history lies in the way it brings together remote and unrelated achievements and people to establish important milestones in our developing society. This ceremony is a good example.

Prof. Samuel Pierpont Langley was the third Secretary of the Smithsonian Institution and one of the pioneer experimenters in the science of flight. He called it aerodromics. His contributions to this science were great—and lasting.

In 1908, 2 years after the death of Professor Langley, Dr. Alexander Graham Bell, a Regent of the Smithsonian, and himself an experimenter in manmade flight, proposed that a Langley Medal be established and awarded to encourage aviation. The Regents promptly established the medal "to be awarded for specially meritorious investigations in connection with the science of aerodromics and its application to aviation."

The Langley Medal was first awarded to Orville and Wilbur Wright on February 10, 1910.

At about the time of this award to the Wright brothers, a young professor of physics at Clark University, Robert H. Goddard, was experimenting with, dreaming of, and writing about rockets as a means of propulsion for flight.

In 1916 he sent a paper to the Smithsonian entitled a "Method of Reaching Extreme Altitudes" and requested financial assistance for his experiments. He was not disappointed and the Smithsonian takes pride in having aided this great scientist in his early work with rockets.

On March 16, 1926, Dr. Goddard successfully launched the world's first liquid-fuel rocket—from his aunt's farm in Massachusetts.

His continued experiments attracted the attention of Charles A. Lindbergh who was helpful in securing additional and substantial financing from Daniel Guggenheim. This permitted Dr. Goddard to transfer his experiments to my home State, New Mexico. There he laid the foundation of the science of modern rocketry which has made possible our space exploration program of today.

When Dr. Goddard launched the first liquid-fuel rocket in 1926, Alan B. Shepard, Jr., was growing up in a little town in the neighboring State of New Hampshire. I imagine that like most 3-year-olds of that time, his only rocket interest was in the 4th of July variety.

Later, he was appointed to the U.S. Naval Academy and graduated with the class of 1944.

Alan Shepard served his country with distinction as a naval officer during World War II in the Pacific Theater. He earned his naval aviator's wings in 1947 and became an outstanding jet test pilot and instructor.

He volunteered for our country's space flight program, was chosen as one of our seven original astronauts, and became the first to fly in space.

On his third anniversary of his historic space flight, Commander Shepard comes to the Smithsonian Institution to receive its highest award—the Langley Medal.

This is most appropriate, for here—within a few steps of this distinguished gathering—are displayed: The original flying models of Professor Langley's aircraft; a section of the tetrahedral man-carrying kite of Alexander Graham Bell; the original Wright brothers aeroplane of 1903; three original Goddard rockets, including the world's first liquid-fuel rocket; Lindbergh's *Spirit of St. Louis;* a replica of the mighty Jupiter rocket which boosted Alan Shepard into space; and *Freedom 7*, the spacecraft in which he made his historic flight.

The award of the Langley Medal recognizes the outstanding achievements of a great American and marks a significant milestone in history.

I have the privilege of now introducing the Chancellor of the Board of Regents, the distinguished Chief Justice of the United States, the Honorable Earl Warren.

DEATH OF HOWARD ZAHNISER

Mr. ANDERSON. Mr. President, it is my sad obligation to announce to the Senate that Howard Zahniser, known to all of us as the seemingly tireless advocate of a wilderness preservation system, succumbed last night to heart ailments which he has had for several years.

I expect to pay tribute to this great conservationist later in Senate remarks. He was a pioneer who dedicated himself entirely to the wilderness movement. At this time I wish only to advise the Sen-

ators of his death. Nearly all of us knew Howard Zahniser personally, and whether they agreed with him or opposed his objectives, everyone respected his unusual zeal and regarded him with affection as Mr. Wilderness.

I thank the Senator from Georgia for his courtesy in yielding to me.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. TALMADGE. Mr. President, with the same understanding as before, I yield to the distinguished Senator from Ohio [Mr. LAUSCHE].

Mr. JAVITS. Mr. President, before the Senator from Georgia yields, will he yield to me?

Mr. TALMADGE. Certainly, if the Senator from Ohio would permit me to yield to the Senator from New York for some questions.

Mr. JAVITS. I intend to ask the Senator from Georgia a number of questions about constitutional questions involved. But if it will not suit the Senator's convenience, I will wait until later.

Mr. TALMADGE. I had promised to yield to the Senator from Ohio. My time is entirely in his hands. If the Senator from Ohio desires to proceed now, I wish to comply with my promise that I would yield. If he desires to wait, I will yield to the Senator from New York.

Mr. JAVITS. I gather that the Senator from Ohio desires to proceed, but may I ask the Senator to state for the RECORD about how much time he will require?

Mr. LAUSCHE. I think it will require about half an hour.

Mr. JAVITS. I thank the Senator.

Mr. TALMADGE. I yield to the Senator from Ohio under the conditions previously stated.

JURY TRIAL AMENDMENT

Mr. LAUSCHE. Mr. President, I desire to direct my remarks to the issue that is immediately before the Senate; namely, whether language should be included in the pending bill which would guarantee a trial by jury to an accused in criminal contempt cases.

I understand that the amendment offered by the Senator from Kentucky does not deal with civil contempt, but only criminal contempt, and that his language provides that whenever a criminal contempt proceeding is instituted, the aggrieved party shall have the right of a trial by jury if he so desires.

In approaching this issue, I wish to discuss a number of Federal statutes dealing with contempt trials under specific conditions. I shall also attempt to discuss what is supposed to be the difference between a criminal and a civil contempt proceeding.

I have obtained the language from four statutes dealing with trials in contempt cases. The first is the Clayton Act. The second is the Norris-La Guardia Act. The third is the Landrum-Griffin Act, which, of course, is an amendment of the Taft-Hartley Act. Fourth is the Civil Rights Act of 1957.

The Clayton Act was passed by Congress with the intention of prohibiting the formation of combinations purposed to fix prices and to engage in monopolies. In that act, injunctive relief is allowed. Manifestly, if injunctive relief is allowed, Congress must proceed to declare how the trial shall be had in the event proceedings are brought against an accused for insulting the court.

I now read from section 21 of the Clayton Act:

> Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Section 22 of the Clayton Act provides, in paragraph 2:

> In all cases within the purview of this act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event a court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; * * *.

That is the end of the quotation, but not the end of the statute.

In that instance, Congress, in attempting to determine how a trial shall be held for a violation of the Clayton Act, specifically recognized the time-honored concept of the American people that trial by jury is one of the fundamental virtues of our Government. In that instance, Congress undoubtedly remembered how, at Runnymede, the English people demanded of King John that he cause to be set forth in writing certain inviolable rights of the citizenry of England. One of those rights was that when charged with crime, the citizen shall have a right to trial by jury, the jury to be made up of members constituting peers of the accused.

Thus, in a sincere approach to this problem, one might well ask, Why, with respect to the Clayton Act, in certain circumstances, did Congress grant the right of trial by jury, but now is it urged that the right of trial by jury shall not be granted to an accused under the civil rights bill? I cannot give a sound reason. In my judgment, the proponents of the bill cannot, on the basis of reason, demonstrate that under the Clayton Act a jury trial must be allowed, but that under the civil rights bill it shall be denied in criminal contempt proceedings.

Let us turn now to the next important act that was passed by Congress on this subject, namely, the Norris-La Guardia Act. This act was passed in 1932. It relates to injunctive proceedings against unions. The act itself is narrow in outlining the circumstances under which injunctive relief may be granted against a union. But within those narrow limits, a trial judge has the right to command unions not to perpetrate certain acts. Again, Congress had to decide, if an injunction was issued, and the union leaders disobeyed the injunction, how the accused should be tried. I shall now read section 11 of the Norris-La Guardia Act:

> In all cases arising under this act in which a person shall be charged with contempt in a court of the United States—

Mark you, Mr. President, that the Norris-La Guardia Act does not speak of criminal contempt, but speaks of "contempt"—civil and criminal contempt. I shall reread:

> In all cases arising under this act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempt committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court * * *.

So we have another situation important to the people of the country—a statute which allows the issuance of an injunction against a union, a statute which envisions the possible violation of the injunction by a union leader. Congress again said that there shall be the right of trial by jury.

In the Norris-La Guardia Act, the right of trial by jury was given not only to the defendant who was charged with criminal contempt, but also to the defendant charged with civil contempt. I shall later discuss the difference between civil and criminal contempt.

I again put the question: Upon what character of reasoning can Congress, made up of honest and intelligent men and women, hold that the labor leader who insults and contemns shall have a jury trial, but that the U.S. citizen who violates the Civil Rights Act in an injunctive proceeding shall not have a jury trial? How can that question be answered reasonably? How can it be answered on the basis of conscience? Are we to admit that we are moved by political considerations? Are we to admit that because the power of the vote has greater effect upon us than the power of the conscience, therefore, in the one instance, the right of trial by jury shall be granted, but in the next instance it shall be denied?

Again I ask, on what basis can one rationalize it? How can it be said that a citizen of the United States who violates the proposed Civil Rights Act shall not have a trial by jury, but a labor leader who violates the Norris-La Guardia Act shall have a trial by jury,

when the violation is either civil contempt or criminal contempt?

I have had some experience in trying to be guided by principles of law. From the first day when I entered law school, there was impressed upon my mind the fact that in the administration of the law there must be equality of treatment for all individuals; and I submit that these differences between the two modes of trial cannot be reconciled. Under the Norris-La Guardia Act, in a prosecution for criminal contempt, before a jury, the accused was presumed to be innocent, and the case against him had to be established beyond a reasonable doubt, and the 12 jurors had to reach a unanimous verdict. But under the proposed Civil Rights Act, one man could make the decision and could be the sole judge of the facts.

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

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may yield, to permit the Senator from Ohio and the Senator from North Carolina to engage in a colloquy.

The PRESIDING OFFICER (Mr. NELSON in the chair). Is there objection? Without objection, it is so ordered.

Mr. LAUSCHE. Very well.

Mr. ERVIN. Does not the Senator from Ohio agree with me that those who founded this country intended to establish a government of laws, rather than a government of men?

Mr. LAUSCHE. Yes. Over the portico of the Supreme Court Building is the motto "Equal Justice Under Law." But, Mr. President, equal justice under law does not mean that one group of citizens shall be treated differently from another group of citizens; such treatment is the very antithesis of equal justice under law.

Mr. ERVIN. I ask the Senator from Ohio whether he agrees with me that in a system which makes any pretense of being a government of laws, all persons must be given both the same substantive rights and the same procedural rights.

Mr. LAUSCHE. I agree.

Mr. ERVIN. I thank the Senator from Ohio.

Mr. LAUSCHE. The mode of trial is a significant aspect of the administration of our criminal laws. Trial by jury is entirely different from trial by a commissariat in Red Russia. When our Constitution was written and when the plans for it were being made, the language used was that a jury shall be composed of members who will be the peers of the accused.

Now I wish to refer to the Landrum-Griffin Act, which deals with labor. I read section 608 of the Landrum-Griffin Act:

> No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary—
>
> Meaning the Secretary of Labor—
>
> or any other person in any court of the United States under the provisions of this Act unless the facts constituting such criminal contempt are established by the verdict of a jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing jury trials in criminal prosecutions in the district courts of the United States.

That is the third instance in which the Congress of the United States, having in mind the sacred principles which guided the writing of our Constitution, provided that no man shall be punished—in this instance, for violating the Landrum-Griffin Act, in a contempt proceeding criminal in character—unless his conviction has been declared by a jury.

So how can those who are the proponents of no trial by jury explain the fact that in the Landrum-Griffin Act, Congress required that in contempt proceedings of a criminal character there shall be a trial by jury, whereas in the pending civil rights bill it is provided that in a civil rights action there shall not be a trial by jury? The difference cannot be explained. I have tried to explain it to myself; I have tried to reconcile that difference; but I was unable to do so. I could have done so by being dishonest with myself, but I could not do so by responding to my reasoning and by being honest with myself.

Mr. ERVIN. Mr. President, will the Senator yield, under the same conditions as before, to permit me to ask a question?

Mr. TALMADGE. Mr. President, I ask unanimous consent for that purpose.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUSCHE. Very well.

Mr. ERVIN. I ask the Senator from Ohio whether he agrees with me that the arguments of those who would deny the right of trial by jury in this case; namely, the argument that some juries might acquit someone, and might be in error in that connection—can be used in regard to any case of trial by jury.

Mr. LAUSCHE. In reply, let me say that some citizens and some public officials feel that the Supreme Court of the United States in certain cases has not rendered judgment the way they want it rendered. My query is: Shall those who are not satisfied with the Supreme Court's decisions be given the right not to go before that Court, but to go before a court of their own choosing? Of course, the answer is in the negative.

Mr. ERVIN. Does the Senator from Ohio also agree with me that, although some juries sometimes make mistakes, sometimes Senators and Members of the House of Representatives and other human beings, in discharging any sort of function, either public or private, also make mistakes?

Mr. LAUSCHE. Of course; all of us are fallible.

The Civil Rights Act of 1957, as I understand, provides that if there is to be a monetary penalty and imprisonment under certain circumstances, a jury trial shall be allowed.

Mr. TALMADGE. Mr. President, will the Senator yield at that point?

Mr. LAUSCHE. I yield.

Mr. TALMADGE. The Senator is entirely correct. When the bill was before the Senate in 1957, the identical amendment that the Senator from Georgia has submitted to the pending bill, and which, with the perfecting amendment submitted by the Senator from Kentucky [Mr. MORTON] and the substitute amendment offered by the majority leader, the Senator from Montana [Mr. MANSFIELD], and the minority leader, the Senator from Illinois [Mr. DIRKSEN], is the pending business of the Senate, was adopted by the Senate by a vote of 51 to 42. The amendment contained an all-inclusive jury trial provision which referred to all cases of criminal contempt except those in which the contempt was committed in the presence of the judge or in his immediate vicinity or affected the service of the court's process or summons.

The bill went to the House with that amendment. The House modified the bill to provide that if the sentence were in excess of 45 days' imprisonment or a fine in excess of $300, the defendant would be entitled to a jury trial. The Civil Rights Act of 1957, with that provision, is on the statute books today. The Senator from Ohio has correctly stated it.

Mr. LAUSCHE. Yes. I have a memorandum showing that if the punishment is more than a fine of $300 or imprisonment for more than 30 days, there must be a trial by jury; otherwise not.

Mr. TALMADGE. Forty-five days is my recollection.

Mr. LAUSCHE. The provision in respect to 45 days was a compromise which was not rooted in reason. As the bill left the Senate, it provided for a jury trial in criminal contempt proceedings. The bill was changed in conference.

Mr. President, it would be interesting to check the RECORD name for name and ascertain how Senators who today argue that there shall be no jury trial provision added to the bill voted on the Landrum-Griffin bill and said in relation to that bill that there should be a provision for a jury trial. It would be rather fascinating to see how, with respect to the civil rights bill, the argument is made now that the honored principle of a right to a jury trial by one's peers is proposed to be cast to the winds in the civil rights bill but remain inviolate in the Landrum-Griffin labor bill.

I should like to ingratiate myself with persons who desire a civil rights bill. I shall vote for a civil rights bill. But there is something more important than ingratiating one's self with the voters. Over and above ingratiation is the need for one to be true to himself. There is the need to be consistent. There is the need to be equal in one's consideration and treatment of his fellow citizens. If the Congress of the United States wishes to say that political expediency, by changing principles to suit the occasion, is the course to follow, I wonder what will become of the words of George Washington in his Farewell Address, when he said that morality must be the basis of the continued life of our country.

I say to the Senate respectfully that we cannot reconcile treating the little barber with one yardstick of justice and the labor unions with another. If the barber is not entitled to a jury trial, how can we give the right of a jury trial to the labor leader? If we give the right

to the labor leader, how can we deny it to the barber under the Civil Rights Act? Those who try to answer those questions will lie in bed interminably trying to figure out how the question can be answered, and they will not be able to answer the question, except on one ground—if they disregard reason.

Mr. President, I have used more time than I intended to use. To Senators who wish to read the most complete and accurate analysis of the difference between civil contempt and criminal contempt, I recommend a reading of the Gompers-Buck Stove and Range Co. case, which appears in 221 U.S. 418. In that case a judge of the district court sentenced Samuel Gompers to jail for violating an injunction. The sentence was rather severe. Gompers and other defendants were found guilty of contempt and sentenced to imprisonment for 12, 9, and 6 months, respectively. The proceeding from which I am now reading was one in which an effort was made to reverse the judgment. The Supreme Court of the United States finally reversed the judgment. I intended to read the entire case, but to do so would take too long. I shall try to summarize the difference between civil and criminal contempt. Civil contempt proceedings are instituted solely for the purpose of providing the remedy for the injured party. The remedy is relief to the injured person.

In criminal contempt, the proceedings are instituted normally by the Government. The relief sought is not a remedy for the benefit of the aggrieved party, but vindication of the honor and the dignity of the court. There are a number of tests by which a determination can be made as to whether a proceeding is criminal or civil. The opinion of the Court states:

> Contempts are neither wholly civil nor altogether criminal. And "it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both."

That last quoted statement was made in the case of *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324, 329. Continuing to read from the opinion:

> But in either event, and whether the proceedings be civil or criminal, there must be an allegation that in contempt of court the defendant has disobeyed the order, and a prayer that he be attached and punished therefor. It is not the fact of punishment but rather its character and purpose that often serve to distinguish between the two classes of cases. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant.

It is not for the benefit of the Government. It is in a controversy between the defendant and the aggrieved or injured party in the contempt proceedings.

> But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court. It is true that punishment by imprisonment can be remedial, as well as punitive, and many civil contempt proceedings have resulted not only in the imposition of a fine, payable by the complainant, but also in committing the defendant to prison. But imprisonment for civil contempt is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do.

I submit to the proponents of the bill that remedy by civil contempt instituted by the Government would bring to the complainant every relief that he needs in order to achieve a performance of the mandatory injunction. The court directs A to perform an act. A refuses to perform it. Civil contempt proceedings are instituted. The court declares to A, "You will either obey my order or go to jail until you do obey it." What greater relief do the proponents of nonjury trial want? They can get everything they need under the civil contempt proceedings, because the amendment of the Senator from Kentucky is applicable only to criminal contempts.

But that does not satisfy them. They want to go one step further and say that in criminal contempt, where there is no relief to be brought to the aggrieved party, but only a vindication of the honor of the judge, and the fine can be for a definite sentence and a definite mandatory amount, without the ability of the defendant to exculpate himself, there shall be no jury trial.

I cannot see it. What more could the injured party hope to attain? What more do the proponents of the nonjury provision think they will get in criminal contempt proceedings that they cannot get in civil contempt proceedings?

It has already been stated on the floor of the Senate that one of the tests of civil contempt is that the accused person has in his hands the key with which to open the jail door. The judge says to him, "You will remain in jail until you perform the act." The key is the performance of the act. If a hotel or inn or restaurant or place of entertainment discriminates on the basis of color and the operator is put in jail until he stops discriminating, have not the proponents achieved that which they want?

For example, in the matter of civil contempt, if a defendant should refuse to pay alimony or to surrender property ordered to be turned over to a receiver, or to make a conveyance required by a decree of specific performance, he could be committed until he complied with the order. When the order is once complied with, the remedy of civil contempt is achieved. It is final.

Another test: The fact that the purpose of the punishment could be examined with a view to determining whether civil or criminal contempt is involved is recognized in certain cases. While it is true that the fine imposed is not made payable to the opposite party, compliance with the order relieves the defendant from payment, and in that event there is no final judgment of either fine or imprisonment.

Based upon the study that I have made of cases and the best way to determine whether an action is in criminal or civil contempt, this question should be put: What is the purpose of the proceeding? Is it primarily to afford civil relief to the injured party? If it is, it is civil contempt. If the primary relief sought is to maintain the dignity and honor of the court, and the fine is fixed without the ability of the defendant to release himself by final compliance with the order, the proceeding is one for criminal contempt.

There is another difference. Proceedings for civil contempt are between original parties and are instituted and tried as a part of the main cause. On the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause.

If it is a proceeding between the public and the defendant, the mighty United States on the one hand, and the little citizen on the other, it is proposed to have Congress say that in a criminal contempt proceeding there shall be no jury trial.

I have already stated that I will vote for the civil rights bill. I will vote to provide for every citizen full enjoyment of his constitutional rights—no more, no less. But I will not cast aside my reasoning power or stultify my conscience by saying that, while we granted the right of jury trial in the Clayton Act, in the Norris-La Guardia Act, and in the Landrum-Griffin Act, we will not grant it in the Civil Rights Act.

In the Gompers case, the court ruled that the defendants were to be relieved of that sentence. It did not specifically deal with whether a jury trial was allowable, but Samuel Gompers, a Mr. Morrison, and a third person were all freed by the Supreme Court of the United States.

Many Senators have served as judges on the bench. They have witnessed trial by jury. They have also sat as chancellors in equity. I sat on the bench. To me, there was no impact of greater sensitivity, wholesomeness, and cleanliness than the fact that the defendant, regardless of how rich or how poor, how strong or how weak he might be, in actions at law had the right to be judged by his peers.

I do not believe that the people of our country are prepared to throw that principle overboard. It is too deeply rooted in our system of government. It has been in existence for many years. It has been deeply embedded in the Anglo-Saxon method of trial. It will be used in our courts as long as we can boast that the goddess of justice is blind, knows not the richness nor the weakness nor the strength nor the poorness of the litigant before it, and will remain so as long as Members of Congress act consistently.

Why do we grant labor leaders the right to a trial by jury and refuse it to little John Galvioni on St. Clair Avenue, who might violate the civil rights law? We cannot answer it. It cannot be answered.

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

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may yield to the Senator from Ohio [Mr. LAUSCHE] for a colloquy with the Senator from Mississippi [Mr. STENNIS].

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, will the Senator from Georgia yield to me for a brief comment?

Mr. TALMADGE. I yield, under the conditions previously stated.

Mr. STENNIS. I thank the Senator from Ohio [Mr. LAUSCHE] for the best, clearest, and finest analysis I have ever heard of the distinction between civil contempt and criminal contempt.

I also thank him for pointing out the way the court has taken occasion to protect itself and to carry out its orders, its dignity, and its power, under the provisions in the bill of the jury trial amendment which apply only to true criminal contempt.

I thank the Senator from Ohio for his eloquent contribution.

Mr. LAUSCHE. Can the Senator from Mississippi point out any instance in which the court, under civil contempt proceedings, would not be able to achieve the objective of the law?

Mr. STENNIS. That is one of the best points which the distinguished Senator from Ohio has made clear as crystal. Of course, the court has the whole power of the Government behind it; and in Federal cases it will have the Attorney General of the United States behind it. It will have the Federal Treasury behind it. There is no way to avoid its mandate being carried out.

Mr. LAUSCHE. Mr. President, on the basis of what I have stated, I shall vote for the amendment offered by the Senator from Kentucky—that is, to provide jury trials in criminal contempt proceedings brought by the Government, just as jury trials are allowed under, A, the Clayton Act; B, the Norris-La Guardia Act; and, C, the Landrum-Griffin Act.

Mr. TALMADGE. Mr. President, the distinguished Senator from Ohio has had a long and outstanding record as a lawyer, as a judge, as a mayor of the city of Cleveland, and as Governor of the great State of Ohio some five or six times. He is now serving his second term in the Senate. During all that period of outstanding service, I do not believe he has rendered a higher duty to his constituents and to the people of America than the able, forceful, logical, eloquent plea which he has made on the floor of the Senate today for trial by jury.

I congratulate the Senator from Ohio.

Mr. LAUSCHE. Mr. President, I do not wish to make it appear as though I drew these thoughts out of my mind through recent studies.

For 10 years I taught the subject of equity. The principles which I have discussed I have repeated year after year in the past. So, today, I am not saying anything new which I did not say 25 years ago on the subject.

Mr. JAVITS. Mr. President, will the Senator from Georgia yield?

Mr. TALMADGE. I am glad to yield to the Senator from New York, with the same understanding as before.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. I thank the Senator from Georgia for yielding to me. I prefer to address my questions to the author of the basic amendment which is pending before the Senate, as they deal with some fundamental points of law as well as with the other amendments which have been offered to it.

I listened with great interest to the Senator's reference to the sixth amendment to the Constitution, which relates to the right of a defendant to a trial by jury in a criminal case. I ask the Senator whether it is his contention, his fundamental argument, that a defendant in a criminal contempt case has a constitutional right to a jury trial?

Mr. TALMADGE. The Supreme Court has not so held; but, as the able Senator from New York knows, it is an equitable matter, it is a court-devised law, which the judges themselves handle; and, in my judgment, it is an escape valve for what the Founding Fathers of our Constitution meant by article III of the Constitution of the United States, and by the sixth amendment of the Constitution of the United States. If the Senator's forefathers and mine thought that a jury trial was sufficiently important to every citizen litigating about an article worth $20 or more, a citizen who is about to be placed in jail for 4 years should be entitled to the same constitutional protection.

Mr. JAVITS. I understand. The Senator does not contend—as of course he could not—that the Constitution grants a person charged with criminal contempt the constitutional right to a trial by jury. Has the Senator any comment to make upon the fact that in the Barnett case there was attached to the majority opinion an analysis of the laws of the individual States, including the State of New York and the State of Georgia? Can the Senator tell us what laws of the State of Georgia entitle a defendant in a criminal contempt case to a trial by jury?

Mr. TALMADGE. The laws of the State of Georgia as well as the laws of the 49 other States are not a matter for either the Senator from New York or the Senator from Georgia to discuss, because we do not handle them, except through the respective State legislatures. We are discussing Federal laws over which we have jurisdiction as U.S. Senators.

I point out to the Senator from New York that in the Barnett case, which was a 5-to-4 decision, four Justices, including Chief Justice Warren, Justice Goldberg, Justice Black, and Justice Douglas, stated in their dissenting opinions that criminal contempt was a subject for jury trial under the Constitution of the United States.

Mr. JAVITS. May I ask the Senator to comment on the following statement from the dissenting opinion of Justice Goldberg, which is found on page 29 of the decision in the Barnett case:

> If a criminal contempt (or any other violation of law) is punishable only by a trivial penalty, then the Constitution does not require trial by jury.

Does that contradict what the Senator has just stated?

Mr. TALMADGE. I think I read that. But the general purport of that decision was that criminal contempt was a matter of a constitutional trial by jury. That was the view of Justice Frankfurter in the Green case in 1948, and it has been the view of Congress in the matters that were cited by the distinguished Senator from Ohio in his comments a few minutes ago on four separate cases.

Mr. JAVITS. I invite the attention of the Senator to the footnote on page 14 of the majority opinion in the Barnett case:

> In view of the impending contempt hearing, effective administration of justice requires that this dictum be added: Some members of the court are of the view that, without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses.

I asked the Senator whether, in his argument in favor of this amendment, he has or has not given any weight to the fact that the court, even in the majority opinion in the Barnett case, indicates a disposition to confine the power of the courts to punishment for petty offenses.

Mr. TALMADGE. I read that footnote. I should say that the use of the word "might" also implies the use of the words, "might not."

Mr. JAVITS. I ask the Senator whether he does not contemplate in his amendment that an individual charged with violating an order of the court may be imprisoned without a jury trial if the charge pertains to that paragraph of the Senator's amendment which relates to "civil contempt." I also ask whether the Senator does not consider it wrong to have any imprisonment without a jury trial.

Mr. TALMADGE. I drafted the amendment for the consideration of the Senate. As the Senator knows, the amendment offered by the Senator from Georgia would limit criminal contempt cases to a trial by jury unless the contempt were committed in the presence of the court, or in the immediate vicinity of the court, or unless it related to the service of process or summons, and that is in accordance with the views of the Senator from Georgia pertaining to the constitutional right of a trial by jury. The Senator from Georgia feels that if one is to be punished, he should be entitled to a jury trial.

Mr. JAVITS. Would the Senator regard it as punishment if a man were to be put in jail and held there until he complied with the court's order?

Mr. TALMADGE. That is, of course, civil contempt. The amendment of the Senator from Georgia does not address itself to civil contempt.

Mr. JAVITS. I beg the Senator's pardon, but I would like to read to the Senator a section from his own amendment.

The amendment of the Senator from Georgia, which is amendment No. 513, provides in line 24, page 2, to line 6, page 3, as follows:

> " 'Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power or detention.'

I ask the Senator, if it is not true that under his amendment, a man could be sent to jail by a judge, without a jury?

Mr. TALMADGE. Certainly, for civil contempt. I told the Senator that a moment ago.

Mr. JAVITS. Does the Senator believe that there is an effective remedy in a situation in which a registrar unlawfully refuses to register a voter in spite of a court order directing the registrar to register the voter—if the election for which the voter sought to register is held, and he is unable to vote?

Mr. TALMADGE. Certainly there is.

Mr. JAVITS. In what way?

Mr. TALMADGE. I point out also that there are six criminal statutes which guarantee the right to vote, and which make it a criminal offense, without the establishment of criminal contempt.

Mr. JAVITS. That is the fundamental argument of the Senator against the bill. It does not relate to the particular situation under discussion—that if the bill is passed and the order is violated, the particular situation which I have described is irremediable. The only thing that can be done is to punish the man.

Mr. TALMADGE. If the court issues an order, he has the power to detain the defendant until he complies with the order. The defendant has the keys to the jail in his own pocket. He can release himself when he complies with the order of the court. But what we are discussing is a situation in which a judge makes up his mind to punish a defendant. In some instances, defendants have been put in jail for criminal contempt for 4 years without a jury trial.

The Senator from Georgia does not believe that that comports with the liberty expressed in our Constitution, in our courts, or in the traditions of America.

Mr. JAVITS. Is it not a fact that a defendant could be jailed for 4 years if he did not comply with an order of the court in a civil contempt case?

Mr. TALMADGE. Of course. But he could release himself from contempt in a civil contempt case, as the Senator knows.

Mr. JAVITS. Where a registrar has been charged with violating an order of the court pertaining to registering a person to vote, is it not possible for the defendant to purge himself of contempt after the election has been held; and would that not end the matter?

Mr. TALMADGE. The remedy provided in such a situation is the use of the six criminal laws already on the statute books.

Mr. JAVITS. The Senator is arguing that he does not want this bill passed at all, really?

Mr. TALMADGE. There are already six criminal statutes on the books. The Senator from Georgia is saying that the Federal Government should enforce the statutes which are already on the statute books relating to civil rights.

Mr. JAVITS. Does the Senator feel that the amount of punishment which is specified in the Mansfield-Dirksen substitute amendment does or does not represent the limitations which we normally, as lawyers, consider punishment for a petty offense?

Mr. TALMADGE. No. I do not believe that the constitutional right of a trial by jury ought to be weighed in terms of a difference of 1 cent, or 1 second.

As the Senator knows, under the Mansfield-Dirksen substitute, if a judge put a man in jail for 30 days and 1 second, he would be entitled to a jury trial. But if he put him in jail for 30 days, he would not be entitled to a jury trial.

As the Senator knows, under the Mansfield-Dirksen substitute, if the fine were $300, he would not be entitled to a jury trial. But if the fine were $300.01, he would be entitled to a jury trial.

I do not think we can weigh justice on any such basis as that. I point out further that under that substitute, a judge would have to pretry the case. First, he would have to make up his mind whether he would hold a hearing for criminal contempt. Then, when he made up his mind that he was going to hold a hearing for criminal contempt, before he even proceeded to the hearing he would have to say, "What am I going to do with this defendant?"

He would have to make a determination as to the guilt or innocence of the defendant. Third, he would have to make a determination as to the sentence he was going to impose. When he did that, he would have decided whether he was entitled to a jury trial.

Mr. JAVITS. Mr. President, I was rather surprised to hear the Senator start his answer to my question by making the point that there was a constitutional right to a trial by jury in criminal contempt cases. It is my understanding that the Senator from Georgia did not contend that to be the case.

Mr. TALMADGE. The Court has so held by a 5-to-4 decision, as the Senator knows. But it does not comport with the idea of justice of the Senator from Georgia that a man can be put in jail as punishment for what a judge considers to be a crime, for 4 years, without a trial by jury, while any citizen is entitled to a trial by jury if he is litigating about any commodity worth more than $20.

Mr. JAVITS. But it does comport with the Senator from Georgia's idea of justice to keep a man in jail for 4 years if he does not comply with an order of the court, if it is civil contempt, without a trial by jury.

Mr. TALMADGE. That is the purpose of the amendment. It would give the court equity powers to enforce its decrees. But the Senator from Georgia does not think we ought to add to that civil remedy the power to let the same judge also punish the crime.

Mr. JAVITS. The amendment of the Senator from Georgia, as I understand it—and I am sure the Senator will correct me if I am in error—covers the whole ambit of the Federal Code with respect to orders of courts which may be violated and a violation would constitute a criminal contempt. Can the Senator tell us why, in drafting his amendment, he did not confine it to the civil rights bill which the Senate is trying to pass?

Mr. TALMADGE. Because I believe that all who are charged with criminal contempts, in all courts, in all matters, are entitled to jury trials.

Mr. JAVITS. In short, the Senator would make a broad scale revision of Federal law in the bill, would he not, affecting every branch of law, other than those which are specifically affected by the Clayton Act, the Landrum-Griffin Act, the Norris-La Guardia Act, and the Civil Rights Act of 1957?

Mr. TALMADGE. That is correct. I want to have justice under the law and in accordance with what I think our forefathers intended in the Constitution; namely, that no person shall be tried for a crime except by a jury of his peers.

Mr. JAVITS. Does the Senator feel, as a lawyer, that a court ought to have, in and of itself, without recourse to any other body, including a jury, the power to invoke some minimal deterrent or punishment when the violation of an order is irremediable by a civil contempt proceeding?

Mr. TALMADGE. Congress did not think so in the four statutes just enumerated by the Senator from New York; neither does the Senator from Georgia. The Senator from Georgia believes equity powers can be enforced by the court under civil contempt. The Senator from Georgia points out, further, than in one or two of the statutes mentioned by the Senator from New York, even one accused of civil contempt is entitled to trial by jury. I believe that is true of the Clayton Act and, of the Norris-La Guardia Act, also.

Mr. JAVITS. But Congress has not changed, unless it would do so pursuant to the Senator's amendment, the whole range of Federal law which is affected by court orders and other actions that have been specifically mentioned.

Mr. TALMADGE. I would hope the Senate would do what it did in 1957, when it passed the identical amendment, paragraph by paragraph, page by page, line for line.

At that time, Senator Lyndon B. Johnson, who is now President of the United States, made the concluding address in favor of the amendment. One of the powerful, eloquent pleas made for it at that time was by the late President Kennedy, who was then a Senator from Massachusetts. The amendment was cosponsored, I point out, by the present majority leader of this body, the distinguished Senator from Montana [Mr. MANSFIELD].

The Senator from Georgia thinks he is in good company when he adopts the views of those outstanding citizens; and I would hope that the Senator from New York would finally find his way to the mourners' bench.

Mr. JAVITS. The Senator from New York feels he is in pretty good company with the law of the land, which sets forth, even in civil rights matters, what a court can do in criminal contempt cases. A court can impose a minimal penalty which is well within the confines or limitations of punishment for a petty offense, and at the same time keep within its own hands, as it should and must, the power to sustain the elementary dignity of the court and preserve the effectiveness of its order. It must have some modest deterrent power where there is no other remedy. It seems to me this

is the fulcrum of difference between us as to these cases, in that a person like myself feels that such minimal deterrent power is absolutely essential to the judiciary. Apparently there are those who are making all kinds of rationalizations as to why this provision should not be in the law, why it is unconstitutional, and so forth, notwithstanding the repeated decisions of the Supreme Court, notwithstanding the fact that the law is on the statute books. There is a lingering feeling in their hearts—this is just my own judgment—that perhaps violators do not really have to perform, because they may not have to pay any penalty if they do not.

I should like to make clear to the junior Senator from Georgia what I made clear to his senior colleague [Mr. RUSSELL] the other day. I am not casting a single aspersion on any Southern jury. I am trying to define what I think is American jurisprudence in this case, in order to insure, better than we would otherwise, that orders of courts shall be complied with by individuals.

I point out in answer to the statement made by the Senator from Ohio [Mr. LAUSCHE] that some of the most arrogant violators of court orders have been officers of States, including Governors of States, as is shown by the Barnett case.

Mr. TALMADGE. The Senator from Georgia does not feel that judges, and judges alone, are possessed of all wisdom and of all justice. He believes that a jury of 12 peers are probably as judicial-minded as are some judges, and are sometimes possessed of more justice.

The Senator from Georgia thought that that matter was settled by Magna Carta at Runnymede, by the Declaration of Independence, and by the Constitution. He regrets that the Senator from New York does not feel likewise.

The Senator from New York has referred to his position in voting on the jury trial provision. Would he state how he voted on the jury trial provision in the Landrum-Griffin Act?

Mr. JAVITS. Unfortunately, the Senator from New York cannot remember that particular situation, how it came up, what the amendment was, or anything else about it.

Mr. TALMADGE. The Senator from Georgia, as he recalls, voted for it when it was before the Senate. The Senate at that time, as I recall, approved it. It was finally agreed to by the House and in conference. Is that not correct?

Mr. JAVITS. The Senator from New York would have to refresh himself on how he voted on the particular provision and the circumstances of it in the Landrum-Griffin Act. He will be glad to do so and supply the information for the RECORD, perhaps even while the Senator from Georgia has the floor.

Mr. TALMADGE. The Senator from New York was boasting of his consistency on the 1957 Civil Rights Act. I was wondering if he maintained the same consistency on all matters.

Mr. JAVITS. I never boast about my consistency. I do not recall having boasted about it with respect to the 1957 act. I do not recall making any such statement.

Mr. TALMADGE. The Senator from New York may not admit his boast, but he stated that he was in good company, when he was not in the company of the late President of the United States, John F. Kennedy, when he was a Senator from Massachusetts; the present President of the United States, Lyndon B. Johnson, when he was a Senator from Texas; the present majority leader, the distinguished Senator from Montana [Mr. MANSFIELD]; and the junior Senator from Georgia, when all of us voted for a jury trial provision in criminal contempt cases in 1957.

I considered that statement a boast on the part of the Senator. But if he does not consider it so, I shall be happy to withdraw it.

Mr. JAVITS. The Senator could hardly consider it a boast. It does not define itself either as a boast or a boast of consistency, which is what the Senator from Georgia charged. I respectfully submit that I was in good company with a majority of the Senate and the House, which is very important to me.

Despite the kindly feeling which we had for President Kennedy, and recalling the terrible tragedy which befell him, and considering the respect which we owe the President of the United States, I often found myself in disagreement with them, and I still feel, in deep, good conscience, that I was right. I do not say they were wrong; I simply feel that I was right.

But this is not a boast, or consistency, or anything else. It is only human nature. It is what we are trying to argue here. All I was doing was giving the facts with respect to my situation in connection with the vote in 1957. I shall be more than happy to obtain the facts on my situation in respect to the Landrum-Griffin Act.

The essence of my argument is that whenever Congress has provided for jury trials in criminal contempt cases it has been on a highly selective basis, when it was thought that the social, political, or economic situation of the country dictated it. But aside from specialized cases that occur, there is no general provision for jury trial for criminal contempt. That is true in all States of the Nation. I am quite sure it is true of the State of Georgia, in the main.

It is true in the law of the United States; and the Senator from Georgia and I are arguing whether a specific exception should be made in the case of this particular proposed statute. He and I differ deeply on that point, and we have submitted our arguments in connection with it; but I hope that, as lawyers, we can agree that this situation must be judged on its merits; that nothing in the Constitution requires a jury trial in criminal contempt cases; and that, therefore, no one would be deprived of an inalienable constitutional right if the bill limited the right of trial by jury to cases of this sort in which the punishment would exceed that for a petty offense. The Senator from Georgia and I have argued that point—and to good effect, I believe.

However, when some persons attempt to proceed on the basis of a mistaken idea about the existence of a constitutional right of jury trial in criminal contempt cases, and say, "This part of the bill will sweep aside all the legal practice of all the States; but all persons must acknowledge that there is a basic constitutional right to have a trial by jury in criminal contempt cases," I respectfully submit that is no argument, and it is not convincing.

Mr. TALMADGE. Mr. President, in a few moments I shall refer to some distinguished authorities, and I shall cite their views on this question. I hope the Senator from New York will remain in the Chamber and will hear me cite them. The next authority I shall cite will be Justice Felix Frankfurter, whom I consider an outstanding authority. The Senator from New York is entitled to his views, of course; but I hope he will yet repent.

Mr. ERVIN. Mr. President——

Mr. TALMADGE. At this time, I yield to the Senator from North Carolina.

Mr. ERVIN. Does the Senator from Georgia agree with me that the able and distinguished senior Senator from New York [Mr. JAVITS] did not show even the slightest disposition to agree that a defendant in such a case should be granted the right of trial by jury if he was to be subjected to punishment by a fine of more than $300 or by imprisonment for more than 45 days, until the Senator from Georgia submitted his trial-by-jury amendment, whereupon Senators who disagreed with the Senator from Georgia became afraid that his trial-by-jury amendment would be adopted, so they offered this powder-puff amendment as a substitute, for the purpose of attempting to defeat a sensible, sound, and just amendment?

Mr. TALMADGE. Of course I do not know what was in the mind of the Senator from New York; but I hope he will be persuaded by the logic, the justice, and the eloquence of some of the authorities who believe that all persons in the United States who are being tried for crime ought to have a jury trial.

Mr. ERVIN. Does the Senator from Georgia agree with me that the pending bill was passed by the House of Representatives without the inclusion of a jury-trial provision in any title except titles I and II?

Mr. TALMADGE. That is correct; and they related to an additional procedure, in which the judge would have to establish three conditions before he could proceed with the trial.

Mr. ERVIN. Does the Senator from Georgia also agree with me that except for titles I and II the pending bill does not contain a jury-trial provision or any limitation upon such punishment, and that none was proposed by the proponents of the bill until after the Senator from Georgia had submitted his amendment, whereupon there developed among certain groups of persons in this country an awareness that, after all, there should be the right of trial by jury?

Mr. TALMADGE. That is entirely correct. As the bill came to the Senate from the House of Representatives, if a Federal judge wished to have a man put in jail for 5 years, 10 years, 15 years, or

for life, following his conviction in such a case, without a trial by jury, that could be done—as the able Senator from North Carolina knows.

Mr. ERVIN. Does not the Senator from Georgia agree with me that we might reasonably infer that the offering of the Dirksen-Mansfield substitute amendment did not represent a change of heart, but merely represented a change of strategy?

Mr. TALMADGE. I hope it represents more than a change of strategy—although, of course, it was a change of strategy. I hope that, also, if we can talk long enough about the evils of this bill, we shall be able to prevail upon even some of the most wayward to repent, so that we could begin to see some faint ray of light in terms of justice in America.

Mr. ERVIN. Does the Senator from Georgia also agree with me that the substitute amendment offered by the minority leader and the majority leader is, after all, only a sort of powderpuff amendment which has been offered in an effort to hide some of the hideousness of the various provisions of the pending bill, as they would forbid the right of trial by jury?

Mr. TALMADGE. That is correct.

The procedure under the bill, as it now stands, would be that one who was accused of the commission of such a crime would be scheduled for trial before a judge; but before the trial began, the judge would first decide in his own mind the guilt or innocence of the accused; and then the judge would decide in his own mind the sentence he wished to impose upon the defendant; and only after he had arrived at both of those decisions—in advance—would the judge then proceed to call the defendant before him and try the case. Such a proposal is a monstrous one.

Mr. ERVIN. Does the Senator from Georgia also agree with me that the right of trial by jury is a fundamental right, and that it should not hinge on the question of whether a judge fines a defendant $300 or $300 plus 1 cent?

Mr. TALMADGE. That is correct. I do not think that right can be weighed in such a scale of values or can be determined on the basis of matters pertaining to time, whether measured in hours or minutes or seconds.

Mr. ERVIN. As regards the right of trial by jury in criminal proceedings, does not the Senator from Georgia also agree with me that it is an affront to justice to attempt to provide that persons merely charged with violation of an injunction should be denied the right which is freely accorded to rapists, burglars, counterfeiters, smugglers, and even persons charged with treason against their country?

Mr. TALMADGE. The Senator from North Carolina is entirely correct.

Mr. ERVIN. Can the Senator from Georgia find any justification, in his thinking, for denying to persons involved in the matters covered by the pending bill the right which the Constitution of the United States and the constitutions of all the States in the Union freely give to persons who are charged with such heinous crimes as first-degree murder?

Mr. TALMADGE. I cannot understand it.

Mr. ERVIN. Yet is not that the position of those who disagree with the Senator from Georgia and me, in our devotion to the right of trial by jury?

Mr. TALMADGE. The Senator from North Carolina has correctly summarized the situation.

Mr. ERVIN. Does not the Senator from Georgia also agree with me that the proponents of the Dirksen-Mansfield amendment say they are opposed to both segregation and discrimination?

Mr. TALMADGE. They say that; yes.

Mr. ERVIN. I ask the Senator from Georgia whether he agrees with me that the present Dirksen-Mansfield substitute would segregate all the litigants who might be involved in criminal proceedings under the civil rights bill from all other litigants in all other cases in the Federal courts.

Mr. TALMADGE. That is correct.

Mr. ERVIN. Therefore, instead of being a bill against segregation, the bill is actually a bill for segregation, for the purpose of denying litigants in criminal contempt proceedings in civil rights cases a right which belongs to all other litigants in the United States, is it not?

Mr. TALMADGE. That is correct.

Mr. ERVIN. Does not the Senator from Georgia also agree with me that even if the bill were amended as it is proposed to be amended by means of the Dirksen-Mansfield amendment, the bill would still segregate the litigants in criminal contempt proceedings in civil rights cases from all other litigants in the Federal courts, and that then the bill would discriminate against one particular group of litigants by denying them such fundamental constitutional rights as the right of trial by jury, the right of limited punishment, the right to have venue fixed—so as to assure them that the witnesses they wished to call would be available to them, and also the right to be confronted by their accusers, and the right of protection against double jeopardy or triple jeopardy?

Mr. TALMADGE. That is entirely correct.

Mr. ERVIN. So, although the bill is alleged to have been brought before us for the purpose of ending segregation and discrimination, yet we find, do we not, that, in actual practice, the bill would segregate and discriminate in the instances the Senator from Georgia and I have discussed?

Mr. TALMADGE. That is correct.

Mr. President, I thank the Senator from North Carolina for his helpful interrogatories.

Mr. STENNIS. Mr. President, while the Senator from Georgia is developing the subject of the judge and his powers and practices with reference to jury trials, will he yield to me for a few questions on one point?

Mr. TALMADGE. I am delighted to yield to my able friend, the distinguished Senator from Mississippi.

Mr. STENNIS. The Senator from Georgia has stated that the judge in effect would have to try a man and find him guilty before he decides whether or not he would give the defendant the benefit of a trial by jury.

Mr. TALMADGE. The Senator is correct.

Mr. STENNIS. How would the judge proceed to try the defendant the first time? Would he give him the benefit of counsel? Would he have to?

Mr. TALMADGE. That is a question about which the judge alone would have to make up his mind. I assume that he would go to his office, and before he would decide to try the particular individual involved, he would be required to make three decisions: First, he would have to decide whether he would proceed to try the accused for criminal contempt. After making that decision, he would then have to determine whether or not he would find the man guilty. Having made the second decision, he must then make a third decision as to what his sentence would be. Then after making those three decisions, he could order a trial to determine whether or not the defendant was really guilty in the first place.

Mr. STENNIS. But on the vital question as to whether or not a defendant might be guilty the bill would not require a hearing of any kind.

Mr. TALMADGE. None whatever.

Mr. STENNIS. The bill would not give the defendant the benefit of procedures to summon witnesses in his own behalf. The bill would not give the defendant notice of the time and place of trial. The bill would not give the defendant the benefit of counsel. Is that not true?

Mr. TALMADGE. That is quite true. I am reminded of a saying that has been attributed to Andrew Jackson. I do not know whether it is true or not, but Andrew Jackson is supposed to have stated to one of his generals following the battle of New Orleans, or about that time, "Take this man out and give him a fair trial and hang him."

That is what the judge would have to do in the present instance.

Mr. STENNIS. Are not all of the steps that have been enumerated contrary to all the basic fundamental principles of American justice in relation to trial by jury?

Mr. TALMADGE. It would be completely repugnant to every principle of American jurisprudence.

Mr. STENNIS. Mr. President, will the Senator yield for another question?

Mr. TALMADGE. I am delighted to yield.

Mr. STENNIS. Suppose the judge were more liberal than we have described him to be, and suppose he held a hearing and let the defendant be represented and summon the witnesses he desired. Supposing, further, that after a hearing the judge should decide that the punishment should be greater than the amount set forth in the amendment, which is a fine not to exceed $300 or imprisonment for not more than 45 days. Then he would have to call in a jury and try the man on the question of his guilt or innocence, would he not?

Mr. TALMADGE. The Senator is correct.

Mr. STENNIS. If the judge should reach such a decision, would not word go out through the corridors, the courtroom, the highways and byways of the county and district so that everyone would know that the judge had already found the man guilty?

Mr. TALMADGE. That is entirely true.

Mr. STENNIS. As a practical question.

Mr. TALMADGE. It would be a most prejudicial type of trial, because the word would quickly be spread that the judge had thought that the defendant was guilty.

Mr. STENNIS. Whatever course the judge might take, does that not illustrate the monstrosity of the proposal when it comes to determining the guilt or innocence of a man according to American standards of justice and right?

Mr. TALMADGE. The Senator is entirely correct.

Mr. STENNIS. Such procedure would have no place under our system of jurisprudence.

Mr. TALMADGE. In the opinion of the Senator from Georgia, it has no place whatever.

I thank my able friend, the Senator from Mississippi, for his contribution and helpful questions.

Mr. President, under the same conditions heretofore stated, I yield to the distinguished Senator from Alaska.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRUENING. I thank my friend from Georgia for his great courtesy and kindness.

PRESIDENT JOHNSON RIGHTLY SUPPORTS PUBLIC WORKS TO CREATE JOBS AND DIMINISH UNEMPLOYMENT

Mr. GRUENING. Mr. President, last night here in Washington, D.C., President Lyndon B. Johnson told a group of labor leaders that if private enterprise, aided by the tax cut, failed to bring about full employment, the Federal Government would step up its programs of public works.

The President pledged, in essence, that the Government will step up its programs of public works if the private sector cannot employ all of the Nation's workers after it has tax relief and other helps.

This pledge is welcome. This pledge is needed. I will do everything in my power to help our President keep it.

The most recent economic indicator prepared by the Joint Economic Committee of the Congress vividly shows that this Nation is not close to achieving full employment. Our seasonally adjusted civilian labor force has 5.4 percent unemployed. The number in human beings is 3,953,000. The unadjusted figure which includes unemployed and part-time workers is 5.9 percent and the human figure exceeds 4 million.

If one looks at private housing starts figures, including farms, he finds that private housing starts in March declined over the February figure from 1.7 to 1.6 million. Similarly, applications for financing new housing starts which have been received by the Federal Housing Administration and the Veterans' Administration declined in March.

Such decreases do not cut back unemployment statistics, and they are unhealthy economic indicators.

On March 2, 1964, I spoke at length on the problem of unemployment confronting our affluent Nation. I said our bounding affluence still does not extend to what President Franklin Delano Roosevelt, a generation ago in a memorable inaugural address, referred to as "a third of the Nation, ill clad, ill fed, ill housed." Undoubtedly the fraction of one-third can be reduced to one-fifth or less, but for those who are in that depressed segment of our society, their plight is no less real, poignant, and unhappy. At that time I placed in the CONGRESSIONAL RECORD an article appearing in Harper's magazine entitled "Let Us Begin: An Invitation to Action on Poverty" which had been written by one of our foremost economists.

Author John Kenneth Galbraith noted that the recent tax cut legislation, whatever its benefits, would not materially diminish unemployment—which is synonymous with poverty. Dr. Galbraith shares my belief that the tax cut may actually increase unemployment by stimulating industry through its generous corporation tax cuts and other benefits to build more modern and up-to-date plants with improved automation, which, of course, means fewer jobs.

Mr. Galbraith supports the expenditure of funds on the public sector.

President Johnson in his historic and welcome speech last night said:

> The time has come for labor and Government and business to agree that we are going to achieve—and keep—full employment; and if all that we do with the help of the private sector cannot employ all our people, the Government will have to do for people what private enterprise fails to do—we will step up our programs of public works.

As we know, Congress 2 years ago did approve the Accelerated Public Works Act authorizing $900 million for the program. Subsequently, nearly the full amount was appropriated. But the sum was inadequate and this particular domestic aid program ran dry 12 months ago.

Over a year ago, in March 1963 I introduced a bill to provide an equivalent for accelerated public works of what would be appropriated and authorized for the foreign aid program. That would have amounted to $3.5 billion. I repeat that the accelerated public works is a kind of partial domestic aid program, seeking to do in part for our unemployed what we are doing, and have been doing for 17 years, to the tune of over $100 billion for the unemployed and needy in foreign lands. No action has been taken on this bill. Last July, the movement to restore the domestic aid program got further support when the distinguished chairman of the Public Works Committee, the Senator from Michigan [Mr. MCNAMARA] who is present in the Chamber, introduced a bill calling for $1.5 billion for this purpose.

The fact is that even after the funds ran out a year ago—the inadequate $900 million appropriated—some $700 million worth of projects were presented and approved by the appropriate State and Federal agencies and are ready to go, and project applications still pour in from the States at the rate of $15 to $20 million each month. These are grant-in-aid programs administered by the Department of Health, Education, and Welfare and the Community Facilities Administration.

That program to fight poverty could go into action immediately upon the necessary authorization and appropriation of more money for accelerated public works. It should be done. Action is overdue. The appropriation should never have been allowed to lapse.

If we are going to win this national war against poverty, it will have to be by a major campaign, not by a piddling, chintzy, token gesture or two, with transfer of funds already appropriated, with "make-do" of existing facilities. That will not put people to work now. And the "now" is imperative. We need precisely the same kind of enthusiasm and demands for congressional action in authorizing and appropriating for public works that our Presidents and Secretaries of State have for the last 17 years devoted to promoting our foreign aid program.

Accelerated public works, with adequate appropriation, would cut a large swath in unemployment. In addition, we should have special and additional legislation to raise the social security allotments, the hospital care bill—erroneously labeled "medicare"—and above all, special education—vocational education to train the young Negroes and whites, the school dropouts—who have insufficient education to hold jobs.

President Johnson has courageously embarked on an all-out war against poverty. His Appalachia program, his support of legislation designed to help senior citizens meet the cost of hospital care, his unswerving support of civil rights legislation are positive indicators in this national campaign. And now he sees the need for public works.

I have long felt, and repeatedly so stated on the floor of the Senate, that diminishing unemployment at home was our Nation's most pressing problem, and should have first priority. I have been convinced that the private sector could not do it. I am glad to see that President Johnson is arriving at that point of view.

I ask unanimous consent that the full text of a news article appearing in the New York Times of Tuesday, May 5, 1964, be printed in the RECORD at this point. It is entitled "President Looks to Public Works."

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

PRESIDENT LOOKS TO PUBLIC WORKS—PLEDGES TO STEP UP SPENDING IF BUSINESS, WITH TAX CUT, CAN'T FIND JOBS FOR ALL

(By Edwin L. Dale, Jr.)

WASHINGTON, May 4.—President Johnson told a group of labor leaders tonight that if private enterprise, aided by the tax cut, failed to bring about full employment, "we will step up our programs of public works."

The President devoted most of the speech to his familiar appeal to labor for restraint in wage demands to prevent another round of inflation.

But he also gave a strong commitment to full employment. Citing the case of Western Europe, where there is practically no unemployment, the President said, "We, too, must catch up with modern history."

CITES LEGISLATIVE REQUESTS

"The time has come," he continued, "for labor and Government and business to agree that we are going to achieve—and keep—full employment."

After noting the major legislative action he has asked of Congress, the President said:

"And if all that we do with the help of the private sector cannot employ all our people, the Government will have to do for people what private enterprise fails to do—we will step up our programs of public works."

This was the first pledge of its kind that the President has given.

The basic theory behind the tax cut is that an expanding private economy will gradually bring about full employment without the need for expanded Government spending.

This is still the Government's hope and its basic position, but the President's statement tonight left no doubt that he would increase spending if the goal of full employment remained elusive.

In his appeal to the union leaders for restraint in their wage demands, the President said:

"I do not believe business or labor want a renewed wage-price spiral any more than BARRY GOLDWATER wants to run on the same ticket with Nelson Rockefeller."

DEFENDS GUIDEPOSTS

The President again defended the administration's guideposts, which call for wage increases no larger than the average rise in worker productivity throughout the economy. Over the last 5 years the rise in productivity has averaged 3.2 percent a year.

"You must remember," Mr. Johnson said, "and we must never forget that the economy cannot absorb big cost increases and big price increases without endangering our progress."

He said that in recent years both business and labor had exercized "good judgment and patriotism unexcelled in our history." But he added:

"As demand increases and unemployment falls, managers will be tempted to raise prices—in spite of already high profits and continuing excess capacity—and unions will be tempted to force wages up faster than productivity—in spite of already high wages and continuing excessive unemployment."

He warned that a renewal of the wage-price spiral would jeopardize the competitive gains made by the United States in world markets in recent years.

And he added, "The case for tightening credit and boosting interest rates would become stronger—and the result could well be a slowdown in the rate of economic expansion."

TEODORO MOSCOSO

Mr. GRUENING. Mr. President, it is a source of regret to me, and I believe to all those who have followed his able and dedicated public service in the Federal Government, that Teodoro Moscoso—"Ted" as he is known by his wide circle of friends—is resigning from his post on the Inter-American Coordinating Committee for the Alliance for Progress and returning to Puerto Rico.

Since the early days of the Alliance for Progress until recently Ted Moscoso has been the AID Administrator for Latin America. Those who know the difficulties which he faced, the complexity of the multiple problems involved, the existence of feudalism and oligarchic control existing below our border in many countries, the great contrast between the wealth of the few and the desperate poverty of the many, the instability of many of the governments concerned, the nullifying population explosion, can only admire the extent to which Ted Moscoso was able to advance the program and to leave that post with a record of substantial achievement and progress.

But his difficulties were by no means only in that field. Perhaps his greatest handicaps were in the domestic setup. Here he was subject to the diversity of participants in the Alliance program. He did not have exclusive authority to make the decisions which he should have had. Half a dozen cooks from the State Department, the AID Administration, and the White House were participating in the broth when he attempted, following the principles laid down by President Kennedy, to exact reciprocal action from the recipient countries. When he sought to insist that land reform, adequate taxation, anti-inflation measures and other necessary preliminaries and concomitants to a successful AID program were to be established in the recipient countries, he found himself often undercut or overruled. The White House itself was guilty of making some of these administrative decisions. That is one of the principal reasons why the Alianza's program has not been more successful.

That situation is now prospectively changed by the fact that President Johnson has wisely concentrated the entire Latin American program, both on the diplomatic level and on the aid level, in the one person of Thomas C. Mann, a highly knowledgeable, experienced Latin American expert. As President Johnson stated henceforth the administration will speak with one voice in Latin American affairs. Undoubtedly President Johnson has profited by seeing what happened to Ted Moscoso, and to the program when half a dozen individuals try to run it.

But as Ted Moscoso leaves Federal service, he may look back with great satisfaction on what he has accomplished, whatever have been the failures, and they are many, in this program to date. They were not of his making. He will now take on another challenging assignment which, to be sure, he will share with other members of the Puerto Rican Commission to make recommendations to determine and define the political status of Puerto Rico. He is, of course, eminently qualified for this assignment. I wish him all success.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United Sates to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. ELLENDER. Mr. President, will the Senator from Georgia yield?

Mr. TALMADGE. I yield to the able Senator from Louisiana.

Mr. ELLENDER. I ask only one question. It has often been said by Senators on the floor that the substitute amendment being considered is somewhat similar to the one adopted in 1957. Is it not true that the amendment adopted in conference in 1957, and then by the Senate, applied only to voting referees, whereas the substitute amendment we are now considering would apply to a host of citizens throughout the country?

Mr. TALMADGE. The Senator is entirely correct. The bill pending before the Senate, with its 55 pages and 11 titles—it is really 11 bills—covers every phase of private human conduct from the cradle to the grave. It would be impossible to think of any activity in private or public life that would not be covered by the bill, with all of its vast multiplicity of aspects. Yet, as the Senator knows, the effect of it is to deny trial by jury in 5 of its 11 titles.

I am grateful to the able Senator from Louisiana for bringing up that point, in order that it may be clearly understood.

As Jefferson pointed out, juries do indeed make mistakes, but so do judges, and I agree with him that it is much easier for 1 man to be wrong than for 12. When the jury trial provision was included in the Constitution, Jefferson had the pleasure of seeing his arguments prevail.

However, in the recent history of our country, the American people have come to know the meaning of government by injunction.

To the derogation of the Constitution and the rights of our citizens, when the Federal Government moves against a person by the injunctive process or through proceedings for criminal contempt of court, he is virtually shorn of the protections required by criminal law. As it was pointed out in the House Judiciary Committee report on the so-called civil rights bill, these protections either do not exist at all in government by injunction or they exist in a less adequate form.

The controversy over the right to a trial by jury in criminal contempt of court cases is one which has troubled us for a long time. Some of the best legal minds in the United States have grappled with this matter and many of them, in all their wisdom, have spoken very strongly in favor of this right.

Let me recall for the Senate the brilliant thinking of Felix Frankfurter, former Justice of the U.S. Supreme Court and one of the most highly respected men ever to sit upon that bench.

The Senate will remember that it is Felix Frankfurter who is credited with drafting the Norris-LaGuardia Act of 1932 which guaranteed jury trials in contempt cases arising from labor disputes.

Mr. President, labor knows the meaning of government by injunction. Labor knows what it is to be high handedly brought before a Federal judge on a criminal contempt of court charge to be tried and punished without benefit of a jury. In the early and very difficult days of the labor movement, workers felt the wrath many times of government by injunction and contempt proceedings.

So numerous were the evils of government by injunction with reference to labor disputes, the Congress was compelled to correct the situation with the Norris-La Guardia Act, particularly in providing for trial by jury.

This important provision is now embodied in the language of section 3692 of title 18 of the Code of the United States which reads as follows:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed. This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

In pressing for the adoption of the Norris-La Guardia Act, Senator Norris, of Nebraska, had this to say on the matter of trial by jury:

> 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. 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 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 in 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.

In a book published prior to the Norris-La Guardia Act, Justice Frankfurter traced the history of the labor movement in this country and called attention to repeated abuses of injunctive power which resulted in many contempt charges being tried without a jury. A summation of the views of Justice Frankfurter on the right of trial by jury can be found in these words. He wrote:

> The grievances aroused by summary prosecutions for contempt and their legislative appeasement long antedate labor injunctions. But the incidence of hardship has, in our day, fallen heaviest upon labor, because of the widespread threat of summary punishment conveyed by every labor injunction.
>
> The heart of the problem is the power, for all practical purposes, of a single judge to issue orders, to interpret them, to declare disobedience and then to sentence.

The wisdom and great truth of the words of Justice Frankfurter, and indeed his warning, have as much meaning today as when he wrote them. He declared the injunction "employs the most powerful resources of the law on one side of a bitter social struggle."

At the time, of course, the social struggle to which Justice Frankfurter referred involved the labor problem. But, his words are meaningful today in the context of another great social struggle in which all of us are engaged. By injunction and criminal contempt proceedings, the full might of the Federal Government embodied in a single judge does indeed balance the scales of law heavily on one side in the current struggle.

Justice Frankfurter pointed out that the broad power of the injunction can reach out and bring under its punitive arm even those persons who were not originally the direct object of the injunction. Even persons who are strangers to the injunction suit may be hauled before the court and charged with criminal contempt of the injunction.

They may be tried before the judge without a jury and fined or sent to jail or both, on his ruling and his judgment of the evidence in the case alone.

With reference to our legal history, Justice Frankfurter was of the opinion that—and I quote from his words:

> Trial by jury in contempt proceedings is an innovation in modern practice, but is a return to what is old in the history of English law.

Justice Frankfurter further held the opinion, and so stated it, that has been expressed time and again in the course of this debate, on whether or not a person accused of criminal contempt should be given a trial by a jury. Declared Justice Frankfurter:

> Since a charge of criminal contempt is essentially an accusation of crime, all the constitutional safeguards available to the accused in a criminal trial should be extended to prosecutions for such contempt.

If a charge of criminal contempt is a crime, as I contend that it is indeed, the issues seem to me to be clear cut. A person charged with criminal contempt is entitled to be tried before a jury of his peers before being deprived of his liberty and property. That is the heart of the matter.

In the words of Supreme Court Justice Arthur Goldberg, in a dissenting opinion in the Ross Barnett contempt case, it was said:

> There is no justification, either in the history or policy of criminal contempt or in the history or policy of the Constitution, for treating criminal contempt differently from other "crimes" or "criminal prosecutions." If a criminal contempt (or any other violation of law) is punishable only by a trivial penalty, then the Constitution does not require trial by jury. If a violation of law is punishable by a nontrivial penalty, then the Constitution does require trial by jury whether the violation is labeled criminal contempt or anything else.

Mr. President, inasmuch as the views of Mr. Justice Goldberg on this matter have such a direct bearing on the issues now at hand, I wish to refer to them in further detail and particularly to quote from the section of his opinion which is headed, "The Nature of Criminal Contempt in the Policy of Trial by Jury":

> I wish to make it clear that I am not here concerned with, nor do I question, the power of the courts to compel compliance with their lawful orders by the imposition of conditional punishment—commonly referred to as civil contempt. In such cases, it may be said that "the defendant carries the keys to freedom in his willingness to comply with the court's directives." Nor am I here concerned with the imposition of the trivial punishments traditionally deemed sufficient for maintaining order in the courtroom. (Cf. *Ungar* v. *Sarafite*, 376 U.S.) I am concerned solely with the imposition, without trial by jury, of fixed nontrivial punishments after compliance with the court's order has been secured.
>
> Thus limited, criminal contempts are not essentially different from other "crimes" or "criminal prosecutions."
>
> In each case punishment is imposed for a past violation of a mandate of a coordinate organ of government; criminal contempt involves punishment for violation of an order of a court; "crime" involves punishment for violation of a statute enacted by a legislature.
>
> I can see no greater need for certain and prompt punishment of the former than of the latter.
>
> It may be true that a judge can dispose of a charge of criminal contempt, or any other criminal charge, more expeditiously and more cheaply than a jury.
>
> But such trifling economies as may result have not generally been thought sufficient reason for abandoning our great constitutional safeguards aimed at protecting freedom and other basic human rights of incalculable value. Cheap, easy convictions were not the primary concern of those who adopted the Constitution and the Bill of Rights. Every procedural safeguard they established purposely made it more difficult for the Government to convict those it accused of crimes. On their scale of values justice occupied at least as high a position as economy. (*Green* v. *United States*, supra, at 216.)
>
> Nor are criminal contempts substantially different from other crimes when measured by the "tests traditionally applied to determine whether (a given sanction) is penal or regulatory in character * * *." (*Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168.) In the Mendoza-Martinez case, the tests were enumerated in the following terms: "Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned." (Idem. at 168–169.)
>
> Criminal contempt, when punished by a nontrivial penalty, certainly 'involves an affirmative disability or restraint' under any reasonable definition of these terms. The sanction imposed for criminal contempt has always been 'regarded as a punishment' designed to deter future defiance of the court's authority and to vindicate its dignity.
>
> No "alternative purpose" has been suggested to justify its existence. Scienter is generally required to support a charge of criminal contempt. And the behavior to which a charge of criminal contempt applies is generally "already a crime."
>
> In my view, therefore, there is no justification, either in the history or policy of criminal contempt or in the history or policy of the Constitution, for treating criminal

contempt differently from other "crimes" or "criminal prosecutions." If a criminal contempt (or any other violation of law) is punishable only by a trivial penalty, then the Constitution does not require trial by jury. If a violation of law is punishable by a nontrivial penalty, then the Constitution does require trial by jury whether the violation is labeled criminal contempt or anything else.

In another dissenting opinion in the Barnett case delivered by Mr. Justice Black, it was stated that proceeding under criminal contempt "means that one person has concentrated in himself the power to charge a man with a crime, prosecute himself for it, conduct his trial and then find him guilty."

I now read further from Mr. Justice Black's opinion in the Barnett case:

I do not agree that any such inherent power exists. Certainly, no language in the Constitution permits it; in fact, it is expressly forbidden by the two constitutional commands for trial by jury. And, of course, the idea that persons charged with criminal offenses such as criminal contempt are not charged with crimes is a judicial fiction. As I said in Green, I think that this doctrine that a judge has inherent power to make himself prosecutor, judge, and jury seriously encroaches upon the constitutional right to trial by jury and should be repudiated.

In Green, the Court affirmed a 3-year sentence imposed for criminal contempt. But now in note 11 of its opinion in the present case, the Court has inserted an ambiguous statement which intimates that if a sentence of sufficient severity had already been imposed on these defendants, a majority of the Court would now overrule Green in part, by holding that if a criminal contempt charge is tried without allowing the defendant a jury trial, punishment is constitutionally limited to that customarily meted out for petty offenses. I welcome this as a halting but hopeful step in the direction of ultimate judicial obedience to the doubly proclaimed constitutional command that all people charged with a crime, including those charged with criminal contempt must be given a trial with all the safeguards of the Bill of Rights, including indictment by grand jury and trial by jury.

Mr. President, it is unconscionable that under the American system of jurisprudence a man could be brought before the bar of justice and dealt with in an unjust manner without benefit of trial by jury.

But, this can, and has, happened. As Mr. Justice Black pointed out, the judge trying a criminal contempt case is a man who wears many hats.

By issuing the injunction which was allegedly violated, he in effect made the law which the man is accused of breaking.

He serves as prosecutor in a trial that is conducted under his direction.

He decides what evidence shall be presented and what evidence will not be admitted.

And, finally, he is judge of the case and determines its disposition.

If the accused is found to be guilty, he sets the penalty.

He sets the penalty which can deprive the citizen of his liberty and his property.

The trial judge in such a proceeding as this is indeed the monarch of all he surveys.

Mr. President, it is argued that juries either will not convict or else they are prone to make mistakes. This, of course, is an attack upon our entire jury system.

While this system may not be perfect, I submit that it is the best one that has been devised to serve as the guardian of the liberties of the people in our courts. Trial by jury was not established as a quick and easy way to convict persons accused of crimes.

Trial by ordeal, however, was much faster and much simpler, but I do not think anyone in this country wishes to return to the dark days when men were tortured into admitting their guilt or when the mystical art of magic determined a person's guilt or innocence.

In short, Mr. President, no argument can be made against my amendment for a trial by jury in criminal contempt cases that is not also an argument against trial by jury for any crime.

Mr. President, to look with disdain and distrust upon the jury system is to look with disdain and distrust upon the people.

There can be no compromise with so fundamental a principle as the right to a trial by jury. In attempting to play around with numbers in terms of the length of time a person may be deprived of his liberty or the amount of money that may be taken from him is mere subterfuge.

It all comes out the same, and amounts to nothing less than a deprivation of the right to a trial by jury.

Either our citizens are to be free and completely guaranteed this right or they are not.

In this matter now before us, there is no in between.

Mr. President, in 1957, the Senate of the United States, by a vote of 51 to 42 passed a jury trial amendment, and I find it difficult to understand why this issue should become controversial at this time.

It has been extremely interesting and enlightening to me to read the debate during the summer of 1957 over the jury trial amendment, which was identical to the one which I have offered. Many splendid addresses were made in this Chamber in support of the right of every American to a trial by a jury of his peers.

Joining in the cosponsoring of the 1957 amendment were Lyndon B. Johnson, now the President of the United States and then the Senator from Texas, and John F. Kennedy, our late President and formerly the Senator from Massachusetts. Both Mr. Johnson and Mr. Kennedy made outstanding speeches urging the adoption of the 1957 amendment.

I would like at this time to read from the remarks of then Senator Johnson:

Mr. JOHNSON of Texas. Mr. President, sometimes in the course of debate we use loose language. But it is not speaking loosely to say that the Senate is approaching a truly historic vote.

By adopting this amendment, we can strengthen and preserve two important rights. One is the right to a trial by jury. The other is the right of all Americans to serve on juries, regardless of race, creed, or color.

But the adoption of this amendment means something even more important. It means the strengthening of the basic purpose of this bill, which is to provide strong guarantees for the right to vote.

I believe we all recognize the fact that in this bill we are stepping into a new field of law enforcement. I am aware of the legal arguments that this is a traditional exercise of the powers of equity.

Those arguments will not be very impressive to our people. No lawyer—no matter how learned—will ever convince them that it is traditional to bring Federal judges directly into the voting cases.

As the bill now stands, it is an effort to convert criminal acts into civil offenses so that they may be punished criminally without a jury trial.

In my opinion, our people will accept the necessity for bringing the Federal courts into the election picture. They realize that there is a question of speed involved if the right to vote is to be effective.

But I do not believe that our people will accept the concept that a man can be branded a criminal without a jury trial. That is stretching the processes of the law too far.

If we were to insist upon criminal contempt proceedings without a jury trial, we would be inviting the very violations we seek to avoid. In my opinion, we could make no greater mistake.

This amendment has been carefully drawn. It leaves the Federal courts with full power to enforce compliance with legitimate court orders. It does not touch, in any manner, the coercive authority the judiciary properly should have.

It says only that a man cannot be branded as a criminal, in the sight of his fellow man, without a trial by jury.

North, South, East, or West, our people will respond to laws that are enacted fairly after reasonable consideration. Those who will not respond can be handled under the ordinary proceedings of criminal contempt.

Mr. President, I believe in the right to vote. I believe in strengthening that right. I believe further that most of our people share my belief or are at least willing to accept it.

And I reject—absolutely reject—the contention that we must concentrate on threats in advance of violation.

Mr. STENNIS. Mr. President, will the Senator from Georgia yield for a question on the subject of jury trials?

Mr. TALMADGE. I am delighted to yield.

Mr. STENNIS. Does the Senator from Georgia agree with the excellent exposition of the subject this morning by the Senator from Ohio [Mr. LAUSCHE], who stated that the amendment of the Senator from Georgia leaves intact and in full force and effect all the powers that any judge could have to require a defendant to carry out the mandate of the court—this is, to obey the court? Whatever the judgment of the court is, must not the defendant fulfill it, under the Talmadge amendment? Must he not obey the order of the court, or else be subject to imprisonment without trial by jury?

Mr. TALMADGE. The Senator is exactly correct. Under the amendment I have proposed, there would be no change whatever in the civil contempt power of the Federal judiciary. As the able Senator from Mississippi knows, he having been an outstanding judge himself, in civil contempt a defendant, in each and every instance, carries the key to the jail in his own pocket. Whenever he complies with the order of the court, he will automatically be released. So it is he himself who determines whether he shall be detained.

But criminal contempt is a horse of a different color, because in criminal contempt the judge makes the law; the judge is the accuser; the judge is the prosecutor; the judge is the jury; the judge determines the sentence. Every aspect of the entire judicial system vests exclusively in the bosom of the court.

The Senator from Georgia says that judges ought not to have that power, particularly when the Constitution, in two separate places, provides that no one shall be tried for a crime except by a jury of his own peers.

In the seventh amendment, as the able Senator knows, in order to nail down that right positively and conclusively, the Founding Fathers provided that even in civil matters, if the object of the litigation is of a value of $20 or more, a person shall be entitled to a trial by a jury of his peers.

Historically in Anglo-Saxon jurisprudence, antedating Runnymede, King John, and Magna Charta, in 1215, and then in the Declaration of Independence, and finally in the Constitution, every aspect of our entire judicial system has been designed to protect the most sacred right of all mankind, the right of trial by a jury of one's peers.

Mr. STENNIS. The Senator from Georgia has made it clear again that his amendment, the Talmadge amendment, would not in any way affect or limit in any particular the method by which a judge could force a defendant to obey an order of the court. If a person violated an order of a court, he could be put in jail until he complied fully with the order, could he not?

Mr. TALMADGE. The Senator is entirely correct.

Mr. STENNIS. Coming to the next point, is it not true that those who framed the bill we are considering—I do not say it was the proponents of the bill or those who will vote for it, but those who framed it—were skillful lawyers? Did they not deliberately draft the bill in such a way as, in effect, to create a new series of crimes that circumvent or dodge or go around the constitutional provision for trial by jury, which the Senator has emphasized? Have they not, even with respect to criminal charges against anyone involved in civil rights proceedings, provided that a person shall not have the right of trial by jury? Is not that as clear as crystal?

Mr. TALMADGE. That is correct.

Mr. STENNIS. The Senator from Georgia is trying to prevent that from happening, is he not? He is seeking to prevent a circumvention of the right of trial by jury. Is not that one of the purposes of his amendment?

Mr. TALMADGE. That is entirely correct.

Mr. STENNIS. It is not intended to defeat any right that anyone has, actual or imaginary. The amendment protects the rights of an individual, does it not?

Mr. TALMADGE. That is correct. It is designed as a protection for all Americans—190 million of them—of all colors, all religions, and in all geographical areas. It is designed to protect the most sacred right of all time—the right of trial by jury.

Mr. STENNIS. So a bill that purports to protect the rights of all people violates, in criminal cases, the right of trial by jury.

Mr. TALMADGE. In five separate titles of the bill.

Mr. STENNIS. Does not the Senator as a lawyer, and also as a Senator, consider trial by jury as one of the most essential and most sacred rights that anyone could have?

Mr. TALMADGE. The Senator is entirely correct.

Mr. STENNIS. All of us have that right, regardless of nationality, color, religion, experience, or other background. We provide it in the same generous measure even to a confirmed or habitual criminal.

Mr. TALMADGE. That is entirely correct. That is one of the reasons why I have designated the bill as an anticivil rights bill. It is a bill to regulate the lives of 190 million Americans in every area of private human conduct, and to deny them the right of jury trial at the same time.

Mr. STENNIS. Does not the Senator from Georgia agree that this subject is still greatly misunderstood, and that in spite of the clearness of the Constitution on the right of trial by jury in criminal matters, there has nevertheless grown up, originally within a small sphere of activity, a wide area of contempt proceedings?

Mr. TALMADGE. That is quite true.

Mr. STENNIS. It has grown to such a scale in our law that it cannot now be said as a fact that everyone under these proceedings is entitled to the constitutional right of trial by jury.

Even in the Barnett case the Supreme Court of the United States has just rendered a decision—although it was a split decision, decided by the narrowest possible margin, a margin of only one vote—has it not?

Mr. TALMADGE. That is correct. I began my speech by quoting Thomas Jefferson; then I quoted Felix Frankfurter; then I quoted Associate Justice Black; then I quoted Associate Justice Goldberg; recently I have been quoting from the President of the United States, Lyndon B. Johnson; and the next able witness I expect to "call to the stand" will be the late, lamented John F. Kennedy—all of whom hold views identical with those shared at this moment by the able Senator from Mississippi [Mr. STENNIS] and the Senator from Georgia—namely, that any American accused of crime is entitled to a trial by a jury of his peers.

Mr. STENNIS. The Senator from Georgia is making a very able, excellent, and most informative speech, and I am sorry to have interrupted him. I thank him for yielding to me.

Mr. TALMADGE. I thank the Senator from Mississippi for helping to illustrate this fundamental issue, which is vital to all Americans, whatever may be their views, wherever they may live, whatever may be their religion, and whatever may be their views of the various aspects of civil rights. After all, the greatest right of each American is the right to be tried by a jury of his peers; and if that right is taken away, the people of the United States will not be safe in their homes; they will not be assured of the possession of their property; they will not be assured of their liberty; they will no longer be safe in any respect.

Mr. STENNIS. Mr. President, will the Senator from Georgia yield for a further question?

Mr. TALMADGE. I yield.

Mr. STENNIS. The Senator from Georgia knows from his own experience, does he not, in the course of his own life—first, when he was reared in the Governor's mansion, and, later, when he came into contact with various groups of the people of America—that the person who sometimes is referred to as "the average fellow" or "the little fellow" has, in the right of trial by jury, his greatest protection and shield if someone is perchance inclined to proceed against him because of spite or because of a desire unjustly to run him out of business or unjustly to deprive him of his liberty?

Mr. TALMADGE. Certainly that is true. Because of the right of trial by jury, no American can unjustly be deprived of his home or his constitutional rights or his liberty—or, as in the case of the pending bill, deprived of all those things by a judge who might be inclined, because of a tendency to be tyrannical, to attempt to deprive him unjustly of his liberty and of his other rights.

Mr. STENNIS. Is not the constitutional requirement that before one can be convicted of a crime, the charge must be proved before a jury of his peers, the greatest protection that all Americans have?

Mr. TALMADGE. Yes. The right of trial by jury is a sort of safety valve. It is true that juries may not always be correct in their verdicts; but if I had to choose between a decision by a judge—just one man—who could be impeached only by the Senate of the United States, and a decision or verdict by 12 jurors, I would choose the decision by the 12 jurors; I would choose the latter, every time.

Mr. STENNIS. I agree with the Senator from Georgia.

Does he not agree that before an American can be convicted of a crime, the prosecutor must first appear before a grand jury and must make his allegations and produce his proof; and the grand jury, when sitting behind closed doors, must then weigh the evidence and, if it so decides, must then return an indictment?

Mr. TALMADGE. Yes.

Mr. STENNIS. And then the prosecutor must go into open court and must prove the charges beyond a reasonable doubt, and must obtain a unanimous verdict of the 12 members of the jury which has been duly impaneled?

Mr. TALMADGE. That is correct.

Mr. STENNIS. Is not that the greatest protection the "little man" in America has?

Mr. TALMADGE. Yes. It is the greatest protection of all Americans, wherever they may live, or whoever they may be.

Mr. STENNIS. It is the basic protection of the American people from their own Government, is it not?

Mr. TALMADGE. Yes, and especially from officials or judges who may be corrupt. That is the very point the Senator from Mississippi and I have been discussing.

Mr. STENNIS. Mr. President, will the Senator from Georgia yield for a further question?

Mr. TALMADGE. Certainly.

Mr. STENNIS. Would the provision of the pending bill which would deprive Americans of the right of trial by jury last 5 minutes on this floor if it were a part of any bill except a so-called "civil rights" bill?

Mr. TALMADGE. I believe it certainly would not.

This morning, the Senator from Ohio documented four specific cases—the Clayton Act, the Norris-La Guardia Act, the Landrum-Griffin Act, and the Civil Rights Act of 1957. Each of them provides for a trial by jury in all criminal contempt cases; and, as I recall, two of those statutes provide for trial by jury even in civil contempt cases.

Mr. STENNIS. I thank the Senator from Georgia for his very able presentation.

Mr. TALMADGE. I thank the Senator from Mississippi for his eloquent and most helpful contributions.

Mr. President, to carry one step further the eloquent argument the Senator from Mississippi has submitted, I point out what the bill would provide, if it were left in its present form, with 5 of its 11 titles depriving all American citizens of the right of trial by jury.

As the Senator from Mississippi knows, the bill is mislabeled a "civil rights bill," whereas it is really a bill which would regulate every aspect of the lives of all American citizens, from the cradle to the grave. It would regulate where they sleep—except in their own homes; it would regulate where both employers and employees, members of labor unions, would work; and it would regulate where they would eat—except in their own homes. Those are the most intimate aspects of the lives of all American citizens. Yet the bill would provide the Federal Government with police power in all those areas, and would deprive all American citizens of the right of trial by jury in such cases.

The result would be that the power and the might of the Government of the United States, with more than $100 billion spent in resources, and with the vast power of the Department of Justice, with all of its thousands of lawyers, statisticians, and attorneys, scattered throughout the Nation, and with the vast array of Federal judges, who have been appointed for life, and were recommended by the Department of Justice for those appointments—all that power of the Federal Government would be arrayed against some little citizen in, perhaps, New York, Georgia, or California, who might have a net worth of perhaps $200 or $2,000. The Federal Government would tell them what he had to do; and the mere threat of a lawsuit by the Government would either bankrupt him or would cause him to knuckle under or would put him out of business; and if he were put out of business, he and his wife would then be unemployed, and any employees he might have had would have been thrown out of employment, and perhaps would be destitute and would be walking the streets, seeking employment; and at the same time the defendant would be deprived—by means of the pending bill—of the right of trial by jury when he was charged in a suit brought by his own Government.

Mr. STENNIS. I thank the Senator from Georgia for his able presentation.

Mr. TALMADGE. I thank the Senator from Mississippi.

Mr. President, I have been quoting the eloquent, powerful, logical, erudite, persuasive, and dynamic speech made on the floor of Senate in 1957 by Lyndon B. Johnson—then a Senator from the State of Texas and majority leader of the Senate, and at the present time President of the United States—when he was discussing the right of trial by jury in such cases.

He also said:

That is not the way to resolve an issue; it is only the way to create new issues.

Mr. President, I am not going to engage, tonight, in a lengthy argument on the merits of this amendment. There are on this floor able Senators who have explored every aspect thoroughly. The hour is late, and many Senators are prepared to vote.

But, before the rollcall is had in the Senate tonight, I should like to call the roll of the great men of the past. I do so only because I believe it will indicate the strength of the jury trial tradition among our people.

It was Thomas Jefferson who said:

"They [the juries] have been the firmest bulwark of English liberties."

It was Alexander Hamilton who said:

"The more the operation of the institution [trial by jury] has fallen under my observation, the more reason I have discovered for holding it in high estimation."

It was the late Senator Walsh, of Montana, who said:

"There is not an argument that can be advanced or thought of in opposition to trial by jury in contempt cases that is not equally an argument against the system as we now know it."

It was the late Senator George Norris, of Nebraska, who said:

"A procedure which violates this fundamental right of trial by jury in criminal cases, even though it be a case of contempt, violates every sense of common justice, of human freedom, and of personal liberty."

Mr. President, these quotations could be continued into the evening, but it would be pointless to do so. The tradition of trial by jury is deep within the heart of our liberty-loving people.

Repeal that right, and our laws will become ineffective, except to incite disobedience. Recognize that right, and we shall have one of the strongest and most effective laws in our history.

Mr. President, I do not presume—as the minority leader has—to pass judgment on the actions of the other body. All I know is that tonight we in the Senate must do our duty as we see it.

Mr. President, when the roll is called, I hope this amendment will be adopted by a substantial vote.

Mr. President, I yield back the remainder of the time under my control, on the condition that the minority leader will do likewise.

Mr. President, that concludes the speech by President Johnson on the jury trial amendment in 1957. At that point the roll was called and 51 Senators voted in the affirmative, 42 Senators voted in the negative, and the amendment was agreed to. The amendment was the same as the one which was offered by the Senator from Georgia and other Senators, and is now at the desk without a change in a single word, sentence or paragraph. The amendment is as vital now as it was then—even more so, because the bill which the Senate is asked to pass now is 100 times as encompassing with respect to the lives and liberties of the American people as was the act of 1957 when it was passed by the Senate.

I wish to repeat a few words of the President:

But I do not believe that our people will accept the concept that a man can be branded a criminal without a jury trial. That is stretching the processes of the law too far.

If we were to insist upon criminal contempt proceedings without a jury trial, we would be inviting the very violations we seek to avoid. In my opinion, we could make no greater mistake.

I hope that the Senate will heed the words of President Johnson.

Mr. President, I turn now to the words of our late, lamented President Kennedy in the speech that he made on the floor of the Senate on the same issue in 1957, when he was then a Senator from the State of Massachusetts. He stated:

Mr. President, I rise to speak briefly on the pending issue before the Senate: Whether in cases where there has been a violation or a deprivation of voting rights and where criminal contempt is involved, a jury trial should be required.

My position on the issue of preserving and strengthening the rights of all citizens is a matter of public record. Since I have been in Congress I have unceasingly supported legislation extending and enlarging civil rights. I have repeatedly made efforts to amend rule XXII to provide for a reasonable limitation on debate—a position, I regret to say, which has not been shared in the past by many of my colleagues across the aisle.

There is, I dare say, no Member of this body who seriously contests the right of every citizen to express himself on public issues through the exercise of the franchise. The critical question for us now is how best to protect this inviolable right without sacrificing the rights of other citizens to full and equitable treatment by public authorities who take the initiative in supporting voting rights. One group in this debate suggests that by interposing a jury trial, efforts to protect voting rights will be effectively nullified, while the other side maintains that without a jury trial serious injury to other citizens may follow.

My position on the measure, taken as a whole, is abundantly clear but I believe that in dealing with the specific question under consideration here we must be careful not to distort its intrinsic importance and forget our central purpose in enacting this legislation.

Although I did not agree with the unusual procedure of placing the bill before the Senate without prior consideration by committee because of the dangerous precedent this set, I did indicate firmly my commitment to an early discharge from the Judiciary Committee. I shared the view of those who voted to place the bill directly on the calendar that the bill must be considered before the adjournment of this session of Congress. I voted to call the bill from the calendar and resisted efforts to return the bill to committee. My vote was cast against the deletion

of title III, which provided additional and substantial guarantees of existing civil rights. I am still concerned by the efforts of some States to prevent victims of intolerance from seeking representation by private agencies and public authority. Such forms of interposition might effectively have been barred under title III.

In short, I favor the proposed legislation because it represents a major and long-overdue step forward in assuring all of our citizens equal rights under the Constitution. I only regret that a majority of my colleagues did not share my view that the retention of the major elements of title III was desirable.

Nevertheless, we have before us a good bill and a strong bill, for which no friend of civil rights need apologize. There remains but one element of this bill which properly detains us by its discussion. If this issue is resolved reasonably, I am confident that we shall have an effective measure in which we can all conscientiously join. I refer, of course, to the jury-trial question.

I speak not as a lawyer, but as one interested in seeing to it that there is adequate protection for the voting rights of all citizens. I have followed in detail and with consuming interest the arguments of my colleagues in this body who are trained in the law. Moreover, I have consulted privately with a number of lawyers for whose competence I have the greatest respect, including several who have been notably identified with the fight for the extension of civil liberties. Each of them has given close study to this legislation and pending amendments. All of my studies and inquiries lead me to the conclusion that there is not a serious legal or constitutional problem raised by requiring a jury trial in criminal contempt cases. And I believe, too, there can be no doubt in the minds of anyone, North or South, that this country is determined that every qualified voter shall be enfranchised. What we must decide here is whether or not the requirement of a jury trial in criminal contempt cases poses a real obstacle to the guarantee of voting privileges, particularly in the South. I do not believe it does.

I have concluded, Mr. President, that the pending amendment, strengthened as it has been by the change suggested by the very able and distinguished Senator from Idaho [Mr. CHURCH] not only provides adequate means to protect voting rights of citizens but will yield considerable collateral benefits.

My reasons for holding this view can be briefly stated:

First, I am confident that the major protection afforded by this bill to citizens who desire to exercise the franchise will be accorded them by the civil contempt power of Federal judges. The major deprivations of voting rights have occurred in those cases where registrars and other public officials have refused to perform positive acts such as registering Negro voters. In these cases the civil remedy, I believe, is adequate, for few public officials will risk the penalties involved in flagrant violation of a court order. It is true that there are other situations, such as the intimidation of registered voters, which present a bar to the free exercise of the franchise. While these in general are not as appropriate for civil contempt proceedings as an order to perform an affirmative act, they nevertheless can be dealt with under the civil contempt power of the courts.

Second, even where it is necessary to resort to criminal contempt proceedings, I am confident that southern juries, presented with convincing evidence of restriction and ever mindful of the watching eyes of the Nation—and indeed the world—will convict those who dare to interfere with orderly legal processes.

I do not count myself among those who are cynical about the capacity of citizens in any section of the country to rise to the challenge of one of the highest responsibilities of freemen—the preservation of law and a just social order.

If I wish to avoid cynicism, so also do I want to avoid the attitude of easy optimism. In this connection, I refer again to the most important action we have taken in adopting the amendment offered by the distinguished Senator from Idaho. The adoption of this amendment holds for me a double significance: not only does it insure that trials will be conducted before juries composed of talesmen selected from all citizens in the judicial district, but it enlarges the civil rights of citizens who may have heretofore been excluded from jury service under State laws.

Third, in passing this amendment we shall not have taken an irrevocable step. Our southern colleagues and many authorities in the North have expressed concern about the dangers inherent in the indiscriminate use of the criminal contempt power. We have accepted their arguments in good faith and acknowledged their expressed desire to approach our common problems reasonably and within the framework of the law. Reciprocally, we have every reason to expect that the provision of jury trials will not be used as a device to hamstring legitimate efforts to secure the voting rights of citizens. If, however, this confidence is misplaced, the option always remains for Congress in the future to reverse its action if time shows that the jury trial in criminal contempt cases is being abused. Rather, the weight of history and tradition falls in favor of a citizen having a trial by jury when he faces prison as a result of a crime. Though I do not anticipate the need to reverse the provisions of this amendment, if adopted, and though many of my northern colleagues and I freely extend our friendship and understanding with the acknowledgment that all is not perfect in many sections of the country, we do ask in return the good faith, acceptance, and implementation of the fundamental principle upon which the Nation rests—freedom and equality of all citizens before the law,

After observing the course of debate during the past days, I am persuaded that if the O'Mahoney amendment is not accepted, the passage of the bill will be delayed for weeks and possibly indefinitely. Is this rigid insistence on a matter of procedural importance a good risk when weighed against the further exacerbation of feeling in the South and further contamination of the environment in which the rights must be enforced? I consider it a mistake to insist dogmatically on the purity of the original act at peril to its large objectives. If there were real question that, by taking this action, we were betraying fundamental principles of law or significantly enfeebling the strength of this legislation, then I could not accept the O'Mahoney amendment. However, this fear is not confirmed by outstanding liberal attorneys whom I have consulted.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a memorandum which is the result of a telephone conversation with Prof. Mark De Wolfe Howe, professor of law, Harvard Law School. That conversation was held last night. He urged support of the O'Mahoney amendment, and he is one of the outstanding constitutional lawyers and foremost advocates of civil liberties in the Nation.

I also ask unanimous consent to have printed at this point in the RECORD an excerpt from a letter from Prof. Paul A. Freund of Harvard Law School, a noted liberal and student of constitutional law. In the letter he states that inclusion of the O'Mahoney amendment will not result in a lessening of the principle involved, but, rather, that inclusion of the O'Mahoney amendment can well make the results of the bill much more satisfactory.

There being no objection, the memorandum and the excerpt from the letter were ordered to be printed in the RECORD, as follows:

"ABSTRACT OF TELEPHONE CONVERSATION WITH PROF. MARK DE WOLFE HOWE, PROFESSOR OF LAW, HARVARD LAW SCHOOL, JULY 31, 1957

"On the jury trial issue, I feel you should support the O'Mahoney amendments. The intrinsic legal argument on this matter does not cut too deeply; the issue has aroused more legal fuss than it deserves, and is certainly not a question which permits of too much dogmatic stubbornness. I do think there is some merit in the jury trial position. From the standpoint of enforcement and getting acceptance in the South, a good deal is gained by the amendment. Certainly the O'Mahoney amendment constitutes no betrayal of principle or of fundamental justice."

"EXCERPT FROM LETTERS TO SENATOR JOHN F. KENNEDY FROM PROF. PAUL A. FREUND, HARVARD LAW SCHOOL, JULY 26, 1957

"The upshot is that there would be some sacrifice of effectiveness in limiting the power of the judge alone to cases of civil contempt. Against this loss must be weighed the value of a more receptive sentiment on the part of the original opponents of the bill, a sentiment which presumably would filter down to the press and populace of the South. In the long run that state of mind may be more important than the partial sacrifice of legal procedures involved in the compromise. This is a matter of judgment on which your own wisdom will yield a better answer than any I might venture. I can only say that to accept the jury trial for criminal contempt would not in my view constitute a betrayal of principle."

Mr. KENNEDY. Mr. President, I have also received the opinion of a former dean of the Harvard Law School supporting the merit and validity of the O'Mahoney amendment.

Finally, Mr. President, this debate, in the main, has been far more than an argument over legalities. It represents, in my opinion, a turning point in American social and political thought. It represents a confrontation of problems which have plagued us too long. It represents an almost universal acknowledgement that we cannot continue to command the respect of peoples everywhere, not to mention our own self-respect, while we ignore the fact that many of our citizens do not possess basic constitutional rights. However late, we have at last come to the point of a great decision. It is this fact which overshadows our deliberations. To this overarching achievement, history will bear witness.

Mr. President, let me repeat, Mr. Kennedy declared that where criminal contempt was involved, a jury trial should be required, that the weight of history and tradition falls in favor of the citizen being granted a trial by jury when he faces prison as a result of his crime.

I have gone into the history of the country in some detail, and have referred to the many great men this country has produced to try to outline why a jury trial should be required in all criminal contempt cases.

In the final analysis, criminal contempt is a judge-made crime. The judge is the prosecutor who brings the charges, he hears the evidence, he determines what evidence shall be admitted and what evidence shall be believed, he determines whether the accused is guilty or innocent, and finally he makes the determination of sentence.

In other words, every vestige, every part and particle of the judicial procedure, from beginning to end, is vested in the bosom of the court—one man, and one man alone. There is no grand jury. There is no warrant. There is no bill of indictment. There are no votes in a grand jury. After hearing competent evidence, the accused does not even, necessarily, have the right to face and cross-examine his accusers.

The judge, after instituting his own action, and handling every part of the judicial procedure, makes the decision.

Yet, cases have been cited on the floor of the Senate in which persons have been sent to prison for as long as 4 years. That, in my judgment, is completely at variance with the third article of the Constitution of the United States, which provides for a trial by jury of one's peers in all criminal cases. It is, in my judgment, at complete variance with the sixth amendment of the Constitution of the United States, which provides in all criminal trials that one shall be entitled to a trial by jury of one's peers. It is at complete variance with the seventh amendment of the Constitution of the United States, which provides that even in civil matters, if the value of the controversy at issue exceeds $20, every American citizen is entitled to a jury trial.

In addition to the constitutional provisions, I have quoted from Thomas Jefferson and from Felix Frankfurter, former Justice of the Supreme Court, who recently retired, and I believe is recognized by all Americans as one of the outstanding jurists our country has ever produced.

Mr. President, logic, history, liberty and justice, all demand that one accused of a crime, whether it be a legislative crime or a judge-made crime, shall have the right of trial by jury of one's peers.

I hope that the Senate will so vote.

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

The PRESIDING OFFICER (Mr. INOUYE in the chair). The legislative clerk will call the roll.

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

[No. 195 Leg.]

Allott	Humphrey	Mundt
Anderson	Inouye	Nelson
Bartlett	Jackson	Neuberger
Bayh	Javits	Pastore
Bennett	Johnston	Pell
Bible	Jordan, N.C.	Prouty
Burdick	Jordan, Idaho	Proxmire
Cannon	Keating	Robertson
Case	Kennedy	Russell
Church	Long, Mo.	Saltonstall
Clark	Magnuson	Scott
Cooper	Mansfield	Simpson
Cotton	McCarthy	Smathers
Curtis	McClellan	Smith
Dirksen	McGee	Stennis
Douglas	McGovern	Symington
Ellender	McIntyre	Talmadge
Ervin	McNamara	Thurmond
Fong	Metcalf	Walters
Gruening	Miller	Williams, N.J.
Hart	Monroney	Yarborough
Hartke	Morse	Young, N. Dak.
Hickenlooper	Morton	Young, Ohio
Hruska	Moss	

Mr. McCLELLAN obtained the floor.

Mr. McCLELLAN. Mr. President, several Senators have asked me to yield to them for different purposes. They are not now in the Chamber. I ask unanimous consent that during the course of my remarks I may yield to Senators, upon their request, for questions, comments, and insertions in the RECORD, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Arkansas will state it.

Mr. McCLELLAN. Is amendment No. 560, known as the Morton amendment, the pending question?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLELLAN. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. For how many hours does the rule of germaneness remain in effect after the Senate has convened?

The PRESIDING OFFICER. The rule of germaneness remains in effect for 3 hours after the unfinished business has been laid before the Senate.

Mr. McCLELLAN. Has the unfinished business been laid before the Senate; and if so, has the period of germaneness expired? Is it now necessary to be germane in all the remarks I may make?

The PRESIDING OFFICER. The 3 hours under the rule of germaneness have expired.

Mr. McCLELLAN. I intend to be germane; but sometimes in the course of his remarks one wanders into other delightful avenues of comment. I might stray a little, here and there; but generally, I intend to speak germanely to the pending question, although not entirely to the Morton amendment, which I support. I expect to speak about the general subject of jury trials in contempt cases. That is the real issue raised by the Talmadge amendment, by the Dirksen-Mansfield amendment, and also by the Morton amendment. Although I may deal with some overall, general, basic issue, my remarks will be directed primarily to the issue of jury trials in contempt cases.

Mr. President, if it had been generally supposed by the Founding Fathers that the Federal Constitution would ever be so construed as not to guarantee the right to trial by jury in a criminal prosecution, or even in a civil case, there is no doubt that the Constitution would never have been ratified. I do not believe the people would have surrendered that power to the Federal Government or the Central Government.

I do not believe that the people of that generation or their ancestors, who were fresh from areas of oppression, where what we term today as civil rights, human rights, and rights of local autonomy, and the like, had been denied, would ever have consented to or ratified a constitution that would have placed the power of accusation, prosecution, judgment, and infliction of punishment in any one man or any one court, whether the court was composed of one man or several men. I do not believe they would ever have delegated such power to the Central Government.

The very fact that even in civil suits, in cases where no greater money value than $20.01 was involved in the issue, they insisted upon jury trial and provided for it, meant that they did not have in mind denying a jury trial under the great Constitution that they constructed and submitted to the several States for ratification.

I do not believe they would ever have consented, and I am sure they did not intend, to permit a judge to become both an accuser, a prosecutor, an adjudicator, and a sentencer, and thus be able to deprive a man of his liberty, by incarcerating him in a jail or penitentiary. It is simply inconceivable that the Founding Fathers would have had such an intention. Such an intention by them cannot be rationalized on any basis, for it does not comport with logic or justice or intelligence or fairness or equality of treatment, regardless of how one might attempt to evaluate it or appraise it.

On the other hand, if the Founding Fathers had intended to do exactly the opposite of what they actually did—in other words, if they had intended to provide in the Constitution that a judge could do what the pending bill would undertake to authorize judges and courts to do, it would have been understandable if the Founding Fathers had then provided that a citizen would not be entitled to a jury trial in a civil case unless the amount involved was perhaps several thousand dollars. But I am sure the Founding Fathers did not intend to provide that the right of trial by jury would not be enjoyed by American citizens involved in civil suits which involved more than $20; and I am equally sure that by no implication, positive expression, or stretch of the imagination could it be held that they intended to provide in the Constitution that so long as the judge's sentence would not exceed a fine of $300 or a sentence of 45 days in jail, the defendant could be tried without a jury. I am sure the Founding Fathers had no such intention. Certainly the Constitution contains no such provision.

Therefore, Mr. President, it is clear that Congress would make a grievous error if it were to enact the pending bill in its present form, and if it did not adopt, as part of the bill, either the original Talmadge amendment or the amendment proposed by the Senator from Kentucky [Mr. MORTON]. The Morton amendment would make sure that under the provisions of the bill, if it were enacted into law, in all cases of criminal contempt arising out of enforcement of the provisions of the bill, upon request of the person accused of the contempt, he would be entitled to a jury trial.

As a matter of historical fact, the failure to incorporate in the original Constitution itself a provision guaranteeing that "a jury trial shall be preserved as usual in civil cases" raised an objection to the Constitution which was "pressed with an urgency and zeal well nigh preventing the ratification of the Constitution."

In that connection, I cite Story's "Commentaries on the Constitution," section 1763.

Because of the fear that that part of the Constitution was not sufficiently specific, and because it did not satisfy those who believed in the right of jury trial, considerable objection was raised and considerable debate ensued. As a result, the Constitution in its present form, as regards the right of jury trial, was finally agreed upon, and of course later was ratified. The same zeal and urgency later culminated in the drafting and adoption of the seventh amendment.

Thus, Mr. President, insofar as it was then within the power of the Founding Fathers to do so, and insofar as they had sufficient intellectual capacity, sufficient learning, and sufficient command of words, those who drafted the Constitution made its language so plain and so explicit that I do not understand how today there could be any doubt that the Constitution clearly provides that every citizen shall have the right of trial by jury; I do not understand how there could be any argument on that point, or how any argument of that sort would carry any weight. To the contrary, I believe there is no doubt about what the Constitution provides and what the framers of the Constitution intended to have it provide and intended its effect to be.

If there is anyone who would challenge the fact that a favorite weapon of tyrants throughout all recorded history has been the denial of trial by jury, let him read the Magna Carta and our own Declaration of Independence.

Mr. President, deprivation of the right of trial by jury was one of the favorite tools of tyrants in the lands from which our forefathers fled. They came to America to be rid of such tyranny; and fought the Revolutionary War to guarantee themselves and their posterity freedom forever from such tyranny. They wrote the Constitution in order to guarantee—and I believe they did guarantee it—that such tyranny could never occur in our Nation, and that every American who was a defendant in a criminal action would—regardless of whether he was subjected to a fine or was subjected to imprisonment—have the right of trial by a jury, thus preventing the possibility that any judge in the courts of our Nation could ever possess the power to engage in the sort of tyrannical conduct which had been imposed on the ancestors of the Founding Fathers; for it is clear that those who wrote the Constitution and who founded our Government preferred to live in this new land, where they could establish a new way of life and a new system of government in which individual rights would be respected, preserved, protected, and insured against any efforts by one who might wish to become a tyrant.

There in the Declaration of Independence and the Magna Carta we see enshrined the sacred right of trial by jury, a right which the champions of freedom of those days were willing to fight and die for if need be. But we need not look back into ancient history for proof of the significance of this sacred right. We have but to recall the history of modern-day tyrannies under Hitler, Mussolini, Stalin, Khrushchev, and others for vivid examples of what happens to rights such as this in the hands of tyrants.

I do not believe any of us foresees or contemplates that we would ever have a leader, despot, or ruler in our country such as Hitler, Mussolini, Stalin, Khrushchev, and others—certainly not so long as we keep our present form of government—who would commit such atrocities as those whom I have mentioned committed with respect to the infliction of punishment upon human beings. We do not believe that such atrocities would ever occur. But we invite things of that nature to happen when we begin to tamper with the fundamentals of our liberty and the safeguards of our liberty. If in the proposed legislation we weaken the right of trial by jury in the present instance so as to appease or placate a minority group or race of our people in this country, and if in order to try to throw a chill of fear into people so that they will not insist upon or fight for their rights, or what they conceive to be their rights as American citizens, and so that they will no longer contend for or continue to insist upon a preservation of the basic principles enshrined in our Constitution, the Declaration of Independence, and the Magna Carta, and for the purpose of temporary expediency or to serve a political purpose, when we know it is wrong, when we take such action, we merely invite repetition in some other situation in which someone might feel that a popular law should be passed.

That is the only reason for the present measure being before the Congress. There is such deep conviction about the proposed legislation and about what its consequences would be, and such deep conviction about the opposition to it, that it is designed—and this is one of the purposes of denying a jury trial—to put the power into the hands of a court to act arbitrarily, firmly, positively, quickly, and summarily to compel obedience to any order that the court might choose to make. If we are going to the extreme to try to force the will of those who advocate that type of proposed legislation upon those who honestly and with deep conviction oppose it, we shall set a precedent. Some other measure will come along that may be unpopular and that we would have the power to pass anyhow. Perhaps wisely or unwisely we might pass it, and the proponents of that measure would point to the present bill as a precedent and say, "We took away a jury trial in that instance, although it may have caused some miscarriages of justice. We will do so again, because enforcement becomes more important than following the constitutional procedures."

So in the next bill a provision comparable to the provisions in the present bill would be included, and then we would go further and further, and ultimately our jury system would be wrecked.

It would be tragic if we did so, and if the courts of the land should uphold such action as being constitutional.

I have said on the floor of the Senate—and I repeat the statement—that since the present debate started and since the present issue was raised, the Senate and the House of Representatives are now presented with the challenge of whether it will rise above political expediency—and it is expediency for the moment—and the purpose of concentrating power to enforce a measure against the deep convictions of people who may feel that the bill is going too far. In my judgment it would be tragic to go that far. It should not be done.

The Supreme Court having divided 5 to 4 on the question of the constitutionality of the right to trial by jury in contempt cases, and the dissenting opinions having, it seems to me, presented unanswerable and unchallengeable arguments in support of the position of preserving jury trials that the Constitution intended, it seems to me that the argument is unanswerable. We are now confronted with a challenge to the Senate and to the House of Representatives that might be stated as follows: Will the Congress now acquiesce in these faulty decisions—these decisions of expediency—and in effect ratify and confirm what the Supreme Court has done in this narrowly divided opinion, or shall we say that the end sought does not justify the crucifixion of the Constitution, and that it does not justify the abrogation of the rights stated in the Constitution, because every citizen accused of crime has the right to be tried by a jury of his peers and not by the judge who accuses him or the judge who prosecutes him, but by his neighbors and by citizens who have the responsibility in their capacities as jurors to enforce the law and to help preserve law and order in the community in which they live.

I hope we shall never depart from that system, but this is a departure from it. I hope the Senate and the entire Congress of the United States will rise above the emotions of the hour, the pressures of the day, and reach for higher ground, something on which we can stand from now to the beginning of eternity, instead of something that is faulty, that will falter and will some day cause us to stumble and fall into the horrible pit of irreverence for law, disregard of the rights of the people, concentrating power in one man, when the Constitution states that such power must rest in the jury of the peers of an accused.

When the Founding Fathers of this Nation drafted our Constitution, they expressly provided in article III thereof that:

> The trial of all crimes—

"All crimes" means all crimes, I assume, Mr. President—

> except in cases of impeachment, shall be by jury—

There is no equivocation there; no double talk. In my judgment, there is actually no room for difference of opinion as to what it says and what it means—

> and such trial shall be held in the State where 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.

Mr. President, suppose one paragraph of a bill that was before the Senate provided "notwithstanding any crime com-

mitted hereunder, any criminal contempt committed hereunder may be tried either in the State where the offense is alleged to have occurred or in an adjoining State." Would anyone contend that is constitutional? One would have just as good a case for it, because the language is "in the State where said crimes shall have been committed." Article III provides:

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

It made only one exception. It is proposed in the pending bill to make another exception which the Constitution does not make.

Suppose there were another provision in the bill stating that such a crime might be prosecuted in the State where the crime was alleged to have occurred or in an adjoining State. There would be no more violence done to the plain provisions of the Constitution—there would be less violence done, but certainly no more—than is done by denying a jury trial and permitting courts of law to imprison a person for 45 days and fine him for $300.

I ask Senators, What is the difference in principle? I do not believe any Senator can, on this floor or anywhere else, point out how one proposition is constitutional and the other is not constitutional. The question is that simple.

If the Constitution does not mean what it says, then we have no fundamental law, and the Constitution is merely a historic document that we are ready to discard and abandon and proceed from now on on the basis of whatever law the Congress may enact, without any anchorage, without any guidelines, without any fundamentals upon which our liberties rest. Whatever the Congress wants to do, whatever it enacts as a law, becomes a law, the Constitution to the contrary notwithstanding.

I do not know how one could rationalize that the Constitution does not mean what it says. It will have to be rationalized in some way to get around it, or we must ignore it and pass a bill anyway.

But their concern—speaking of the concern of our forefathers—for the urgent need to guarantee and protect this most sacred right was such that they were not content to rely on this provision alone.

Notwithstanding that the provision was emphatic, and not subject to this interpretation, they did not rely upon it alone. It was only upon assurance that this and other basic rights would be given adequate protection by the adoption of a Bill of Rights that the ratification of the Constitution was insured.

In other words, had not the Bill of Rights been submitted at the same time, all historians agree it is highly probable that the Constitution would not have been adopted.

In the very first meeting of the Congress, what we now know as the Bill of Rights was a first order of business, and included among other amendments were the fifth, sixth, and seventh amendments, all of which provide guarantees with respect to the right of trial by jury.

Why? Why did they so often have at least a lingering suspicion that some day this Government, our people, the Congress, might become lax in their respect and reverence for the Constitution, for what it says, what it does, what it was intended to do, to protect the rights of the people? Were they concerned at that time? Evidently they were. They wanted to take every precaution that was humanly possible for them to take in a basic document of law—the Constitution itself—to insure that certain rights would not be destroyed, that they would not be abolished, that they would be preserved and vitalized as long as the Constitution survived.

Mr. President, that is what should happen as long as the Constitution survives. We are not going to pass a resolution in the Senate, of course, abrogating the Constitution in so many words, but we are whittling away at it, either by legislation or by court decision, causing it to lose its potency, its efficacy, and its protective effect.

In the fifth amendment, it has been provided:

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

The sixth amendment expressly 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, 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, I have great respect for the ability and capacity of the framers of the Constitution who used language which conveyed their intent, which conveyed their viewpoint, and which declared that the principles of rights and governments were not susceptible to willy-nilly interpretations.

There can be no mistake about what they wrote. In both instances where I have mentioned them, the Constitution stated "all." It made only one exception; namely, in impeachment cases. Even in impeachment cases, they cannot be tried by the accuser. The House of Representatives makes the accusation. It votes impeachment, and in a sense it votes to indict, but the House cannot try the case. It is judged in the Senate, where it comes from the House for trial.

But it is proposed to violate the Constitution by allowing the same judge—the same authority that accuses—to become the judge, the jury, and the adjudicator of the issue.

Yes, Mr. President, the Constitution stated "all," and it meant all. We may not respect it, we may undertake to circumvent it, but we cannot erase that word "all" by anything we do. We cannot take it out of the Constitution. A resolution could be agreed on to strike the word "all" from the Constitution, but it would have no effect on it.

But if we should undertake in the bill, which we would be doing, to write in an exception, we could not take out the word "all." Everyone knows that. But if we should undertake to write in an exception, where would our authority be, by legislation, to write into the Constitution an exception, and provide that it should not apply in criminal contempt cases arising out of the proposed legislation? We have no authority to do that. We may attempt it. Someone may hold that we have authority to do that. But there are principles which endure, no matter what a court says. We may have to be governed by what the court says, but as a matter of right or wrong, our Founding Fathers said "all," and every court in the land can declare that "all" does not mean all, if it wishes to do so—and the Congress can declare that "all" does not mean all, if it wishes to do so. But "all" means all in the English language. Yet we propose to change it.

Mr. President, we shall be doing great violence to principles that are the greatest source and protector of the human rights and the liberties a people can be blessed with beyond anything ever achieved before in the history of human society and human governments. We should not tamper with them. Instead of trying to circumvent with indifference or willful purpose what the Constitution provides, instead of applying our energies to finding some subterfuge, some way to get around the truth and what the Constitution declares to be the truth, we should be resisting with all our power and might the attempt by anyone to subvert the Constitution and distort its meaning to grant the courts a power they were not granted.

The sixth amendment provides that a citizen shall be entitled to a trial by jury in the State or district wherein the crime has been committed. A provision could be incorporated in the bill which would be just as constitutional, that either a citizen be tried in the district court where the crime was committed, or in an adjoining district, or in a district designated by the highest Court of the land, or by someone else. Would the Senate change that?

It has been stated that perhaps in some States or localities a jury would not always render a fair verdict. I do not believe that applies to any one section of the country. Human nature is about the same everywhere. Probably justice miscarries as often in one State as it does in another. I am not sure that one section of this country—especially the one that is being attacked and assaulted, in a sense, by the proposed legislation—is more corrupt and more susceptible to prejudicial influence in a trial of criminal cases than any other section of the country. No one has so established it. I have seen jury trials outside the South where obviously, to the layman at least, and to some lawyers who follow the subject closely, justice has miscarried. No one will contend that in every such case and in every such instance, in every trial by jury in any State, or in any community, justice is always done.

There are frailties of the human mind. People are so constituted that they may hear the same testimony, and see the same presentation, and yet arrive at honest differences of opinion. Yet, there

is no one race or section of the country that can claim that it is more honest, or that its people have more integrity than the people of any other section of the country.

Would one be willing to write into the bill a change in the Constitution with regard to where these cases will be tried?

Shall we say, "Although the Constitution says you are entitled to be tried by a fair and impartial jury, you cannot be tried by a jury if your punishment is to be only 45 days in jail and a $300 fine."

Are we willing to change the rest of it and say that if the court, who is the accuser and the prosecutor, had any reason to think that some influence might be brought to bear that would prejudice justice, according to his viewpoint, the judge could transfer the trial to an adjoining district, or even to another State? All of that would be in violation of the Constitution. It is not authorized. That power is not delegated to the Congress of the United States, or to the Central Government itself. That power is reserved to the people of this Nation.

Yet it is proposed to usurp the power. It is proposed to exercise it. If we usurp that power, when the next bill comes along, we shall say, "We have had some experience in that field. We find it is difficult to obtain a conviction here, or to get a conviction there. Therefore, we shall say that the case may be tried in an adjoining district, or in another State." If we can violate the Constitution and get by with it, it can become a habit.

Are we not willing to stop, to look, and to listen, to see the yellow light flashing, and come to a conscious realization of what we are about to do?

Trial by jury is mentioned in the sixth amendment. Let us see what is in the seventh amendment. The seventh amendment provides:

> In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

The jury in a civil case is the judge of the facts. Their judgment is based on the facts in the case, and cannot be reviewed, except as to whether the facts are sufficient to warrant a finding of guilt. It does not have to be by a preponderance of the evidence. The law says, "Beyond any reasonable doubt." It requires that guilt must be found beyond any reasonable doubt.

When the jury finds guilt based on the word of 1 witness as against 100—the preponderance of the evidence may be overwhelming even as to the facts being different—and says, "That convinces us beyond a reasonable doubt of the guilt," its decision cannot be examined beyond that. Yet, it is proposed to do that.

The framers of our Constitution felt deeply about the integrity of the jury and the wisdom of the jury system. Yet, it is proposed to tamper with it.

Are we smarter today than were the Founding Fathers who drafted the Constitution, and, in effect, constructed the great pillars of this Government? Are we wiser concerning fundamental law? If we are smarter, the way to do it is by amending the Constitution. We do not legitimately amend the Constitution by legislation. We may do it illegitimately, and the baby may obtain sanction in the courts, but it is still illegitimate. I do not care what kind of sanction it is given.

Even in common law, where money is the only thing at issue, our Founding Fathers thought the jury system was sacred and indispensable to the processes and to the adjudication of justice as between the contentions of men. Are we smarter today? Can we have 1 judge who knows more about justice, who knows more about how to analyze facts, who knows more about how to render justice between the State and the individual, than do 12 men sitting on a jury?

We are denying the defendant that right. We must give him a jury trial if we are to follow the Constitution. I do not know how long it will be followed if we adopt this practice, but we must give him the right to a trial by jury if he is sued for $20.01.

I do not know how those who would construe the word "all" to mean "nothing" would construe that provision. I do not know how they would construe the right of an individual to a jury trial if the amount sued for is more than $20. But if we follow the Constitution, we would have to give the man a trial by jury, if he wanted it, if the amount were $20.01, or $20.05.

But if we charge him with criminal contempt, we will give the judge the right to send him to jail for 45 days. Compare one's liberty for 45 days with the amount of $20.01. Which is the most precious? Which is the most valuable to a citizen of the country?

Yet, we are going to tamper with it. We will take the word "all" out of the Constitution. We will make exceptions. If we make an exception in this one bill, there will be another bill in which we will make another exception. And here we go.

Talk about stability and integrity of government. We hear of disrespect for law, and that does prevail in some areas and among some individuals. But when we—who have the highest responsibility, and, who are clothed with authority and the duty to enact legislation—display disrespect for that fundamental document, we invite disrespect from the remaining citizens of the country for the law of the land.

If Congress can flout the law, if the courts can construe "all" to mean "not all," then the citizen can say he does not like the law and will not observe it. He can say, "Congress does not pay any attention to the Constitution when it enacts laws. If Congress can disregard and disrespect the Constitution and the laws, why cannot I?"

Mr. President, we are playing with danger. We are exposing the country to danger by the proposed legislation.

Placed in this context of history, it is no less than appalling that in the year 1964 Congress should be considering the enactment of legislation which would deny to American citizens the most sacred right of trial by jury. Is it necessary to have this provision in the bill in order to enforce the law, if it becomes law? Are not the other processes for trial by jury adequate? What is the reason for this provision? Why the departure? The reason is not sufficient, in whatever terms it may be expressed.

In an effort to conceal from the American people this assault upon one of their sacred rights and liberties, the proponents of the so-called Civil Rights Act of 1963 have sought to becloud the issue under a semantic barrage. They assert the existence of a distinction where there is no difference. They attempt to distinguish between a prosecution for a crime and a prosecution for criminal contempt.

If one is entitled to a trial for criminal contempt, it is proposed that a judge shall try the accused, not a jury. But a jury trial is recognized, because it is provided that if the punishment amounts to more than 45 days in jail, the accused ought to have a jury trial. But the Constitution makes no such distinction. That is not provided in the Constitution. What is proposed is far beyond the purview of the Constitution.

Mr. STENNIS. Mr. President, will the Senator yield for a question about jury trials?

Mr. McCLELLAN. I yield for a question or a comment.

Mr. STENNIS. Has not the Senator from Arkansas found that, after all, the subject of jury trial as it pertains to matters that arise from contempt proceedings is greatly misunderstood, even among Members of the Senate, many of whom are confused about the civil contempt and criminal contempt concepts? That question is preliminary to a question about the amendment which the Senator said he is supporting. Does not the amendment leave the judge with full power to require the one against whom he is proceeding to obey the mandate or requirements of his decree, under threat of a civil contempt proceeding that could put the accused in jail until he complied?

Mr. McCLELLAN. It would not interfere with that power. The judge would still have summary power of jurisdiction to enforce his orders as he had directed them to be carried out.

Mr. STENNIS. That is an essential and effective part of the power he needs to insure the carrying out of his decree.

Mr. McCLELLAN. I do not believe the court would be at all hampered in its ability to enforce its orders. But this proposal actually resolves into a threat, an attempt to coerce and intimidate the citizen.

Mr. STENNIS. The Senator is correct.

Mr. McCLELLAN. It flashes a 45-day jail sentence in his face immediately. He is told, "You may not have a trial by jury. You must submit." He is under subjection to whatever sentence one man imposes, up to 45 days in jail.

Mr. STENNIS. Under the proposal as it is now written, and which it is sought to amend, instead of a judge having power to put a man in jail, if necessary, until he obeys the instructions and rulings of the court, the judge would have additional power, if he saw fit, really to prosecute the person for the crime.

Mr. McCLELLAN. That is true.

Mr. STENNIS. And to deny the accused a trial by jury.

Mr. McCLELLAN. That is true. He could accuse him, charge him, deny him a trial by jury. The man who made the charge, the one who accused him, would try him.

Mr. STENNIS. There is a proviso in another pending amendment, known as the Mansfield-Dirksen amendment, that if the punishment were more than $300 or 30 days in jail, the court would have to grant a trial by jury on a charge of criminal contempt.

Mr. McCLELLAN. The bill itself provides for 45 days, does it not?

Mr. STENNIS. That is true in two of the titles; but the amendment applies to all the titles. My question is: If there were to be a determination by the judge as to whether he would afford a person a jury trial, would he not in effect have to find guilt before he decided to grant a jury trial? Is not that the practical operation?

Mr. McCLELLAN. The practical operation would be that the person would never get a jury trial, because the judge would arbitrarily sentence him to jail for 45 days, and he would never get a jury trial. In theory, any action a judge might take other than to sentence up to 45 days or less, or 30 days or less, would be tantamount to a decision and a judgment of guilt. Otherwise, there would be no occasion to call for a jury, because the judge would have decided in his own mind that the accused was guilty and ought to be sentenced to more than 45 days in jail. Otherwise, there would be no occasion under the statute as proposed to submit to a jury any case in which he did not think the accused was guilty and should have greater punishment than is prescribed in the bill, which the judge could impose.

Mr. STENNIS. So it would soon become known among the public, and the jurors particularly, that the judge had considered the matter and had found the accused guilty; otherwise he would not be calling in a jury. Is not that the practical way in which the proposal would work?

Mr. McCLELLAN. The jury will know that the judge thought the accused was guilty and ought to have punishment in excess of 45 days in jail, or of 30 days, as the case might be.

Can the Senator from Mississippi tell me that the accused would receive an impartial trial? That would be a new name for it. Could it be an impartial trial if the judge were able in a criminal case to tell a jury, before it weighed the evidence and deliberated, "I have already determined that the defendant is guilty." That would be tantamount to the judge saying, "I have weighed and assessed the evidence or the facts, and I have determined that the accused is guilty and should have punishment in excess of what I as a court may impose upon him."

Mr. STENNIS. The jury, in order to acquit, would have to come into open court and bring to the judge a verdict of "Not guilty," which would, in effect, be saying to the judge, face to face, "You are wrong in your conclusion. We reverse you." In effect, that would be what the jury would be saying.

Mr. McCLELLAN. Certainly the jury would then be saying that. The jury would be saying, in effect, to the judge, "You were wrong in the first place, for this man is innocent, and therefore he should not be punished in any way at all."

I do not know how intimidating the prior decision of the judge would be or how much influence it would have on the jury, although certainly it would not be calculated to result in having the defendant receive a fair trial. Therefore, if the defendant did receive a fair trial, he would receive it despite those handicaps, not because of them; he would receive a fair trial because of the integrity, wisdom, and courage of the jury, not because of what the judge might do.

Mr. STENNIS. In the proceeding in which the judge decided whether he would permit the defendant to have a jury trial, would the defendant have the right to produce witnesses in his behalf or to have counsel present, or even to have a hearing on that question in open court?

Mr. McCLELLAN. Of course the Constitution provides that all persons charged with crime are entitled to all those rights. On the other hand, if Congress were determined to abolish this provision of the Constitution, I suppose it could be argued, by implication, that Congress intended to have many or most of the other provisions of the Constitution abolished. If a statute which violated the Constitution were enacted, and if thereby a court were given a power which Congress had no authority to place in the court—in other words, a power that had been expressly reserved to the people; namely, the right of trial by jury—I do not know what the court would think about the other rights of the American people.

Mr. STENNIS. In connection with due process of law and the rights of defendants, is it not unheard of for a judge to determine in advance whether a defendant was guilty or innocent, and at that time—before the trial—to decide what punishment he would impose on the defendant? Under all our laws, the punishment is determined only after all the evidence is heard and evaluated, is it not?

Mr. McCLELLAN. Certainly that is in accordance with the procedures and practice under our laws and Constitution.

Mr. STENNIS. But this provision of the pending bill would reverse that procedure, would it not?

Mr. McCLELLAN. Yes, and thus the provision would abrogate the rights of American citizens under the Constitution.

Mr. STENNIS. Certainly that provision would violate the spirit of many letters of the Constitution, would it not?

Mr. McCLELLAN. Suffice it to say that it would violate the letter of the Constitution. I do not know what the meaning of the constitutional words "all cases" is, if they do not mean "every case."

Mr. SPARKMAN. Mr. President, will the Senator from Arkansas yield briefly to me?

Mr. McCLELLAN. I yield.

Mr. SPARKMAN. My questions will be quite simple. They relate to procedure; and I shall ask these questions quite seriously.

First, suppose a judge called in a jury. In that case, would the jury have a right to decide whether the defendant was guilty and, if so, what his punishment would be?

Mr. McCLELLAN. The Senator from Alabama is asking what the situation would be after the judge had already found the defendant guilty; in effect, that would be the situation, after the judge had decided that the defendant should be punished by a fine of more than $300 or imprisonment for more than 45 days. Then the judge would call in a jury. So at that point he would say, in effect, to the jury, "I have found the defendant guilty, and I have decided that he should be sentenced to more than 45 days in jail or should be fined more than $300. Now I submit the case to you."

Mr. SPARKMAN. What would the court do then?

Mr. McCLELLAN. I should like to have the proponents of the bill state how they think the judge would handle such a case.

Mr. SPARKMAN. I am curious to know about that.

Mr. McCLELLAN. I think the Senator from Alabama will have to remain curious about it, for I do not think the answer will be provided by any proponent of the bill.

Mr. SPARKMAN. Next, I should like to ask the Senator from New York, a question, if I may do so.

Mr. McCLELLAN. I yield for that purpose.

Mr. SPARKMAN. Suppose the judge decided that he would find the defendant guilty of contempt, but that the punishment should be less than $300 or less than 45 days in jail. In that case, would not the judge be bound to charge the jury as follows: "Gentlemen of the jury, I have considered the facts in the case, and I have decided that the defendant is guilty." In effect, the judge would thus take that position, even though he would not use those exact words, would he not?

Mr. McCLELLAN. Of course that would be the implication of the action of the judge in submitting the case to the jury.

Mr. SPARKMAN. Perhaps the Senator from New York can answer that question.

Mr. McCLELLAN. I hope so; I invite the Senator from New York to help us untangle this problem.

Mr. JAVITS. Mr. President, will the Senator from Arkansas yield?

Mr. McCLELLAN. I yield.

Mr. JAVITS. Of course, in our zeal, there are some things we should not overlook. We are discussing the conduct of Federal judges, including southern Federal judges. I say, with all respect, that Senators who have been speaking have been saying about Federal judges some of the things that the Senator from Georgia [Mr. RUSSELL] accused me of saying, the other day, about juries in the Southern States. I do not believe that

any Senator wishes to imply that a judge of a Federal district court would proceed in the face of the U.S. Constitution. However, if a judge tried to do that, certainly the higher courts would correct him.

Mr. SPARKMAN. But by means of this bill, Congress would be flying in the face of due process of law.

Mr. JAVITS. Of course we have already argued that question; and now we are talking about the procedure of the judges. I do not think that, in our zeal, we should make statements which could be considered as being unfair or improper ones, insofar as certain persons are concerned.

In the first place, following the presentation of the evidence to the jury, the judge would instruct the jury, as I understand, that in order to convict the defendant, the jury would have to find the defendant guilty of willful violation of the court's order; and, following the presentation of the evidence to the jury, I assume that the judge would define criminal contempt committed outside the presence of the court.

Mr. McCLELLAN. Will the Senator from New York state the authority for that? He said he assumed that would be done.

Mr. JAVITS. A requirement of due process of law is that in order for a person to be convicted of a charge which, if sustained, would carry with it punishment by fine or imprisonment, it would first be necessary to prove contempt. I can produce some of the cases in that connection. I have before me the decision in the Barnett case.

Mr. McCLELLAN. But the Barnett case was not tried under the provisions of the pending bill, the statute now proposed.

Mr. JAVITS. But the amendment which is the pending question would provide jury trials in all criminal contempt cases; and the leading and most recent case in connection with contempt is that of United States against Barnett. So, in order to ascertain the rule, it is necessary to refer to that case.

First, as I understand, the judge would have to instruct the jury that, in order to convict the defendant, it would be necessary for the jury to find that there had been a willful violation of the court's order. The jury's finding would depend upon the evidence which had been adduced. If the jury found the defendant guilty, the punishment imposed could, under the Dirksen-Mansfield substitute amendment, be a fine of more than $300 or incarceration in jail for more than 30 days.

However, it is clear that under the Barnett case it would be necessary for the jury to find that there had been a willful violation of the court's order.

Mr. McCLELLAN. But if the judge decided in advance that the defendant should be subjected to a fine of more than $300 or to imprisonment for more than 45 days, would not the judge have to reach that decision before he could submit the case to the jury, which thereafter might reach a verdict that the defendant had been guilty of a willful violation of the court's order?

Mr. JAVITS. I believe he would.

Mr. McCLELLAN. Following the point further, how would the court ever get the case to the jury? The court would be entitled to submit the case to a jury under this statute only if the punishment were to be 45 days or longer. Therefore, the judge would be required in his own mind to judge the defendant guilty before he could ever send the case to the jury.

Mr. JAVITS. I have seen many cases—and I assume the Senator himself has tried cases——

Mr. McCLELLAN. Once or twice.

Mr. JAVITS. I have seen many cases in which the judge might have assumed in his own mind that the defendant was guilty and yet a jury acquitted the defendant.

Mr. McCLELLAN. In the jurisdictions in which I have practiced, if a judge made that assumption and so indicated to the jury, it would be reversible error.

Mr. JAVITS. That is the point I was about to make. If the judge let it show through, for that reason alone the appellate courts would reverse the conviction.

Mr. McCLELLAN. I do not see how the judge could get the case to the jury without his view showing through. If the members of the jury would know what the statement was, I am sure the attorney for the defense would know.

Mr. JAVITS. Nonetheless, the jury could find the man innocent; and that has happened on many occasions.

May I proceed now on the point of due process?

Mr. McCLELLAN. The jury could also find the defendant guilty; and it would not be reversible error under the proposed legislation for a judge to have let it be known by his actions that he had adjudged the man guilty of the charge before he submitted the case to the jury.

Mr. JAVITS. I believe that would be reversible error.

Mr. McCLELLAN. I do not see how the judge could keep it from the jury.

Mr. JAVITS. The judge might not be able to keep it from them by implication, but if he showed it in his charge, it would be reversible error.

Mr. McCLELLAN. If a judge should so conduct himself in the trial of a criminal case that by implication he would indicate to a jury his view with respect to the guilt or innocence of a defendant, would it not be reversible error?

Mr. JAVITS. The courts have decided that question time and time again. I believe it would be just as true here, but again that would not be an inference to be drawn from the terms of the statute, but from the conduct of the judge.

Mr. McCLELLAN. I believe the conduct of the judge in submitting the case to the jury must inevitably carry with it the conviction or the idea that the judge was finding the defendant guilty. If the judge should consider the case is a serious one, and that the defendant ought to be punished to a greater extent than the judge had authority to sentence him, the inference is that the case was given to a jury because the defendant was guilty and deserved a greater punishment than the court could inflict.

Mr. JAVITS. Obviously I cannot persuade the Senator if he does not wish to be persuaded.

Mr. McCLELLAN. I wish to be persuaded by something that I can depend upon and rely upon and accept. We could argue the question at quite some length. Probably we would both wind up with the same opinion still. But I cannot let the RECORD stand as showing that the proposed legislation would not be a departure from the regular procedures of the adjudication of guilt and innocence. In my judgment it would be a very grave departure, and one that would do irreparable injury.

Mr. JAVITS. In my judgment, a jury would be no more impressed with that possibility than it might be with an indictment by a grand jury. Many defendants are found innocent after indictment by a grand jury. A defendant would have all the constitutional protections in a trial on a charge of criminal contempt either by the judge himself without a jury or before a jury.

The Senator from Mississippi—and I do not believe that he has checked the facts on the point—made some rather broad statements earlier in his discussion with the Senator from Georgia [Mr. TALMADGE].

Mr. McCLELLAN. I do not know what he said. I may not be able to discuss that point with the Senator. If the Senator wishes to comment on that point, however, I shall yield to him for that purpose.

Mr. JAVITS. I shall comment; but, as I have said, it is a question of fact and law.

Mr. McCLELLAN. The Senator is not present, but he will have opportunity to answer the statement, I presume.

Mr. JAVITS. I shall make the statement without reference to the statement of the Senator from Mississippi. Some question was raised about due process of law in a criminal contempt case. I should like to read into the RECORD, if I may, rule 42(b) of the Rules of Criminal Procedure, which expressly provides with respect to criminal contempt as follows:

A criminal contempt, except as provided in subdivision (a) of this rule—

Which is a contempt committed in the presence of the court and, as lawyers, we understand entirely the power of the court to impose summary punishment in that case; but we are talking now about a criminal contempt outside the presence of the court. The rule provides—

(b) Disposition upon notice and hearing: A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the U.S. attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from

presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

I should like also to cite two decisions of the Supreme Court. A defendant in a criminal contempt case is presumed to be innocent. His guilt must be proved beyond a reasonable doubt; and he cannot be compelled to testify against himself. The applicable citations are *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, and *Michaelson* v. *United States*, 266 U.S. 42.

Mr. President, as to notice, a reasonable opportunity to be heard to meet the charges against him, the right to counsel, the right to present his own witnesses, and the right to cross-examine others, I refer to the case of *Cooke* v. *United States*, 267 U.S. 517. I state these affirmative facts only because I do not believe that we would wish to have the RECORD show that we are advocating, no matter what happens to this amendment, some license for star chamber proceedings contrary to the practices of our courts or Anglo-Saxon jurisprudence or the protection of our Constitution which would apply to any such defendant, whether he were tried without a jury or not.

It is only fair that these facts be placed upon the RECORD. I thank the Senator from Arkansas.

Mr. MCCLELLAN. I do not necessarily agree with the interpretation of the Senator from New York as to the facts. The Senator is making a departure from the Constitution, which provides that a man is entitled to trial by jury. This refers to all criminal prosecutions. I do not know how it could be interpreted otherwise. The word "all" must be diluted. It does not mean "all" if the bill is constitutional. That is all there is to it. "All" means "all," or it does not mean "all"; and if we can pass a bill that states that it does not mean "all," in my judgment we dilute the Constitution.

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

Mr. MCCLELLAN. I am glad to yield.

Mr. SPARKMAN. The Senator has referred to the word "all." He will recall that in two other provisions of the Constitution relating to trial by jury the word "all" is used. In the first provision the statement is made that, "all criminal cases shall be tried by jury." In another instance the Constitution uses the word "all."

I should like to refer to rule 42(b) of the Federal Rules of Civil Procedure, which was read by the distinguished Senator from New York. As I understand, that is a rule which was enunciated by the court. I ask the Senator from Arkansas, who is a good constitutional lawyer and a long standing member of the Committee on the Judiciary, whether that rule does not have the force of law. Does it?

Mr. MCCLELLAN. It does not.

Mr. SPARKMAN. I refer particularly to the provision of the rule which states that a defendant may have a trial by jury only in cases in which Congress so provides. Is it not true that they are running completely in the face of the Constitution, which provides that one charged with a crime is entitled to a trial by jury?

Mr. MCCLELLAN. That is the point. That is the crux of the issue. The Constitution provides—and I shall read it again:

The trial of all crimes—

That is one instance in which the phrase is used. Criminal contempt would not be called criminal contempt if the act were not a crime. The sixth amendment to the Constitution states, "in all criminal prosecutions."

Mr. SPARKMAN. I invite the attention of the Senator from New York to what I am about to say. Does the Senator from Arkansas remember that Justice Black in the Barnett case wrote one of the strongest dissenting opinions and referred to a rule as "judge-made law?"

Mr. MCCLELLAN. There is too much of that in this country today.

Mr. SPARKMAN. Mr. Justice Black referred to it as "judge-made law." Could rule 42 be called judge-made law?

Mr. MCCLELLAN. That is correct.

Mr. SPARKMAN. The Senator will recall that Justice Black said it was time we were getting around to making sure that we would not have the same man make the accusation, indict the person—in practical effect—bring him to trial, prosecute him, try him, and then sentence him. Does not the Senator from Arkansas feel that is exactly what would happen in the type of cases he is talking about?

Mr. MCCLELLAN. I am sure that that is exactly what would happen.

I say to my friend that "all" means "all." I am reminded of a story I once heard about the Supreme Court of Arkansas many years ago. The constitution of Arkansas provided that each circuit should have a judge—I repeat, a judge. A case involving a serious personal injury, in which a little child had lost both his arms in an accident, went to the supreme court. The case was reversed. The court had recently held that "a judge" meant one or more judges, whatever was necessary to do the work of the court. The lawyer, who was campaigning at that time for office, and was talking about the case, said:

If "a judge" means one or more judges, as interpreted by the supreme court, then "an ass" means one or more asses, and we have five of them on the supreme court.

When strained interpretations are placed on a statute or on the Constitution of the United States, we encounter serious problems. It does not stop in one instance. The process continues. That is where we are headed if we do what is proposed to be done.

Again, with respect to the provisions of the Constitution I have cited, when placed in the context of past history, no one can see how it can be interpreted to mean that "all" does not mean "all," or that we can legislate away the right of constitutional guarantees to one charged with crime.

The fallacy of this attempt at distinction is clearly and forcefully exposed in an editorial which appeared in the Washington Evening Star on April 26. I think we should bear in mind that this publication editorially supports the general objectives of the bill. It believes that a civil rights law somewhat on this order is needed, but it draws the line on the very sacred right of the individual who is accused of crime. The editorial stated in part as follows:

Once a man has been accused of a crime—and a charge of criminal contempt is a criminal charge—his constitutional right to a jury trial ought not to be traded off by politicians for the sake of votes in the Senate, or to avoid a filibuster, or to dodge a tough decision on invoking cloture, or for any other reason.

I have quoted a supporter of the civil rights cause, one of the leading newspapers in the Nation. I would not say it is the most important or the most powerful, but it ranks very high among the newspapers of this country, and it supports civil rights legislation. But it sees the danger, and it is honest enough and courageous enough to say something about it and try to do something about it and point out the error that is about to be committed, as it sees it, and as I see it, by the proposed action to abrogate the right of trial by jury.

Justice Black, in his dissenting opinion in the recent case against Governor Barnett, said that the denial of a jury trial in a contempt proceeding means that a judge "has concentrated in himself the power to charge a man with a crime, prosecute him for it, conduct his trial, and then find him guilty."

So, when those of us who are opposing the bill, who are battling here with whatever power and strength we have, to persuade our colleagues not to travel this path of error, use these terms and make these statements, we are supported by those who have been regarded, and who are, I am sure, in the proper sense of the word, as great liberals of our times. Justice Black said:

It is high time * * * to wipe out root and branch the judge-invented and judge-maintained notion that judges can try criminal contempt cases without a jury.

He did not say it was constitutional. To the contrary, he said it was a judge-invented and judge-maintained notion that judges can try criminal contempt cases without a jury.

Not only is it appalling that anyone would propose to trample upon the most sacred right of trial by jury in a criminal proceeding in this year of 1964, but it is equally appalling—it is astounding, in fact—that anyone should suggest that this right be compromised in the fashion suggested in the substitute amendment which is now being considered.

There is no difference in principle between putting a man in jail for 45 days and putting him in jail for 30 days. One punishment is only two-thirds as severe as the other, but the principle is the same. If it is wrong for a trial court to put a man in jail for 45 days, without having a jury trial, it is just as wrong in principle for him to put a man in jail for 30 days.

So this amendment is nothing. I could not vote for either proposal. I do not think there is much virtue in the proposed substitute amendment.

Justice Black stated in his dissenting opinion that it is high time that we wipe

out, root and branch, the judge-invented and judge-maintained notion that judges can try criminal contempt cases without a jury.

When the distinguished Senator from New York [Mr. JAVITS], raised some question about the position of those who are opposed to this bill and the position of those who are opposed to this bill and the position of those who are advocating a trial by jury, he suggested in effect that, by implication, we were reflecting on judges. If we are reflecting on judges, the Constitution itself reflected on them first. And we are only quoting the Constitution. The Constitution did not reflect on judges. Neither has anything which I have said reflected on judges. I have merely pointed out what our forefathers recognized when they drafted the Constitution. They repeatedly said that one charged with a crime is entitled to a trial by jury. They recognized the fallibility of man. They recognized human nature. They knew that all men, of course, would not be corrupt. They knew that all judges would not be corrupt. They knew that it would also be true that all men and all judges down through the vista of time would not be honest. They knew that some of them would stray from the straight and narrow with respect to their duties. They recognized that some would become prejudiced. They recognized that occasionally one would perhaps become arrogant, despotic, or tyrannical.

It was because of the experience and the history of the human race that they felt it necessary to provide in the Constitution—the basic law of the land—a protection for the right of one who is accused of crime to be tried by a jury.

If anything that any Senator has said in the course of this debate—in opposition to the bill, and in support of the amendments that would provide for a jury trial—could possibly be construed or interpreted as reflecting on judges, I suggest that the Constitution—if we weigh it in the same light—reflected upon judges because it provided for a jury trial.

Of course, it did not reflect on judges. It did not reflect any more on judges than it reflected on Members of the Congress or anyone else, when under the Constitution limited powers were delegated from the people to the Central Government.

That was not a reflection upon the people in government. It was not that they could not be trusted with power. It was merely that the people of the States did not feel that they could entrust the Central Government with all power. The purpose was to insure a system of government that would reach the highest plane of efficiency, integrity, and justice that it is possible for the human intellect to conceive, to construct, and to maintain.

It is no reflecton upon honest persons to enact a law declaring thievery a crime. It might be said that to enact a law declaring thievery to be a crime is a reflection upon all the citizens of the country. But it is no such thing. It is merely for the protection of society. It may single out those who violate the law, who commit thievery, particularly those who are caught at it; but even he who was caught in his thievery would still be entitled to a jury trial.

It is appalling to think that anyone, in the year 1964, should propose to remove the sacred right of trial by jury.

Again, I turn to the editorial which was published in the Washington Evening Star on Sunday, April 26, 1964, which discusses the suggested compromise in the following language:

> The Senate is beginning to talk in terms of compromise in the matter of a jury trial for anyone accused of criminal contempt of court under the pending civil rights bill. The suggested compromise is at least an improvement over the comparable provision in the bill which passed the House. Nevertheless, we are against it.
>
> We are against it because the issue, or the right, involved here is too fundamental to our liberties to be the victim of a political deal, which is what this compromise really comes down to.

Mr. President, I digress to say that I hope the amendment will not be compromised. I hope Senators will vote for it in one way or the other. To the extent that a judge could sentence a person to only 30 days in jail, instead of 45 days, I suppose would prove in some instances a little advantageous to the one who was accused and who was tried summarily and sentenced. But the principle, as I stated earlier, remains the same.

The Star editorial continues:

> Once a man has been accused of a crime—and a charge of criminal contempt is a criminal charge—his constitutional right to a jury trial ought not to be traded off by politicians for the sake of votes in the Senate, or to avoid a filibuster, or to dodge a tough decision on invoking cloture, or for any other reason.
>
> The proposed Senate compromise is a compromise only in the sense that it quibbles with the House penalties for criminal contempt. Under the House bill there could be a jury trial if the penalty exceeded a $300 fine or 45 days in jail. Under the Senate compromise the fine remains the same, but the maximum jail sentence drops to 30 days. What nonsense.

Mr. President, "nonsense" is a pretty mild term. It is more than nonsense; it is a travesty on justice. If such a compromise were to be adopted, the right of every accused person to a jury trial would be made to depend upon the penalty assessed, and he would have to wait until that penalty was assessed before he would have any standing under the so-called Civil Rights Act of 1964 to a jury trial. I do not know how it can be said that the penalty is more than a $300 fine or more than 45 days in jail without finding the person guilty. I do not see how it can be determined that a person should be punished to any degree before guilt has been assessed.

The Dirksen amendment provides:

> In all cases of criminal contempt arising under the provisions of this act, the accused, upon conviction, shall be punished by fine or imprisonment or both.

The accused would not receive any fine or imprisonment, or any punishment at all, until there was a judgment of conviction. There could not be a further proceeding to punish until there had been a conviction—

> upon conviction, shall be punished by fine or imprisonment or both.

Punishment is not reached until there has been conviction. The assessment of punishment is not made at the beginning of the trial of an accused. It is necessary to wait until there has been a verdict or a judgment of guilt. So upon conviction, the judge proceeds to punish.

> *Provided, however,* That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of 6 months.

There is a limitation upon the punishment. It cannot exceed 6 months under any circumstances. Then:

> *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 the aggregate fine shall not exceed the sum of $300 nor any cumulative imprisonment exceed 30 days. If the trial is by a jury, the procedure shall conform as near as may be to that in other criminal cases.

So a person actually could not have a jury trial until the court had determined that the sentence should be greater:

> That in the event such proceeding for criminal contempt be tried before a judge without a jury the aggregate fine shall not exceed the sum of $300 nor any cumulative imprisonment exceed 30 days.

The bill provides that the cumulative imprisonment shall not exceed 45 days. I continue to read from the Dirksen-Mansfield amendment:

> If the trial is by a jury, the procedure shall conform as near as may be to that in other criminal cases.

As long ago as 1888, the Supreme Court of the United States in the case of *Callan* v. *Wilson* (127 U.S. 540), declared that:

> The guarantee of an impartial jury to the accused in a criminal prosecution * * * 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.

The Court in that case held, and rightly so, that the question of a jury trial is not one of discretion in a trial court, but is a right, a right that is reserved to all citizens of the United States by the Constitution itself.

I continue to read from the Court's opinion:

> 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.

Mr. President, that right attends the accused from the very minute he is first accused; from the very minute the indictment against him, charging him with the commission of a crime, is returned—from the very minute he is first accused, not after the case had been concluded and a verdict had been reached

and an appeal had been taken to a higher court. Instead, this constitutional right attends him from the very first minute the charge against him is made.

If the Court was correct in so interpreting the Constitution—and I believe the court was correct—then the language of the pending bill and the language of the amendment which would give to a court discretion to determine whether a jury trial would be allowed the accused do not satisfy that requirement of the Constitution.

Mr. President, when the so-called Civil Rights Act of 1964 came to the Senate, there were loud and vigorous assertions by various of its proponents that it should be enacted into law without a single change in respect to any of its provisions or even in respect to the change of a single comma. I do not know what the outcome of this controversial issue in the Senate will be—whether the Senate will pass the bill without any changes in the version which was passed by the House, or whether the Senate will adopt certain amendments to the bill, or whether there will be a widespread awakening to the dangers the bill involves—an awakening sufficient to persuade its proponents either to vote against it or to withdraw it. The last two possibilities may be remote; but, Mr. President, however remote they may be, I cling to the hope that ultimately a majority of the Members of the Senate will have the courage to resist the pressures brought to bear on them by those who are undertaking to coerce and to intimidate, in the attempt to secure the passage of the bill, and I hope all Senators will make full use of the wisdom that is available to them, with the result that the Senate will not pass the bill, for the bill would bring more trouble, more sorrow, more sadness, and would start us on the road to tampering with the Constitution and to denying to citizens of the United States rights which have been guaranteed to American citizens from the day when constitutional government was first established in our country.

So, Mr. President, although I do not know what the final outcome will be, nevertheless, even though there are those who protest and even denounce this series of debates, which they term "a filibuster," and use other derisive terms about it, I say that if ultimately we accomplish only the assuring of trial by jury, this long debate will have been worth all the efforts involved.

However, that is only the minimum which should be accomplished. In addition, we should bring about the defeat of the bill. But even if we continue the debate for weeks or months longer, in our efforts to point out the dangers which lurk in the pending bill, and if ultimately we finally succeed only in assuring the right of jury trial for all those who may be charged with criminal contempt, and if we succeed in nothing more, our efforts, both physical and intellectual, and our long struggles in this battle will have been justified, even with only that reward, although certainly our efforts should be rewarded by complete triumph and total victory.

The proponents of the bill began by insisting that the Senate pass the bill exactly in the form in which it was passed by the House, without the addition of even one Senate amendment. I do not know what their attitude is at this time, although there is some indication that they may be willing to accept some amendments.

First of all, I hope the amendment which will assure the right of jury trial will be adopted.

Thereafter, we can take up other amendments.

If we have sufficient time—if the proponents do not use the weapon of cloture, in an attempt to "cut our throats" and silence us in this debate, not only will we win our struggle to have jury trials assured, but we will also win, for the American people, protections in other areas of the Constitution—protections now proposed to be jeopardized by the provisions of the bill, protections which would be destroyed if the bill were to be enacted.

So, Mr. President, now that the public is becoming generally aware that the pending bill contains this vicious provision which would deny the basic and fundamental right of trial by jury in criminal proceedings, the proponents do not dare to stand on their original position; and I am convinced that if the American people were equally informed on the travesties which are contained in this so-called Civil Rights Act against other equally sacred rights of American citizens, the proponents of its passage would be equally embarrassed and disturbed about other aspects of the bill.

The amendment proposed by the Senator from Georgia [Mr. TALMADGE]—for himself and Senators ERVIN, ROBERTSON, THURMOND and STENNIS—provides as follows:

> SEC. 1105. In any proceeding for criminal contempt arising under any title of this act, the accused, upon demand therefor, shall be entitled to a trial before a jury—

That is exactly what the Constitution provides, and that is what it means—

> which shall conform as near as may be to the practice in other criminal cases, except that this provision shall not (1) apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court, or (2) be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

For the life of me, I cannot see why anyone opposes that amendment. What is there about the objectives of the measure that requires, with compelling necessity, the abandonment of our jury system?

The point raises a question mark if nothing else. Why? We have not heard an answer to that question—at least, not a satisfactory answer.

Someone has suggested that in certain sections of the country, juries would not be inclined to convict. I believe that juries in one section of the country are about the same as those in other sections. One might find a bad jury in North Dakota, Arkansas, Pennsylvania, New York, Massachusetts, or somewhere else. But on the average, juries are about as good in one State as in another. They will follow their oaths and be obedient to and perform their duties about as faithfully in one place or in one section of the country as in another. I would not speak disparagingly of any section of the country or of the citizens of any community by saying that they would not measure up, at least on an average, to what other citizens of other communities throughout the Nation would do with respect to the discharge of their duties as jurors.

The adoption of either the amendment offered by the Senator from Georgia [Mr. TALMADGE] or that offered by the Senator from Kentucky [Mr. MORTON], with which I see nothing especially wrong, would do no more than to insure the constitutional right to trial by jury which our Founding Fathers intended should be the constitutionally guaranteed right of every American citizen, but its enactment is desperately needed to prevent the destruction of this sacred and fundamental right by the so-called Civil Rights Act of 1964.

If the bill is passed in its present form, without making provision for the right of trial by jury, we would take away in a so-called civil rights bill—one which has the title of "civil rights bill," is popularly known as a civil rights bill, and by its very terms is declared to be the Civil Rights Act of 1963—the constitutional rights and guarantees that have been vouchsafed to citizens from the day the Constitution was adopted.

Mr. President, we ought not to do that in the name of civil rights. I assert that to take away the right to trial by jury is to commit a civil wrong. If we should enact the proposed legislation, in my judgment, we would commit a great wrong. To call the bill a civil wrong would not fully describe its possible consequences.

How can this Congress under the pretext of enacting a so-called Civil Rights Act perpetrate an assault upon a basic and fundamental right which is held sacred everywhere but in the totalitarian societies?

Mr. President, we ought not to move in that direction. At times I have thought that certain of our courts have been too lenient with some who have been convicted of crime. I have thought that in some decisions the Supreme Court of the United States has gone, as one of its able Associate Justices has described it, on a quest for error, searching for either an imaginary or at least a minor technicality upon which to hang an excuse for a reversal.

We are now going in the other direction. We are going in the direction of putting the fate and the liberty of individuals who may be charged with criminal contempt into the hands of one man, subjecting them not to the judgment of a jury of their peers, but subjecting—not only exposing—them to the

will and whim of their accusers, with whom we would vest the power to accuse, to prosecute, to try, and to assess judgment and punishment.

And while we are reflecting upon that question, how can the Congress justify the appropriation of billions of taxpayer dollars for the benefit of those same totalitarian societies whose tyrannical rulers accord no rights to any of their subjects, and at the same time propose to withhold from American citizens under the provisions of the so-called Civil Rights Act, moneys which were taken from them originally in the form of taxes?

Mr. President, these proposals would deny the right of trial by jury, and would penalize a section of our society, or a group of our citizens, and discriminate against them by withholding certain Federal aid or assistance or benefits because perhaps one person had committed what would be called discrimination under the pending bill. The aid and benefits that Congress had provided by law, and that the people had been taxed to support, could be withheld from a whole community or a whole group within the category affected.

The history, development, and vital importance of trial by jury in the Anglo-American system have received considerable attention in this body during the past 2 weeks or so. I think it is a good thing that that is so. There is a tendency among us—and I mean not merely among Senators or Members of Congress, but among all the American people—to take for granted some of the fundamental rights and liberties which the Constitution guarantees.

We are prone to do that. We take it for granted that those guarantees will not be violated; that Congress will not enact legislation that will contravene the letter or spirit of the Constitution. Yet, while many citizens may take it for granted, we, the Members of Congress, have the responsibility and duty to safeguard, protect, and preserve what the citizens take for granted is their protection in the Constitution, if the Constitution is properly interpreted as meaning exactly what it says.

That is the situation with respect to trial by jury. All we have to do is take the Constitution at its word—not improvise on it, not detract from it, but add to it; merely take it at its word.

It provides for trial by jury in the cases I have referred to.

If we undertake to interpret the Constitution as it is written, no doubt this Government will endure for ages to come; but if we begin to detract from it, subtract from it, improvise on it, add to it, by giving additional powers, by interpreting the Constitution as vesting powers in the Central Government that were not granted to it by the framers of the Constitution, powers which were withheld from the Central Government by the Constitution and reserved to the States and the people, there will come a time when this Nation will not be able to endure. There will come a time when our Government will not provide the protections the Constitution guarantees. It will fail to do so when we violate the meaning of the Constitution and distort its purpose and weaken its efficacy to the point where it will no longer provide protection and serve as a guideline and an anchor.

When we do that, this country will be in danger. We can do it by detracting from the Constitution, by subtracting from it the power and force that are contained in it and that were intended to be there.

When we either add to or subtract from it, we do a violent thing that can only result in adverse, and possibly irreparable, consequences.

The right to trial by jury, as everyone must know, predates the Constitution of the United States by hundreds of years, both in England and in the United States.

In his volume entitled, "An Almanac of Liberty," Mr. Justice Douglas notes that in December 1641, the Massachusetts Colony adopted "The Body of Liberties"—a code of laws to govern their affairs.

I think Mr. Justice Douglas belongs with Mr. Justice Black. They are regarded as two of the most liberal judges, using the term "liberal" in its common acceptation today, who have ever served on that High Court.

These men were Puritans and their laws reflected their severity and their faith. For example, blasphemy was a capital offense; civil courts had the authority to enforce "the peace, ordinances and rules of Christ" in every church; foreigners "professing the true Christian religion" and fleeing from persecution were made welcome; churches could be established by those who were "orthodox in judgment" and who organized them in a "Christian way with due observation of the rules of Christ revealed in his Word."

Justice Douglas notes further, however, that the "Body of Liberties" also contained many seeds of the civil liberties which today distinguish us from the totalitarian systems. Among the list of 12 of these civil liberties is found the right to trial by jury, recognized even in those early days—back in 1641, in the colony of Massachusetts—as a very fundamental right.

It is my hope that the great liberals of the Senate will arrive at the conclusion with regard to this legislation that they, too, should follow the leadership and the conclusions of Justice Douglas, Justice Black, and others, that the idea that a man can be tried for criminal contempt without a jury is a man-invented theory, that it is not a constitutional grant or authority, but that it is man invented, man executed, and that it should be taken out of our judicial system, root and branch, as Justice Black expressed it.

Another instance of the importance to the Founding Fathers of trial by jury, cited by Justice Douglas, is recounted by him as follows:

On November 1, 1765, the Stamp Act became effective. It imposed a duty on most of the documents used in judicial proceedings and in commercial transactions. Newspapers, pamphlets, and books were included. So were deeds, bills of lading, invoices, and the like. The act gave admiralty courts jurisdiction to try those who violated the act. There was no jury in admiralty courts. The case was heard and decided by a judge. The judges who would try the American colonists would be judges serving at the pleasure of the King.

The purpose of the Stamp Act was to raise money to help defray the cost of stationing British troops here. When the proposal was first made, a storm of protest arose in the Colonies. That protest continued to mount. Opposition to the act swelled into vast proportions, even to the point that resistance to the law became so great that it was actually never enforced. The act was finally repealed in 1766, approximately a year after it had gone into effect. It did not last long because of the public sentiment against it.

From this opposition, three principles of a fighting faith emerged: First, there should be no taxation without representation; second, taxes on the privilege of publishing are as obnoxious as censorship itself; and, third, and this is the one that is involved here—trial by jury is "the inherent and valuable right" of the citizen.

What is proposed to be tampered with in the proposed legislation is the inherent and valuable right of citizens to trial by jury.

In 1774, the First Continental Congress, meeting in Philadelphia, passed a resolution, on October 15, protesting encroachments by the Crown on the liberties of the people. After reciting numerous grievances, this resolution stated:

> That the respective Colonies are entitled to the common law of England and, more especially, to the great and inestimable privilege of being tried by their peers of the vicinity according to the course of that law.

One of the basic, fundamental rights of man is the right to a fair and impartial trial at the bar of justice.

It is obvious that this right, stated in similar language, is found in the sixth amendment to the Constitution, which 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.

Again, I return to the proposition that if Congress can legitimately and constitutionally abrogate by a legislative act the constitutional provision that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

It can also go further, because this language is all in the same sentence of that provision of the Constitution. The same Congress, or the one that succeeds it, or the next, can legitimately and constitutionally deny the accused the right to trial in the "State and district wherein the crime shall have been committed."

If Congress can remove one part of that provision from the Constitution by a legislative act, it can take out the remaining part, or any other part. That is what we are tampering with.

Justice Douglas points out that among the events which led to the inclusion of this language in the October resolution of the First Continental Congress

was the fact that in cases of murder and other capital offenses, the Governor of Massachusetts, under repressive measures enacted by the King and Parliament, was granted power to have the trial in another colony or in Great Britain, if he concluded that "an indifferent trial" could not be had in Massachusetts. In addition, the selection of jurors was taken from the people and their courts, and given to sheriffs appointed by the Governor.

Our forefathers experienced the abridgments of human rights and the liberties of citizens and the encroachments upon justice in the early history of our country, when it was under the rule of the mother country. What happened then could logically follow what is proposed to be done by the bill. First, there could be the denial of a jury trial. Second, a judge could determine that the case ought to be tried elsewhere. That was done in the early days of Massachusetts. In addition, the court was granted the power to hold the trial in another colony, or even to have it moved to Great Britain, if he concluded that "an indifferent trial" could not be had in Massachusetts.

What would be the difference in adding another provision to the bill, providing that the judge who does the accusing, the prosecuting, the trying, the assessing of guilt, and the infliction of punishment, if for some reason he decided his tyranny would not be tolerated in a particular community, shall have the power to transfer the trial to an adjoining district or even to another State? That is known to have been done in the past. It was done in the early history of the country. But Congress could just as logically and legally and constitutionally provide that the venue of a trial may be set in another area or another district than where the crime was committed, as it could deny a jury trial.

The courts in those days went even further. If we wanted to violate the Constitution, we could do so by legislation such as is proposed to be enacted. We could say that if the case were to be tried by a jury, we would let the court select the jury and not let the defense have any right of peremptory challenges. The court would select the jury which would try the case. If Congress can deny one right by statute, by the enactment of a law that contravenes the Constitution, it can deny, or abrogate any other right that the Constitution presently guarantees.

Justice Douglas relates that the community reaction to the efforts of the King to control juries was violent. I do not know that some day there will not be demonstrations on the part of those who today are not demonstrating—perhaps by great masses of people—if we start to deny the right of jury trial; if we deny to those accused of crime the right to a fair trial before an impartial jury.

The jurors summoned refused to act. One group said that if they served, they would betray "the just and sacred rights of our native lands," which were "purchased solely with the toil, the blood, and treasure" of their ancestors.

What would the situation be if we passed the bill and a judge undertook to prosecute and try for criminal contempt one whom he accused, if the jailer said, "I will not turn the key. The law is unconstitutional." Suppose, further, that the citizens of the community supported the jailer.

One might say that would be, in a measure, insurrection, in addition to contempt. But, Madam President (Mrs. NEUBERGER in the chair), I say that in a sense they would have just as much right to refuse to carry out an unconstitutional order—in fact, they would have more right—than the judge would have to issue the order or to adjudge the guilt, when the Constitution clearly vests that power in an impartial jury, if the defendant requests a jury trial. Whereas the pending bill would attempt to deny by statute that constitutional right, I say that one who would question such action by a court and possibly would decline to comply with the court's order, in connection with the court's effort to enforce such proceedings, would certainly be within his constitutional rights, although the court might have statutory power—but not constitutional power—to sentence him for contempt. But of course we know the invalidity of a statutory power when it is in conflict with the Constitution.

But when a citizen knew he had the constitutional right of trial by jury, if a judge attempted to violate that right, that citizen and all others who found themselves in such a situation would quickly lose their respect for the courts and for law and order and for judicial attempts to usurp that constitutional power and to accuse unjustly and to convict a person of the commission of a crime.

Madam President, the right of trial by jury was purchased by the blood that was shed by our ancestors during the Revolutionary War; and if a majority of the Senate proceeded to betray that victory, they would do so at the price of suffering; it could not be escaped. If this constitutional right were tampered with, there would ultimately be a day of reckoning. Some Senators may not realize that now; they may think conditions would smooth out. But that would be wishful thinking and a vain hope. Instead, trouble and chaos would be invited and provoked, if the Constitution were disregarded and if attempts to whittle it away were successful.

We are told that the people congregated at the courthouses, making it impossible for trials to be held. When the sheriffs of the Governor ordered them to give way, they refused, saying they recognized no courts except their own.

In Boston, the legislation impeached judges who undertook to act under the new laws. In Worcester, 5,000 people formed a double file and made the judges, lawyers and sheriffs walk bareheaded down it, swearing they would not hold court under these laws. In Great Barrington, the citizens filled the courthouse, leaving no room for judges or jurors. Popular feeling ran so high that no judge, jury, or sheriff dared enforce a law against the general bent of the people.

Madam President, I cite these historic instances to refresh the recollection of my distinguished colleagues with respect to the very great importance of trial by jury to our ancestors—to the people who laid the foundations of this great Nation of ours.

They thought so much of this principle that they were willing to risk the peril of imprisonment for standing for it and for fighting for it. They risked their lives for it, and many of them died for this sacred right.

In Parliament, the American jury system was criticized as follows:

> To these men offenders know how to apply; and when any riot happens between the military power and the people of the town, the jury, being taken principally out of that town, the power of life and death of the offender is lodged in those who are offended.

That is exactly what some are attempting to do; they are attempting to lodge the power to incarcerate our citizens in the hands of a judge who would be the accuser and who would also say he was offended by the act of the defendant.

Mr. Justice Douglas then summarized the vital importance of our jury system in a democracy as follows:

> A jury reflects the attitudes and mores of the community from which it is drawn. It lives only for the day and does justice according to its lights. The group of 12, who are drawn to hear a case, makes the decision and melts away. It is not present the next day to be criticized. It is the one governmental agency that has no ambition. It is as human as the people who make it up. It is sometimes the victim of passion. But it also takes the sharp edges off a law and uses conscience to ameliorate a hardship. Since it is of and from the community, it gives the law an acceptance which verdicts of judges could not do.

Those who wish the bill enacted and enforced fail to recognize the great truth which I have uttered. I repeat those words of Mr. Justice Douglas:

> Since it is of and from the community, it gives the law an acceptance which verdicts of judges could not do.

If we should try to enforce the provisions of the bill by the power of judges, denying the right of a jury trial to an accused, we would invite the opposite of respect for law. We would hinder the acceptance of the law as being desirable and workable. We would place an obstruction in the path of justice. I hope that we shall not do so; but if we do, there will be a day of reckoning, and a recompense will be exacted.

At another point in his book, Justice Douglas calls attention to the Quebec letter, in which the Continental Congress appealed to the people of Quebec to send delegates to a meeting of the Congress called for May 10, 1775.

I am quoting Mr. Justice Douglas, not necessarily because I think he is a supreme authority in the field. As I have said, he and Mr. Justice Black are two of the great liberals of our time. They are two of the greatest liberals who ever served on that Court. If they have such a deep conviction about the right of jury trial, and that that right ought not to be abrogated, I suggest that the great liberals of this

body should be moved to stop, look, and listen before they go all the way in the denial of the right of a trial by jury. I, who may be regarded as a conservative, am not alone in making the argument. I have at least distinguished support and authority from the ranks of those who are termed liberals in this political age.

The letter, to which I have referred, the full title of which was a "Letter to the People of Quebec," was approved by Congress on October 26, 1774. Justice Douglas observes that this letter, more than any other document, shows the civil rights which the Founding Fathers prized the most and which they felt were being denied to them by royal authority.

"The first great right," the letter says, is representative government, making people "ruled by laws, which they themselves approve, not by edicts of men over whom they have no control."

The "next great right" is trial by jury—the guarantee that life, liberty, and property will not be taken without a fair, public trial before a jury from the neighborhood.

Who are we in this body today to judge and say that our Founding Fathers were not correct, and that they attached too much importance to the right of a trial by jury? I, for one, am unwilling to sing in that chorus. We have every evidence that they were right then, and that the principles which they enunciated and the guarantees which they incorporated in the organic law of the land are correct, and that they will continue to sustain us in the future as they have in the past.

After citing other rights, including habeas corpus and the right of free ownership of land, Justice Douglas concludes that:

> These were "the invaluable rights"—the rights "without which a people cannot be free and happy," the rights in jeopardy when the "legislative, executive, and judging powers are all moved by the nods of a minister." These were the rights in the forefront of events leading to the Declaration of Independence.

They were sacred then; they should be inviolate now.

Madam President, as we all know, trial by jury was introduced in the English colonies in America at a very early date. In the struggle with the mother country during those momentous days which preceded the American Revolution, the jury served as a bulwark against the arbitrary actions of colonial governors. Confidence in the jury was reflected in the postrevolutionary constitutions of the States and, later, in the Federal Constitution. Hamilton said that—

> The friends and adversaries of the plan of the Convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury.

The institution of our jury system has served well as a defense against the oppression of the kings, and Hamilton suggested that it would serve as well as a "barrier to the tyranny of popular magistrates in a popular government."

Madam President, I have many more prepared remarks on the subject. The trouble is that I cannot speak from prepared remarks without, as I proceed from sentence to sentence, getting an inspiration of the depths and the seriousness of the issue that is before the Senate.

Will the Congress join with the bare majority of the Supreme Court in abrogating the right of trial by jury? The decision that we shall make will be momentous. The Supreme Court was divided 5 to 4 in its most recent decision on the issue, with some of the greatest liberals the country has ever known taking the position that this great right of trial by jury, this invaluable right, this right which is sacred to liberty, ought to be preserved, and that no court should usurp it. Shall we by our vote on the amendments say that we shall go with the bare majority of the Supreme Court and destroy, detract from, weaken, and dilute what the Constitution states with respect to the right of men who are accused of crime to trial by jury?

Madam President, I do not know what others may do, but I will not go down that road. I will not travel that course.

There may be further debate on this issue. If so, and if occasion arises, I shall be prepared to discuss it at some length. I have just barely initiated the subject today, from my viewpoint. As I said earlier, and as I say again, I do not know what the final outcome of the legislative battle is going to be, but I say, for the eternal record, that if those of us who are opposing the bill shall win a triumphant victory—we may not do so—but if in the long weeks of debate up to now, and in the long weeks of debate that may follow, we succeed in bringing to those who may be accused of violating provisions of this iniquitous bill the right to trial by jury, we shall not have fought in vain. We shall at least have preserved one of the great fundamentals of American liberty.

Madam President, I am prepared to yield the floor, if other Senators wish to discuss matters in their own right. I am willing to do whatever they prefer. I was going to ask for a quorum call, but I defer to the wishes of my colleagues.

Mr. THURMOND. Madam President, will the Senator yield?

Mr. McCLELLAN. I am glad to yield for a question. I wish to accommodate whatever the will of Senators in charge of the leadership is.

The PRESIDING OFFICER. Does the Senator from Arkansas yield to the Senator from South Carolina?

Mr. McCLELLAN. I yield.

Mr. THURMOND. I take this opportunity to commend the able Senator from Arkansas for a magnificent and eloquent address. I hope every Member of the Senate will take occasion to read the outstanding address which he has delivered on the floor of the Senate today.

I congratulate him, too, for the wonderful service he has rendered to our Nation in the debate on the so-called civil rights program. He has made some of the finest addresses that have been made by Senators opposing the so-called civil rights bill. I express to him my sincere appreciation for the great services he is rendering our country.

Mr. McCLELLAN. Madam President, I thank my distinguished friend. He is very generous. He is highly complimentary. I only fear that he has exaggerated. I wish I might qualify for the great distinction and qualities he has conferred upon me. I thank him. I do not know of anyone, however, who has done more than the distinguished Senator from South Carolina. I sometimes wish I could match the ability, power, energy, and strength that he has demonstrated in this battle. Anyway, I join with him in a determination to continue the effort to enlighten the American people and to persuade our colleagues to vote correctly on this measure.

Mr. THURMOND. I thank the able Senator for his kind remarks.

SENATE RULES

During the delivery of Mr. McCLELLAN's speech,

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

Mr. McCLELLAN. I have asked unanimous consent to yield without losing my right to the floor. I assume I may yield with that understanding.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PASTORE. Mr. President, may I ask how long the Senator from Wyoming will take?

Mr. SIMPSON. About 15 minutes.

Mr. President, I rise today to commend the Senate of the United States and the rules under which it is governed. Because of our rules, which have been under severe attack by the critics, we are now preparing to take a very important vote on a fundamental right which has been cherished, protected, and preserved by our form of government. Had it not been for full and free debate which is assured to the Senate by our rules, the Democrat administration and the bipartisan leadership supporting this bill would have forced and compelled the Senate of the United States to vote and no doubt accept a bill which was hurriedly adopted by the House of Representatives. That bill, which has received the full endorsement of the administration and a bipartisan group of Senators, denies to American citizens a fundamental civil right that has been respected and protected by our form of government since the inception of this great Republic.

I am grateful that the Senate, as an institution, has stood up to the abuses it has received through the liberal press, radio, and television. Many of our Members have spoken at length in an attempt to point out the shortcomings of this so-called civil rights bill. They have been ridiculed, abused, and mocked. Not only by the liberal news media of the Nation, but by fellow Members of the Senate and so-called responsible officials of this administration. I commend the Senators for carrying on a fight to guarantee to all Americans a "civil right" that has been guaranteed to us by the Constitution of the United States. Had it not been for their gallant efforts, this right to a jury trial for criminal contempt would have been denied under the provisions of H.R. 7152.

Now that we are preparing to vote on the jury trial amendments, I feel that

every Senator owes it to himself, to his State and to the Nation to commend the few Senators who have waged the battle to preserve the fundamental principle of the jury trial. It is because of a select few that the shortcomings of this bill have been pointed out.

It is because of their perseverance and their determination that the bipartisan leadership and the Democrat administration finally yielded so that we may vote to adopt amendments which will continue the right to a trial by jury in criminal contempt cases. Too many of us in the Senate have shirked our responsibility and refused to carry out the duties that we, as Senators, pledged to carry out when we were sworn into office. We are guilty of the same charges that have been made of the Members of the House of Representatives when they, in great haste, passed this most important bill, but gave little consideration to its constitutional grounds because they knew "the Senate will take care of the matter."

Many Senators have also refused to face up to their responsibilities and have turned to the Southern Members in hopes that they will be successful in their attempt to correct and clarify this bill. We are here to represent all American citizens and it would be a great injustice to our people, to our form of Government and to freedom itself, if we were to destroy the fundamental right of trial by jury in criminal contempt cases.

The Senate will soon be voting on a series of amendments which will be helpful in perfecting and improving H.R. 7152. I am hopeful that the Senate will not put a price tag on the fundamental right of trial by jury in criminal contempt cases. The distinguished Senator from Georgia [Mr. TALMADGE] has proposed an amendment which would guarantee to all citizens the right to a trial by jury in a criminal contempt proceeding. This amendment is similar to the amendment which my fellow Wyomingite, the late distinguished Senator Joseph O'Mahoney, proposed in 1957, which was accepted by a majority vote of the Senate. Among those voting for this amendment in 1957 were the late President John F. Kennedy, the present President Lyndon B. Johnson, the Senator from Montana [Mr. MANSFIELD], and the majority of the then Senate of the United States.

Mr. President, I now associate myself with this amendment and am hopeful that the Senate will also, once again, support and vote for it. In brief, the Talmadge amendment would, in the case of a natural person, prohibit a fine in excess of $1,000 or imprisonment of more than 6 months. It would not apply to contempts committed in the presence of or near the court. It would permit civil contempts to be tried without a jury, but it would give the accused the right of a jury trial in criminal contempt proceedings as guaranteed to us by the Constitution of the United States.

The Dirksen-Mansfield amendment, which has been proposed as a substitute for the Talmadge amendment, would provide that in criminal contempt proceedings, the accused may be tried with or without a jury at the discretion of the judge. In the event a criminal contempt proceeding is tried before a judge without a jury, the fine shall not exceed $300 and the imprisonment cannot exceed 30 days.

The Dirksen-Mansfield amendment puts a price tag on the fundamental right of a jury trial in criminal contempt cases. It would require that the presiding judge determine the severity of the sentence for the alleged offense prior to hearing the facts. This is basically and inherently wrong.

Let us review the historical significance of the right to a jury trial in the United States. Trial by jury has evolved into a right flowing to the individual from the Constitution of the United States, and the constitutions of the States. At the time that our Constitution was adopted, there seemed to be no controversial conflict involved in the establishment of a trial by jury in criminal cases. Article III, section 2, provides:

> 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.

While this provision was not objectionable, there was some discussion of the need to provide for jury trial in civil cases. The colonists appreciated the fact that even in civil matters the protection of a civil jury would be needed against extensions of power, but they hesitated to include this protection for civil cases in the Constitution itself because of differing State regulations. It was the fundamental importance which all Americans attach to the right of trial by jury that led them later to include further guarantees of its use in criminal cases by the sixth amendment, and in civil cases by the seventh amendment. We are all aware that the Bill of Rights, the first 10 amendments, had to be adopted before many of the States would ratify the Constitution. Three of the 10 amendments concern jury trials. The fifth amendment concerns grand juries. 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/or district wherein the crime shall have been committed.

The seventh amendment provides:

> In suits at common law where the value in controversy shall exceed $20 the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise reexamined in any court of the United States, than according to the rules of common law.

Trial by jury, although originating in England, was adopted in America as a means of insuring local protection from a remote and tyrannical administration. Deeply rooted in the American concept of government, it has withstood the attacks of the executive in wartime and of the mob in peacetime. The right to trial by jury in criminal and civil cases has occasionally been ignored, neglected, or abused in moments of political, religious, economic or racial stress. But more moderate elements have always reappeared to affirm the spirit of the basic right. I am hopeful that once again we shall rise to the support of this fundamental principle and save it from those who attempt to abuse, if not deny, this right.

Contempt of court can mean:

> Unbecoming conduct within the courtroom or so near thereto as to amount to an obstruction of the administration of justice.

This type of conduct is that which can be said to threaten the existence of the judicial system itself, and it is generally conceded that action there must be swift and punishment certain. The misconduct must be corrected almost at the instance of its occurrence, if the dignity and integrity of the court is to be maintained.

Civil contempt of court does not require a jury trial because it is used for obtaining compliance with a court order. Civil contempt proceedings are used only against a person who has been directed by a court to do an act or to refrain from doing an act. There is no punishment involved. The court's action is coercive only to obtain compliance. The contempt disappears when compliance is obtained. The accused in a civil contempt proceeding, at all times, holds the key to his release and to the dismissal of his fine. Since the freedom of the accused depends, at all times, wholly upon himself in the case of civil contempt, there is no need for a jury trial to safeguard his rights.

Criminal contempt is a completely different matter, in that this proceeding lies as a remedy for willful disobedience of a mandate or an injunction of a court. It is a proceeding which compels compliance with the court order. The purpose of criminal contempt is a public purpose to vindicate the dignity of the court which has been flouted by the willful and intentional act of the defendant.

The determining issue in criminal contempt cases is the state of mind, the intent of the defendant in the proceeding. The state of mind of the defendant is an issue which our system of law requires the jury to determine if the defendant asserts his right to a trial by jury in a criminal case.

Providing a jury trial for criminal contempt does not hinder the court in any way from using all available means to effect compliance. Provision for such jury trial means only that the court may not punish until the jury of the defendant's peers have found him deserving of punishment.

Judge Joseph Story, writing at a time when the adoption of the Constitution was still in the memory of men then living, speaking of trial by jury, said:

> It seems hardly necessary in this place to expatiate upon the antiquity or importance of the trial by jury in criminal cases. It was from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties, and watched with an unceasing jealousy and solicitude. The right constitutes one of the fundamental articles of Magna Carta, in which it is declared, "no man shall be arrested, nor imprisoned, nor banished, nor deprived of life, etc., but by the judgment of his peers, or by the law of the land."

The judgment of his peers here alluded to, and commonly called, in the quaint language of former times, a trial per pais, or trial by the country, is the trial by a jury, who called the peers of the party accused, being of the like condition and equality in the State. When our more immediate ancestors removed to America, they brought this great privilege with them, as their birthright and inheritance, as a part of that admirable common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our State constitutions as a fundamental right, and the Constitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms.

Since the determination of whether or not a person is guilty of criminal contempt depends upon the intent of the accused's mind, I feel that it is imperative he be given a right to a trial by jury. This permits men and women, his peers, to judge his state of mind. All men have equal rights regardless of the gravity of their offenses. A person's constitutional rights should not be determined by the severity of his alleged offense. Every man should receive the full and unabridged protection which is guaranteed to him by the Constitution of the United States. Whenever the Federal Government attempts to usurp that right, the very freedoms upon which this country has been based will start to crumble and our Government, as we have known it, will be destroyed.

There seems to be a concerted effort by many citizens in our Government to destroy the very concept of our judicial system. Our body of law provides that in criminal cases it must be proved beyond a reasonable doubt that a person has violated a statute before the accused can be adjudged guilty. Under the concepts of this bill, H.R. 7152, enforcement proceedings are not by criminal law but by injunction. Thus, it is much easier for a person to be found at fault under the provisions of this bill than it would be under criminal proceedings if they were to be followed. Consequently, the dignity and the innocence of man, which is presumed under our criminal law, is being destroyed by the constant chiseling away of those concepts. The idea that a man could be thrown in jail or fined, at the discretion of one man, for violating a court order is repugnant to the concepts of American government. We are now standing at the crossroads. It is imperative that, once again, we stand up for the rights of all American citizens. We are engaged in a great debate in an attempt to bring about "civil rights" for all American citizens. We should not act in the name of civil rights if we are, in fact, going to destroy the rights of American citizens.

It is my hope that the Senate will give full and complete protection to the right of a trial by jury in criminal contempt of court cases.

I thank the Senator from Arkansas for yielding to me for the purpose of making this statement.

Mr. STENNIS. Mr. President, will the Senator from Arkansas yield to me for a brief statement?

Mr. McCLELLAN. I yield for that purpose. I do so with the same provision as heretofore, that I do not lose my rights to the floor.

Mr. STENNIS. Mr. President, I know the deep concern which the Senator from Wyoming has for the subject matter of this bill and for the principles that are represented here. I know that he has reached his conclusions on the major points of the bill with great concern for our Nation, and with great concern for discharging his duty in the Senate.

I commend the Senator heartily for his statement. I appreciate it very much as a fellow Senator.

Mr. SIMPSON. I thank the Senator.

Mr. McCLELLAN. Mr. President, I thank the distinguished Senator from Wyoming. I am very glad to have yielded to him. I thank him for his contribution to this debate. His contribution involves one of the most vital issues before Congress.

VOLUNTARY SYSTEM OF CONTROLLING ADVERTISING OF CIGARETTES

During the delivery of Mr. McCLELLAN'S speech,

Mr. JORDAN of North Carolina. Mr. President, recently the leading tobacco companies announced that they are in the process of setting up a system of controls to govern the advertising of cigarettes.

This is a purely voluntary action on the part of the major cigarette manufacturing companies, and rigid rules will be enforced by a special administrator.

The announcement of the new advertising code met with widespread approval throughout the Nation, and the people of North Carolina learned of the action with great interest since we are the leading tobacco producing and manufacturing State in the Nation.

I ask unanimous consent that the text of a statement I prepared for release to the press today concerning this matter be printed in the RECORD.

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

WASHINGTON.—We in North Carolina were especially interested in the announcement that the major tobacco companies of the United States have agreed to set up a voluntary system of controlling the advertising of cigarettes.

More than any other State in the Nation, North Carolina is vitally interested in and affected by what happens to the tobacco industry.

Some very serious problems were created several months ago when the Public Health Service released its now famous smoking report.

Since that time there has been considerable uncertainty as to the ultimate effect the report will have on all segments of the tobacco industry.

Recently the Federal Trade Commission completed hearings on a proposal that would require the labeling of cigarettes as harmful.

Of course, such action by the FTC would be most drastic and in my opinion is completely uncalled for on the basis of what is known at this time. A great deal of vague and unproved information has been spread about tobacco in recent years, and it would be a mistake to take punitive action against the entire industry until more data is available.

Under the code, a special administrator would be appointed and he would exercise complete control over all cigarette advertising by tobacco companies.

For the most part, the code would take some of the glamour out of cigarette advertising and would eliminate the strong pitch advertisements now made to college students and other young people.

Of course, the ultimate solution to the tobacco problem must be found through accelerated research and renewed efforts on the part of farmers to produce desirable qualities of tobacco. But the action taken by the tobacco manufacturers is certainly a positive, constructive, and highly commendable step.

I have never thought that it would be wise for the FTC to take any action that would require the labeling of tobacco as harmful, and certainly the decision by the manufacturers to set up a voluntary code removes any necessity whatsoever for FTC action. I am most hopeful that the FTC will abandon any plans it might have had in view of the new code.

POLISH CONSTITUTION DAY—MAY 3, 1964

During the delivery of Mr. McCLELLAN'S speech,

Mr. KENNEDY. Mr. President, Sunday, May 3, was celebrated by several million Americans of Polish ancestry and many others around the world as the anniversary of Poland's most illustrious attempt at freedom and as a symbolic remembrance of those patriots who made such great sacrifices for their country.

The anniversary of May 3 is one of the brightest events in Polish history—the adoption of the May 3 Constitution of 1791. This remarkable document was the result of 20 years of eruption against ignorance, oppression, and feudalism. In 11 brilliant articles, it bespoke the determination of Poles to rid themselves of the vestiges of medievalism and foreign occupation. Led by outstanding men, much like the group of patriots who founded America, Poles wrote into the May 3 Constitution the most advanced thinking in Eastern Europe. The determination shown in 1791 has served ever since as an inspiration to Poles. Whenever they speak of freedom for their country, it is the spirit of 1791 which glows in their eyes.

The Polish people have shown stunning courage and fidelity to their nation's honor despite various partitions and numerous repressions. The ranks of Polish patriots have produced able leaders like Kosciuszko and Pilsudski, whose sacred goal was the emancipation of their fellow countrymen. Through the darkest hours of the Polish nation there have always been voices crying out for freedom, rallying, and leading the people on.

Along with this encouraging remembrance of the May 3 Constitution, Poles are also symbolically celebrating the 600th anniversary of the University of Krakow, where many of Poland's greatest men have studied. They are also remembering the infamous Soviet-Nazi attack on Poland in 1939, the stirring victory of the free Polish Army in the Italian campaign of 1944, and the Warsaw battle against the Nazi army, also

in 1944. These are important events for the Polish people.

Though often the social and cultural leader of Europe, Poland has for the last 3 centuries been unable to enjoy the political freedom which the people ardently desire. At the time of my visit to Poland in 1962, however, I saw firsthand that faith and freedom are not dead in Poland today. My own conviction is that the words of the Polish national anthem still have great relevance to us all: "As long as you live, Poland lives."

As long as we continue to meet together, as long as we here in America continue to maintain our strength, and give our assistance in the cause of freedom around the world, the Iron Curtain will be but a temporary drape and not a permanent partition.

TITLE OIL SHALE ON UNPATENTED MINING CLAIMS

During the delivery of Mr. MCCLELLAN'S speech,

Mr. ALLOTT. Mr. President, I have long favored the development of an oil shale industry in this country, not only for the many economic benefits to be derived, but also because of the unquestionable importance of a viable oil shale industry to the defense posture of this country.

There have been many reports summarizing this country's energy requirements and supplies, which in my opinion have adequately demonstrated the desirability of the early development of an oil shale industry. These reports, such as "Resources for the Future," are unanimous in the conclusions that if we are to meet our growing energy requirements new sources must be developed, and in my opinion oil shale presents the most apparent available source. It is, therefore, in the national interest for the Congress to foster a favorable climate in which a vigorous and commercial oil shale industry can develop. To that end, Congress has the affirmative duty to remove barriers and impediments to the early development of an oil shale industry through the legislative process.

The bill I am introducing today—which is cosponsored by the Senator from Utah [Mr. BENNETT], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Colorado [Mr. DOMINICK]—is in furtherance of our affirmative duty. Its purpose is to clarify the status of certain lands containing oil shale, and to correct what I consider to be gross inequities by amending the Mineral Lands Leasing Act of 1920. Its underlying principle may best be expressed by this phrase:

All citizens similarly situated are entitled to be treated equally and fairly by their Government.

Prior to the enactment of the Mineral Lands Leasing Act of 1920, oil shale lands in the public domain were subject to disposition under the mininig laws. The familiar expression "staking out a claim" may not be technically correct in all respects, but it is colorfully descriptive of how mining claims were located under the mining laws. Without going into specifics, the location of a mining claim involved the discovery of a mineral deposit, the marking of the corners, the posting of a notice, and the recording of the notice of location in the county records. In order to prevent the relocation of his claim by another, the claimant had to perform certain annual assessment work. In order to perfect his claim and apply for a patent, the claimant was required to complete $500 worth of improvement, have an approved survey performed, comply with certain regulations and procedures, and pay the prescribed fee.

The enactment of the Mineral Lands Leasing Act created considerable confusion. Under its terms, it removed oil shale lands from disposition under the mining laws. Section 37, however, acknowledged the existence of oil shale claims and provided that valid claims existent on the date of enactment and, "thereafter maintained in compliance with the laws under which initiated" could be perfected under such laws. This amounted to the recognition of the continued application of the mining laws to such claims. The controversy revolved around the question of whether the claimant must perform $100 in assessment work on the claim each year, or be subjected to the cancellation of his claim on the instance of the Secretary.

During 1929 and 1930, the Department of the Interior instituted actions to cancel many of the oil shale placer claims which were valid and existent on the effective date of the Mineral Lands Leasing Act. Some of the claims were challenged for failure to perform annual assessment work, while in others the charge was abandonment. The basis for the distinction between the charges affecting different claims was never clear, if indeed there was a reason for such a distinction. In the 1935 Supreme Court decision of *Ickes* v. *Virginia-Colorado Development Corporation,* 295 U.S. 639, the Department's theory that oil shale claims could be canceled where assessment work was delinquent and had not been resumed was struck down. It appears that considerable reliance was placed in the 1935 decision by both the Department and the claimants, and that from 1935 to 1958 many placer claims were patented. I am informed that since 1935 some 124 of the oil shale placer mining claims which had been previously declared null and void by the Secretary were subsequently patented. I understand that of the 106 patents issued between 1949 and 1958, approximately 60 of such patents were for claims that had previously been declared null and void by the Secretary for failure to perform annual assessment work. However, since 1958, applications for patent have been rejected by the Department of the Interior based upon its 1930 holdings that such claims were null and void, irrespective of the Supreme Court decision I have just mentioned.

The recent Union Oil Co. of California et al., departmental decision has the effect of overruling the 1935 decision of the Supreme Court, where the Court said that the decision of the Department in canceling these claims went beyond the authority conferred by law—295 U.S. at 647. Although I can appreciate the great difficulty of the problem the Department has been attempting to solve by determining which of the oil shale-bearing lands of the public domain are subject to disposition under the Mineral Lands Leasing Act, and which lands are subject to disposition under the mining laws; nevertheless, I believe that the interests of justice, and our affirmative duty to create a favorable climate for the early development of a viable oil shale industry demand that we take legislative steps to expeditiously resolve the title problems of these unpatented mining claims.

Accordingly, this bill is offered in that spirit. It provides that the Secretary may not cancel any valid claim existing on February 25, 1920, on the grounds of failure to do annual assessment work, or for the reason that an economically or commercially feasible method of extraction and production of shale oil from oil shale does not now exist, or did not exist at any previous time, or may not exist at the time when the application for patent is made. As Senators know, a commercially and economically feasible method of extraction does not now exist. The other day I announced from the floor of the Senate the signing of an agreement between the United States and the Colorado School of Mines, whereby the school of mines was to engage in research for two pioneering companies in this field—Socony Mobil and Humble Oil Co.—in a $5 million project to develop such a process.

By way of clarification, in this agreement there is a provision that any other corporation, or any other individual, might participate in this program, and in the research program, by putting up a proportionate share of the expenses. To place such a burden on the patentability of an oil shale claim would not only be unreasonable but unjustifiable.

As I said earlier, the purpose of my bill is to clear up the status of these unpatented mining claims judiciously and expeditiously. In keeping with what I consider to be good legislative practice, my bill provides for a cutoff date after which the Secretary of the Interior would have clear authority to cancel any of these claims on the grounds of abandonment. After July 1, 1966, the claimant would be required to prove that he had not in fact abandoned his claim. It provides further:

The owner or owners of any such oil shale placer claims may make application for patent pursuant to the laws under which such claims were initiated, and, if such application be made on or before July 1, 1966, neither failure to perform annual assessment work, abandonment, nor the lack of any economically or commercially feasible method of extraction and production of shale oil from oil shale shall constitute a basis for the Secretary of the Interior to deny issuance of patent.

I believe that if this bill becomes law and is administered in the spirit in which it is offered it will expeditiously and fairly settle the question of these unpatented mining claims and will aid in the creation of a favorable climate in which the oil shale industry can develop.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point, and that it be allowed to lie over on the desk for a period of 1 week so that those Senators who so desire may join me in sponsoring this bill.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD, and held at the desk, as requested by the Senator from Colorado.

The bill (S. 2809) to amend section 37 of the Mineral Lands Leasing Act of February 25, 1920, relating to disposition only as provided in such act of deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas in lands valuable for such minerals, except as to valid claims pursuant to laws under which initiated and existing at the date of the passage of such act, which claims may be perfected under such laws, introduced by Mr. ALLOTT, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 37 of the Mineral Lands Leasing Act of February 25, 1920 (30 U.S.C. 193), as amended, is hereby amended to read as follows:

"SEC. 37. That the deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled 'Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming,' approved August 1, 1912 (37 Stat. 1346), shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. With respect to any valid oil shale placer claims existent on February 25, 1920, neither failure to perform annual assessment work nor the lack of any economically or commercially feasible method of extraction and production of shale oil from oil shale shall constitute a basis for the Secretary of the Interior to hold such claims invalid. The owner or owners of any such oil shale placer claims may make application for patent pursuant to the laws under which such claims were initiated, and, if such application be made on or before July 1, 1966, neither failure to perform annual assessment work, abandonment, nor the lack of any economically or commercially feasible method of extraction and production of shale oil from oil shale shall constitute a basis for the Secretary of the Interior to deny issuance of patent; *Provided, however,* that with respect to any such claim for which application for patent shall not have been made on or before July 1, 1966, such claim may be cancelled by the Secretary of the Interior on the basis of abandonment by appropriate proceedings after such date and the owner or owners of any such claim shall have the burden of proving that abandonment of such claim has not occurred."

Mr. ALLOTT. Mr. President, in conclusion, I deem this bill to be an absolute necessity. If all the people in the United States who have had an interest in this area at one time or another, and whose statuses are basically on a par, are to have their rights equitably taken care of, this bill is essential to that end.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

AMENDMENT NO. 573

Mr. HRUSKA obtained the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. I ask unanimous consent that I may yield briefly to the Senator from Kentucky [Mr. COOPER] without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COOPER. Madam President, I send to the desk an amendment which I intend to propose to the amendment of the Senator from Georgia [Mr. TALMADGE], No. 513. I ask that it be printed and lie on the table, and I also ask unanimous consent that it be printed in the body of the RECORD, along with an explanation.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table; and, without objection, the amendment and explanation will be printed in the RECORD.

The amendment submitted by Mr. COOPER is as follows:

AMENDMENT No. 573

On page 2, beginning with line 1, strike out all through line 9 on page 3.

On page 3, between lines 9 and 10, insert double quotes and the following: "Title XI—Jury Trials of Criminal Contempts".

On page 3, line 10, immediately before "In", strike out the single quote and insert in lieu thereof "SEC. 1101.".

On page 3, line 10, beginning with "for willful", strike out all through "Columbia" on line 13, and insert in lieu thereof the following: "arising under Section 302 of this Act, or under title II, V, VI, or VII of this Act".

On page 3, line 16, immediately after "cases", insert a semicolon and the following: "and in any proceeding for criminal contempt arising under Section 301 of this Act, or under title I or IV of this Act, the court, in its discretion, may grant a trial by a jury to the accused".

On page 3, line 17, strike out the single quote before "This".

On page 3, line 22, strike out the single quote before "Nor".

On page 4, line 4, strike out the single quote.

On page 4, line 5, strike out "1103." and insert in lieu thereof "1102.".

On page 4, line 7, strike out "repealed." and in lieu thereof insert the following: "amended by striking out the second and third provisos to the first paragraph thereof, and inserting in lieu thereof the following: *'Provided further,* That in any such proceeding for criminal contempt, the court, in its discretion, may grant a trial by a jury to the accused.' ".

The explanation submitted by Mr. COOPER is as follows:

If the Cooper amendment (No. 573) to the Talmadge amendment (No. 513) now pending were adopted, the Talmadge amendment as modified would read:

"On page 54, between lines 7 and 8, insert the following new title:

" 'TITLE XI—JURY TRIALS OF CRIMINAL CONTEMPTS

" 'SEC. 1101. In any proceeding for criminal contempt arising under section 302 of this Act, or under title II, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to trial by a jury, which shall conform as near as may be to the practice in criminal cases; and in any proceeding for criminal contempt arising under section 301 of this Act, or under title I or IV of this Act, the court, in its discretion, may grant a trial by a jury to the accused.

" 'This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court.

" 'Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

" 'SEC. 1102. Section 151 of part V of the Civil Rights Act of 1957 (71 Stat. 638; 42 U.S.C. 1995) is hereby amended by striking out the second and third provisos to the first paragraph thereof, and inserting in lieu thereof the following: *"Provided further,* That in any such proceeding for criminal contempt, the court, in its discretion, may grant a trial by a jury to the accused." '

"On lines 15, 16, and 17 of page 11, strike out subsection (c) of section 205.

"On line 8 of page 54, change the designation of title XI to title XII.

"On lines 9, 14, 22, and 24 of page 54, change the designations of section 1101, 1102, 1103, and 1104, to sections 1201, 1202, 1203, and 1204, respectively."

AMENDMENT NO. 574

Mr. COOPER. Madam President, I also ask unanimous consent that there be printed in the body of the RECORD an amendment which I intend to offer to the amendment of the Senator from Georgia [Mr. TALMADGE], No. 513, if the amendment of the Senator from Kentucky [Mr. MORTON], No. 560, is adopted. The amendment would accomplish the same result as the amendment I just sent to the desk. Its language would be applicable if the Talmadge amendment is modified by adoption of the Morton amendment now pending. I do not offer it now, I merely ask unanimous consent that it be printed in the RECORD.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the desk; and, without objection, will be printed in the RECORD.

The amendment submitted by Mr. COOPER is as follows:

AMENDMENT No. 574

Immediately before the period at the end of the first sentence of section 1101, insert a comma and the following: "except that if the proceeding is for a criminal contempt alleged to have been committed under section 301 of this Act, or under title I or IV of this Act, the accused shall be entitled to a trial by jury only in the discretion of the court".

Strike out the double quotes at the end of section 1102 and immediately after section 1102 insert the following:

"SEC. 1103. Section 151 of part V of the Civil Rights Act of 1957 (71 Stat. 638; 42 U.S.C. 1995), as amended by section 1102, is further amended by inserting at the end of the first paragraph thereof the following: 'The term "entitled", as used in the second proviso to the preceding sentence, shall mean having a right given only in the discretion of the court.'"

DEATH OF FORMER REPRESENTATIVE HOWARD BUFFETT, OF NEBRASKA

Mr. HRUSKA. Madam President, I ask unanimous consent that I may yield to the Senator from Nebraska [Mr. CURTIS] under the previous conditions.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CURTIS. Madam President, death has taken still another prominent Nebraskan, Howard Buffett.

It was my privilege to have served with him during the four terms he represented Nebraska's Second Congressional District in the House of Representatives. During that period, beginning in 1942, I was present on many occasions when Howard Buffett spoke out on important issues as his conscience dictated and without regard to taking a popular position.

Howard Buffett was widely known as a conservative leader, his written expression of the conservative point of view commanding nationwide attention.

In addition to serving on the Omaha school board, his participation in Omaha civic projects covered a broad range of activities, far too numerous to list.

Howard Buffett was a political stalwart. He was a conservative. He knew the reasons for the faith that was in him. He was steadfast. The apostles of big government have mortgaged the country's future for generations in attempting to prove that the political principles adhered to by Howard Buffett and others were wrong, but they have totally failed.

Howard Buffett was an outstanding citizen of his city, our State, and our country. His character was above reproach and his sincere Christian faith was an inspiration to all who knew him.

When Mr. Buffett announced in 1952 that he would not be a candidate for the Senate, the Omaha World-Herald said, editorially:

We are not here discussing whether Mr. Buffett is generally right or wrong or in-between, but are only noting the rather obvious fact that he calls 'em the way he sees 'em—and always in accordance with what he considers the welfare of the Republic.

I ask unanimous consent that there be included as a part of my remarks a recent editorial from the Omaha World-Herald, relating to former Representative Howard Buffett.

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

[From the Omaha (Nebr.) World-Herald. May 1, 1964]

HOWARD BUFFETT

The qualities that set the late Howard Buffett apart were outspokenness and a blazing integrity.

Omaha's four-term Congressman might well have gone on to higher political office if he had been willing to use soft soap, trim his views, or simply remain noncommittal on touchy issues.

But it wasn't in the man. He was ever true to his own conscience. If the right course meant splitting with his political party or standing alone on the House floor, as he once did when President Truman seized the railroads, Howard Buffett pursued what he believed to be the right course.

Mr. Buffett was a warm, ebullient, friendly man with a lively sense of humor. But no friend ever dared ask Howard Buffett to bend his principles, and no political enemy ever nailed him with contradictions in his record or his public statements.

He was a national leader of the conservative movement in America, and his pen and his voice spoke sharply and well. He had faith in his country and its free institutions. He defended them with all that was in him. We who write for this page admired Howard Buffett, and he was our friend. We shall miss him.

Mr. HRUSKA. Madam President, I join in the sentiments just expressed by my colleague, and associate myself with the remarks that he has made in regard to the late Howard Buffett.

I was the immediate successor to Howard Buffett in the House of Representatives in 1953, having known him for years, particularly as a member of the board of education in Omaha and also for many years as a Member of the House of Representatives, where he served during all those years with my colleague.

I came to know him as a courageous man, one who yielded to no one when persuaded his cause was right. He was a competent man. He was an articulate man. In losing him, we lose a highly valued citizen and one who was devoutly dedicated to the service of his country.

CIVIL RIGHTS ACT OF 1963

The Senate resumed the consideration of the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. HRUSKA. Madam President, I rise in support of the Morton amendment. In essence, it seeks to narrow the effect of the Talmadge amendment by restricting its application to criminal contempt cases which would arise in the process of enforcing the pending civil rights bill.

Those who oppose the Morton amendment urge that the provisions of the bill will be ineffective if there is a requirement that all criminal contempt actions be referred to a jury. They hold that this amendment will permit the infringement of certain rights to go without redress unless the judge is uninhibited by a jury to impose criminal sanctions.

On the other side, those who favor adoption of the Morton amendment hold that actions involving criminal offenses, including those offenses which result from criminal contempt, should properly be heard only by a jury before punishment is set by the judge.

Against this background, some areas of agreement can be found. As recently as April 6 of this year, the Supreme Court in its decision in United States against Barnett held that there is no constitutional requirement that all criminal contempt actions be tried by a jury. However, the power of Congress to provide a requirement that there be jury trials in criminal contempt actions is unquestioned. Thus, the debate clearly involves an area in which this body can work its will.

There is also agreement that an underlying condition for any valid and effective legislation is general public acceptance. Without general public acceptance, the law will not be meaningful or helpful no matter how expertly the enforcing machinery is assembled.

No one can seriously doubt that this legislation will stir emotions and generate tensions to a great degree. In fact, it already has. Every effort must be made to insure that it is fair and just as well as constitutional to assure its being effective. Every effort must be exerted to insure that it is consistent with our tradition of concern for the rights of every man. In an ardor to remedy one wrong, great care must be exercised to avoid working another wrong elsewhere.

At the outset, it is important that the distinction between civil contempt and criminal contempt be noted. A civil contempt proceeding is generally regarded as a remedial device adopted for the purpose of inducing the defendant to obey the court's order which can still be executed. A proceeding for criminal contempt, on the other hand, is invoked for having defied an order which can no longer be executed. In civil contempt the defendant is said to "carry the keys to the jail in his pocket" a graphic way of saying that he remains in confinement until such time as he chooses to obey the court's decree. A criminal contempt order is accompanied by a fixed sentence either of imprisonment or a fine.

The applicability of civil or criminal contempt is determined by the circumstances. Where there is a refusal to carry out a court's order while it is still timely to do so, whether it be performing an act or refraining from it, civil contempt is appropriate. The defendant can

purge himself by compliance. Thus, civil contempt looks to compliance with, or abstention from, a continuing course of conduct.

Criminal contempt entails a punishment for a past failure to perform an act or refrain from acting in a manner ordered by the court. It presupposes that the time for effective action has passed and looks only to punishing the defendant for defiance of the court's command. As time is no longer a consideration, all that remains is preservation of the authority of the court.

Action for contempt, whether it be civil or criminal, as generally understood concerns only the judge. He hears the plea from which the order arises, determines the course of conduct which the defendant must follow, orders action or restraint, and later punishes, if he finds that his order is not carried out. The unilateral nature of civil contempt is necessary and proper to insure that the court's order will be carried out when left unchecked, the course of conduct would result in continuing injury. Thus, the supporters of the Morton amendment have not urged that civil contempt proceedings be altered or modified in any way.

However, criminal contempt cannot be justified by this argument. The time for action has passed in this event. No additional injury will result from the further lapse of time. In his dissent in the Barnett case Mr. Justice Black described the position of the judge in a criminal contempt proceeding as follows:

> This means that one person has concentrated in himself the power to charge a man with a crime, prosecute him for it, conduct his trial, and then find him guilty.

A trial of this character does violence to the spirit, if not the letter, of our Constitution.

Our constitutional heritage has made us sensitive to the need for adequate protection of the individual charged with a crime. The star chamber concept was one grievance cited by our Founding Fathers at the time of the Revolution. To chip away at the fundamental principle that every man charged with a crime should be tried by a jury of his peers by allowing the practice of criminal contempt proceedings without a jury trial, would be equally grievous. Those who espouse this course contend that the jury system is not equal to the task. This is not true. It is the very antithesis of our legal system.

This distrust in our system of law is now reflected in the growing tendency toward Government by injunction. While the increasing complexity of our society has increasingly involved the Federal Government in our daily lives, the abandonment of our traditional legal procedures in recent years has been most disturbing. The House report on H.R. 7152 carries a list of 45 Federal statutes in which the Federal Government is authorized to proceed against citizens by injunction. These statutes range from antitrust actions to welfare plans. There are also a multitude of administrative agencies which seek injunctions after administrative hearings which are informal in character.

Several bills in addition to H.R. 7152 are pending in the Congress which seek to expand the practice of Government by injunction. An example is H.R. 594 authorizing the Federal Trade Commission, upon complaint that an unfair trade practice is being committed, to issue a temporary cease-and-desist order which compels the summary discontinuance of the practice pending completion of the proceeding before the Commission. The practical effect is that of a permanent injunction and final disposition of the case because an FTC proceeding could continue for years and often does.

In our desire to enforce Government policy, we must be on guard to avoid acts of expediency which commonly shows little regard for individual rights and even less zeal for their protection.

The time is long overdue to halt this trend away from traditional guarantees of individual liberty. This civil rights bill seeks effectively to protect the rights of all persons. Let us insure that the rights of all Americans are in fact protected. Again, as Justice Black pointed out in Green against United States, expedition is not a valid argument by which to justify an infringement on constitutional rights:

> Such trifling economies as may result have not generally been thought sufficient reason for abandoning our great constitutional safeguards aimed at protecting freedom and other basic rights of incalculable value. Cheap, easy convictions were not the primary concern of those who adopted the Constitution and the Bill of Rights. Every procedural safeguard they established purposely made it more difficult for the Government to convict those it accused of crimes. On their scale of values, justice occupied at least as high position as economy.

The proposed legislation, which will thrust the courts into delicate areas of social contact and property rights as well as human rights will surely give rise to a substantial amount of litigation. In the attempts to enforce the mandates of the law, there will arise difficult questions that will demand the greatest understanding on the part of the court. The problems will have no easy solutions.

Emotions will be stirred, not only those of the man on the street but also those of the administrators of the law's provisions and those of the man on the bench. This Senator urges that in an area as sensitive as this, more than anywhere else there must be total severance of the responsibility for enforcing the law from the burden of finding a failure to comply with the order of enforcement.

In that regard the Senate Judiciary Committee has had under active consideration proposals amending section 144 of title 28 relating to affidavits of bias and prejudice in civil proceedings. The problem has been that the judges against whom the affidavits are filed customarily pass on their merits, understandably giving rise to the feeling that total objectivity is lacking in the determinations. It is with gratification that I note the Judicial Conference of the United States approved the bill to divorce such procedures. The parallel is obvious. The Morton amendment obviates the distasteful problems for the court as well as its defendant in the instances of proceeding for general contempt which could arise under the terms of the proposed civil rights bill.

In 1957, this Senator voted against the O'Mahoney-Church-Kefauver amendment. It proposed to engraft provisions similar to the Talmadge amendment to all criminal contempt actions in Federal courts. The O'Mahoney amendment was subject to the same objection as the Talmadge amendment, without the restricting provisions of the Morton amendment. It might have resulted in utter chaos by invading many other legislative areas in which the procedures have been effective and have not proved overly harsh. Thus, the use of jury trials in criminal contempt proceedings would have been expanded into areas in which no need has been indicated. If the pending amendment was similarly broad and nonselective, my vote would be the same. However, the Morton amendment restricts the requirement for jury trials to only those criminal contempt cases which will arise under this bill.

By way of summary, Madam President, it is essential to underscore exactly what the Morton amendment proposes to do. It does not apply to contempts committed in the presence of, or close to, the court as to jeopardize its ability to maintain order and function properly. Second, it does not apply to civil contempts wherein the defendant's capacity to execute the orders of the court still exists. But when the time for execution has passed and it is no longer possible to secure the compliance with the order, and it becomes a question simply as to whether the defendant has defied it, this matter should be decided by a jury if the prospect of punishment confronts him. The Morton amendment accords this right and in that manner preserves the greatest tradition of our legal system.

For these reasons, I support the pending amendment, and urge all Senators to do likewise.

RECESS UNTIL 10 A.M. TOMORROW

Mr. HRUSKA. Madam President, if there is no further business to come before the Senate, I move, pursuant to the order previously entered, that the Senate stand in recess until 10 o'clock tomorrow.

The motion was agreed to; and (at 6 o'clock and 38 minutes p.m.) the Senate took a recess, under the order previously entered, until tomorrow, Wednesday, May 6, 1964, at 10 o'clock a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 5 (legislative day of March 30), 1964:

TEMPORARY ALASKA CLAIMS COMMISSION

Maurice Oaksmith, of Alaska, to be a member of the Temporary Alaska Claims Commission.

Ray Ward, of Virginia, to be a member of the Temporary Alaska Claims Commission.

W. C. Arnold, of Alaska, to be a member of the Temporary Alaska Claims Commission.

EXTENSIONS OF REMARKS

The Appalachia Program

EXTENSION OF REMARKS
OF
HON. JOE L. EVINS
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. EVINS. Mr. Speaker, the Appalachia program, proposed by President Johnson should have the highest priority for speedy approval.

In this connection, I ask unanimous consent that my newsletter, dated May 4, last, be reprinted in the RECORD.

The newsletter, concerning the Appalachia program, follows:

CAPITOL COMMENTS

(By JOE L. EVINS, Member of Congress, Fourth District of Tennessee)

THE APPALACHIA PROGRAM

The House is giving legislation for Appalachian regional development recommended by President Lyndon B. Johnson the highest priority. The President this week sent a letter to Speaker JOHN W. MCCORMACK of the House urging speedy action.

Congress is now fully engaged in consideration of this great development undertaking—one of the highlights of the President's program. Hearings on the proposed Economic Opportunity Act of 1964—the program designed to eliminate pockets of poverty throughout the country—already are well advanced. The overall attack on depressed areas and the Appalachia development program together set a new high mark for American internal improvement efforts involving cooperative Federal-State-local action.

A NEW START FOR 10-STATE REGION THAT INCLUDES PART OF TENNESSEE

The Appalachia program is a broad-scale long-range, comprehensive plan for economic growth and development of a mountain area that straddles 10 States, embraces 340 counties, and includes more than 165,000 square miles, with more than 15 million American citizens in residence. Included in the developmental area under this program are 49 of Tennessee's 95 counties containing nearly 1,600,000 of the State's more than 3.5 million inhabitants. Some 15 of these counties are in our great Fourth Congressional District of Tennessee.

There are many aspects of this regional program attacking problems of the area, and these include the following:

Highways: A developmental highway system of 2,350 miles to provide access to isolated areas and encourage the growth of new industry and other economic activity.

Water resources: Accelerated water facilities development, with emphasis on flood control, industrial and recreational impoundments, and sewage treatment and construction.

Agriculture: Pasture improvement program to convert marginal farmlands to pasture for increased livestock production; also, an expanded Farmers Home Administration program to assist small farmers.

Mineral resources: Expanded programs to promote new use of coal, improve mining practices, and stimulate land restoration following mining operation.

Forest resources: Assistance programs for improved timber production, management, manufacturing, and marketing.

Aid to small business: An expanded Small Business Administration loan and local development program.

Community development: Expanded area redevelopment program and stepped-up human resources programs, with emphasis on education and training, as provided in the Economic Opportunity Act legislation.

For a continuing and sustained attack on the complex problems of the region, this legislation provides for creation of a Federal-State regional commission to guide all levels of Government and private agencies in this work. Achievement of these legislative goals would make it appropriate to call the 88th Congress the development Congress.

In sum, this program will make possible "an active beginning to end an old problem in Appalachia" as President Johnson said in his letter to Speaker MCCORMACK. The cost of the entire program for the first year—$262 million—is included in the President's 1965 budget which was submitted in January to the Congress. Work continues until these goals are achieved.

Rumanian Independence Day

EXTENSION OF REMARKS
OF
HON. ABRAHAM J. MULTER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. MULTER. Mr. Speaker, another of the important independence days of those many oppressed nations behind the Iron Curtain is being celebrated this Sunday, May 10. This is Rumanian Independence Day, the most important national holiday for all free Rumanians. It is sad indeed that the Rumanian people themselves cannot celebrate their own national independence day. That is one of the penalties of living under communism. While we here freely express our admiration for Rumania's independence, Rumanians themselves must not celebrate. Their recognition is limited to a silent word in their own hearts and clandestine listening to the celebrations in free countries over the radio.

Rumania enjoyed many centuries of independent growth, it was for two centuries a Roman province. From this came the modern name of Rumania, and the romance language which Rumanians speak.

In the middle of the last century the forces began shaping which led to the pronouncement of Rumanian independence on May 10, 1877. The people were sick of many years of cruel invasion and oppressions, first from one side then from the other. During the years when our Nation was engaged in a great civil war, Rumanian leaders were fighting to free their country from Russian-Turkish domination and an archaic feudal land sytem.

Much progress was made by autonomous Rumania under King Alexandru Cuza between 1859 and 1866. On that memorable day in 1877, the Rumanian people demanded and got their rightful independence. It was duly recognized by all the great powers in 1888 in reward for Rumania's gallant fight against the Ottoman empire.

This is the event which rightly holds an important place in Rumanian loyalties. It inaugurated the greatest period of progress in Rumanian history, which was drastically altered in World War II, and shattered completely when the Communists came to power in 1947. Today the very event which founded Rumania as a nation, and the great courage of Rumania's leaders of 1877, are denied to the people by the Communists. It is well to remember Rumanian Independence Day here, to add our voices to the great outcry demanding Rumania's freedom. In this way we can encourage Rumanian-Americans as well as the Rumanian people to carry on the struggle against tyranny with a view to making it over again an independent nation.

Ed Ball: Angel of Mercy for Crippled Children

EXTENSION OF REMARKS
OF
HON. L. MENDEL RIVERS
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. RIVERS of South Carolina. Mr. Speaker, an angel of mercy for thousands of crippled children in America is an energetic, hard-driving executive with the Nemours Foundation.

The Honorable Edward Ball, secretary-treasurer of the foundation, is considered a moving force behind the humanitarian work this charitable foundation performs for crippled children.

His deep interest in the unfortunate, his unflagging energy, and his tremendous executive skills have meant in so many cases that a child may walk again; may even be cured.

His work is arduous; his schedule imposes demands a lesser man would succumb under. However, his faithful efforts have paid off handsomely for the crippled child.

Mr. Speaker, since the Nemours Foundation opened in 1940, it has provided more than half a million patient-days for crippled children. These unfortunate children, whose parents may be poor or wealthy, but for some reason or another could not obtain the medical skill needed, are treated at the Nemours Foundation crippled children's hospital—known as the Alfred I. du Pont Institute—at Wilmington, Del. Here extensive facilities are provided for treating crippled children.

Though a close personal friend of the late Mr. Du Pont and considered his right-hand man, Ed Ball has achieved no small success in business in his own right. The holder of many titles in the Du Pont

Estate's individual banks, he is president of the St. Joe Paper Co. in Florida. Additionally, Ed Ball serves as chairman of the Florida East Coast Railway and the National Board & Paper Mills of Waterford, Ireland, with which the Du Pont Estate holds a working arrangement.

Mr. Speaker, Ed Ball can truly be called one of the more determined capitalists in the present-day United States—a title he does not disdain.

The humanitarian projects spearheaded today by Ed Ball were originally launched by the late Mr. Du Pont. When he died in April 1935, he left a will which created a charitable, valuable, and lasting aid to crippled children in America.

His will, in part, read:

It has been my firm conviction throughout life that it is the duty of everyone in this world to do what is within his power to alleviate human suffering.

My trustees shall cause to be incorporated a corporation for charitable purposes, to be designated and known as the Nemours Foundation * * * and my said trustees are hereby directed to pay over, at convenient intervals, the net income of my said estate * * * for the purpose of maintaining Nemours as a charitable institution for the care and treatment of crippled children, but not incurables.

Mr. Speaker, what was begun by Mr. Du Pont is being carried on today by Ed Ball.

During the first year of the program, the Nemours Foundation paid for 3,872 patient-day's care for children approved by the Florida State Crippled Children's Commission. At the end of 5 years, the figure had grown to 69,922 patient-day's care, and by July 1, 1962, it had become 89,367 patient-day's care. It is noteworthy that in this period the State of Florida has increased its own budget for the Florida State Crippled Children's Commission to between six and seven times the amount provided in 1948.

Another corollary program that covers 17 States, 15 of which are in the South, has been in the process of expansion by the Nemours Foundation during the past 10 years.

Its purpose is to share the knowledge of the specialists on the institute's staff with the authorities in the States concerned with crippled children. The program takes the form of continuing seminars organized by the institute.

These seminars, sharing the knowledge of the specialists on the Du Pont Institute staff as they do, have brought a substantial advance to the cause of crippled children. They have been attended by State officials, doctors, and all types of professional and lay people, all working with the special groups in the States they represent.

The staff and personnel at the institute have grown until they now number well over 100, including the necessary doctors and specialists, and during the years the hospital has been in operation, it has performed several thousand corrective operations.

I am certain you recognize this has meant new hope to crippled children through advanced methods of medical treatment.

Thus, the earnings of the estate of Alfred I. du Pont are being devoted to humanitarian purposes. After making provisions for his family, he directed the remainder be set up as the Nemours Foundation to support the institute and a future program for old people.

And, as the annuities are fulfilled, 100 percent of the earnings of the estate will go to the foundation. This means, Mr. Ball says, 100 percent of the estate's earnings of such substantial enterprises as the Florida National Group of Banks, the St. Joe Paper Co., and the Florida East Coast Railway will eventually go to the Nemours Foundation for the care and treatment of crippled children and old people.

His wishes are being carried on today by his faithful and devoted trustee—Ed Ball.

The Greatest Asset We Have in This Country Is Our People

EXTENSION OF REMARKS
OF
HON. ROBERT DOLE
OF KANSAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. DOLE. Mr. Speaker, on April 16, in Lima, Peru, an outstanding Kansan and a great American was fatally injured when he accidently fell from his ninth-floor apartment. Harlan S. Parkinson, formerly of Scott City, Kans., age 30, was not an ordinary man but an exceptionally bright, resourceful, and capable person whose ability was reflected in everything he did. As reported in the Hutchinson News, "Harlan Parkinson was a young man who began carving his niche in life early." An honor student in economics and philosophy during his 4 years at Kansas University, Parkinson graduated in 1955, having been president of his senior class, a member of Omicron Delta Kappa, national honorary scholastic society, and a member of Sachem, the senior men's honorary society. From 1955 to 1957 his outstanding service in the Army was recognized by his having been chosen "Trainee of the Month" and selected for duty in the Army Intelligence Corps at Heidelberg, Germany. On release from the Army in 1957, he entered Michigan Law School where he was a Campbell fellowship finalist and fifth in his class in moot court argument. In 1961, after a brief law practice in Denver, Colo., he was employed by Great Plains Wheat, Inc., in charge of the association's market expansion program in South America with headquarters in Lima, Peru. It was here Parkinson's leadership reached full expression. The Scott City News Chronicle wrote:

Known as El Gringo Bueno throughout Peru and Chile for his monumental work in establishing school lunch programs for the poverty-stricken areas of these countries, Harlan had been decorated in 1962 by the Peruvian Government with "the Knight of Corrian Order"—the highest award Peru can confer on a foreign citizen—and last year was awarded the Bernardo O'Higgins Grand Order of Merit by the Chilean Government for his service to the people of Chile.

An initial project in Peru soon after his arrival was the establishment of the community of La Morada, which was started with the moving of 30 families from the slums of Lima, to more than 400 miles away to the slopes of the Andes. When aid from the Peruvian Government was denied, Harlan appealed to the people of his hometown, Scott City, to help the destitute Peruvians. They responded by "adopting" La Morada, and the local Lions Club headed up a people-to-people project to furnish them necessary supplies.

The needs of these people were met soon when a crate full of clothing, tools, and medical supplies arrived in La Morada, and the goods were distributed by Harlan and his wife, the former Alise Battha, of Buffalo, N.Y., whose father was former Secretary of Agriculture in Hungary.

The High Plains Journal, Dodge City, Kans., said this of Parkinson's work in South America:

Harlan Parkinson, in charge of the wheat organizations' program for U.S. wheat in South America, was one of the most effective workers the American wheat producers had.

It is not often that a person on a job of this kind can gain the national respect of the countries in which he is working. Harlan Parkinson did just that, however; he caught the humanitarian spirit of the wheat farmers for whom he was working, and combined his job of wheat promotion with that humanitarian outlook.

In a eulogy prepared by a Catholic priest, a friend of Harlan's, it was said:

Harlan: you strode in and out of our lives with those great giant steps of yours, never staying long enough for us to see anything but pieces of you; a piece of your impulsive generosity, your incredible humor, your love for people and charm over children, your inscrutable moods, your restless search for something beyond conformity.

And the pieces were beautiful: temporarily held together in pain, loneliness, in longings that reached far beyond your own happiness to that of your fellow man lost in a reeling world.

Your keen mind and rare sensitivity brought complexities in you we could never fully comprehend, but will never cease to love.

Perhaps the meaning of Harlan Parkinson was best expressed when his friend and mentor, Clifford R. Hope, Garden City, former U.S. Congressman and immediate past president of Great Plains Wheat, Inc., stated:

It is hard to realize Harlan Parkinson is gone. There are few men of his age who have done as much or whose lives held more promise for the future. His brilliant mind and engaging personality was matched by an intense interest in people.

As a representative of Great Plains Wheat in South America he worked hard at market development. But people, to him, were more than customers for wheat. He saw them as human beings in need of both help and understanding.

He projected an image of our country which will be long remembered, not only by presidents and premiers but by thousands of the poor and weak. To them he was the good American who helped them to help themselves.

Harlan Parkinson was a living example of how international good will can be established without spending of hoards of money but by dedication and genuine application of hard work in a spirit of unselfish concern for others. It is sadly ironic when an accident must take this

sort from our midst. It is even more tragic when it must deny expression to one who had so much to give and when it must extinguish a source of hope for a better world. For one who knew, admired and respected Harlan Parkinson, it is difficult to accept his loss. If his absence can teach anything, it is in the words of his father, "My family was an average Kansas family. The children grew up in the church. The greatest asset we have in this country is our people."

To Mrs. Parkinson and her 3-year-old daughter, Madeline, and the Parkinson family, I extend my deepest sympathy.

New Myths and Old Realities in Poverty

EXTENSION OF REMARKS
OF
HON. PAUL FINDLEY
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. FINDLEY. Mr. Speaker, a few weeks ago the chairman of the Senate Foreign Relations Committee made a speech on foreign policy in which he referred to what he chose to call old myths and new realities. I refer to that speech not with any intent of analyzing it, but only for the purpose of pointing out that myth and reality and jingoism are by no means confined to foreign policy. These same factors of myth and jingoism as contrasted to reality and fact occupy an inordinate portion of the stage in our domestic national affairs.

During the past several years, there has been a great deal of official and unofficial declaiming that the United States is failing its economic and social obligations—that it has not provided full employment, that it has not sustained economic growth, and indeed that it is in imminent danger of falling into the class of a second-rate power. All of this is pure mythology. Yet, even after the Soviet Union publicly acknowledged its inability to provide the basic need of bread for its own people—and looked to the United States to fill the gap—the oft-repeated myth of American failure and retrogression keeps emanating from the White House and echoing across the countryside.

The echoes do not stop at the shoreline. When the President speaks, the world listens. When he declares over and over again that one-fifth of America is poverty stricken he is blackening America in the eyes of the world. To people in underdeveloped countries, poverty has a far different meaning than the definition President Johnson gives it. To most of the world's population, an annual income of $3,000 would be regarded as kingly.

How can we hope to motivate the underdeveloped countries to follow our own free enterprise system when our President says that one-fifth the population of free enterprise America lives in poverty?

In reaching eagerly for November votes by exaggerating economic conditions in the United States, the President is unjustly and unwisely damaging the word "America."

With respect to unemployment, we are plagued and confused by the same tendency toward sloganism and mythology. We neglect reality—a simple fact that is too often lost sight of; too often minimized.

That simple fact is this: The American system has created and sustained the highest level of attainment and the highest standard of living any society has ever achieved in the history of the world. And it has reached this pinnacle in a society which accords to the individual the maximum in freedom—economically, politically, and socially. It is an accomplishment of which all Americans should be proud. It is an accomplishment which we should not jeopardize with dubious and ill-conceived experimentations based on precepts foreign to our own.

At this moment there are 70 million Americans gainfully employed in the United States. These Americans earn more, possess more, and live better than any other people on earth, and we should not forget it. We should bury the myth of economic failure in America.

THE POVERTY PROGRAM

Probably the outstanding recent example of the confusion of myth with reality is the war on poverty recently declared by the President. Every American citizen should read this proposal for himself.

He should not accept the limited descriptions of this package which have appeared in the press, most of which were personal declarations of virtue on the part of those who advocate this program.

This war on poverty began with the crashing of cymbals and the blaring of horns. The proclamation, however, was somewhat delayed by the "blowing of tops" as, in the infighting, departmental officials stoutly resisted the preempting of their established domains by the war's commander in chief.

No sooner had the battle within the administration been stayed than this hastily contrived poverty package was hurriedly messaged to Congress and unveiled to the public—all 7 titles and 47 pages of it. It was introduced as H.R. 10440 and labeled the Landrum-Powell poverty package. Rarely has a political affinity been so rapidly created; seldom was a package so sectionally enwrapped. Some people have even gone so far as to suggest there might be something political in this poverty pact which binds together widely separated stars of the Democratic galaxy.

Almost before the ink was dry on H.R. 10440, an ad hoc subcommittee was appointed and public hearings announced. Here again the administration with much fanfare and even more ado brought forth poverty's commander in chief, the Cabinet officers, and the lesser lights, all to declaim against poverty, all to endorse H.R. 10440. Yes, they were all against poverty. No, they were not too familiar with the contents of the bill. Yes, they felt their administrative efforts against poverty needed to be coordinated. No, their present programs against poverty were not being badly administered. No, the existing programs should not be placed under the poverty czar. And yes, oh yes, politics was the thing furtherest from their minds.

But dawned the next day—into the office of every Democratic Congressman was delivered a "poverty kit," complete with prewritten speeches, prepackaged press releases—with appropriate blanks for inserting the Congressman's name—and digests of various sorts, all proclaiming the merit of the poverty package. And the source of these poverty kits, delivered before many Congressmen had read the bill? Why the Democratic National Committee, of course. But alas, a misdelivery. One of these packages was somehow given to, of all things, a Republican Congressman. Thus, the pragmatic basis of this brave new political project was revealed to the world.

THE ELEMENTS OF THE POVERTY PACKAGE

Like most packages which are politically giftwrapped, the poverty bill contains something for everyone; from Harlem to Georgia, from farmer to factory hand, from 17 to 70. Like most gimmicks of this type, it is based on that time-honored political promise, "something for nothing."

TITLE I

Title I of this well publicized tabloid deals with so-called youth programs. Young males age 16 to 22 who are unemployed and who are found unfit for the draft, will be sent to distant work camps where, according to the sponsors of this bill, they will be employed on conservation projects and get vocational training. There are so many obvious questions relating to this proposal, that its predecessor proposal under the late President Kennedy has long lain dormant in the House Rules Committee.

TITLE II

Title II of this proposal authorizes the establishment of so-called community action programs. These programs, for which the Federal Government could defray the full cost, can be carried out either by public or nonprofit private agencies in such fields as health, education, job training, and vocational rehabilitation. These programs carry no provision for participation of established State and local governments, and leave the way clear for the Federal Government, by direct intervention, to support, direct, and finance various types of activities which neither the State nor the community may approve.

In almost every respect they duplicate or overlap programs already in operation at the Federal and/or State level.

TITLE III

Title III of this bill is concerned with poverty in the rural areas where it is proposed first, to make gifts of up to $1,500 cash to poor farm families; second, to make loans of up to $2,500 to the same group to enable them to buy seed, livestock, machinery, or to start a farm business; third, and get this—to make loans to nonprofit corporations to buy up rural property, develop it, and sell it back at a discount to selected farmers in family size plots.

Bureaucrats would call the signals, and taxpayers would cover the losses in this

L.B.J.-style land reform. One guess where the idea originated.

The remaining titles of the bill provide loans for the establishment of new businesses designed to employ the unemployed and members of low-income families; provide funds for experimental projects to help unemployed fathers obtain employment.

Finally, the bill authorizes the commander in chief to set up the volunteers for America—a Domestic Peace Corps to embark on community action programs, to consult with Indians, migrant workers, and similar groups.

Mr. Speaker, the press agents and the tub thumpers who are pushing this political poverty cart would have the world believe that poverty is their own private discovery; that the U.S. Congress, the State governments, the local governments, and all past American Presidents have gone through life blissfully unaware that the problem of poverty ever existed and have not turned a hand to meet its challenge.

Nowhere is mention made of the fact that existing Federal programs which deal with poverty carry appropriations in the amount of almost $9 billion annually. And this $9 billion does not, lest we become confused, include any expenditures made for social security benefits or for unemployment compensation. If these were included, the total would be about $40 billion per year.

Now when one is exposed to the description of all the things this poverty package is designed to accomplish, one quite naturally regards it as a big project—a truly Texan undertaking. And for a Texan undertaking one would also expect a Texas budget. But no, it is all going to be done on a Rhode Island budget—less than $1 billion. Now there is some real mythology.

This Landrum-Powell poverty package proceeds on the theory that every American family which does not have a cash income of more than $3,000 per year is poverty stricken. This works out to about 35 million Americans so situated. Now if you take the $965 million that the poverty plotters say will do the job, that divides out to $27.57 for each poverty stricken person per year. Who is kidding whom?

This proposal speaks solely about the first year only. During the parade of administration witnesses, various questions were asked about the probable costs of this program for the second year, or the third year, or any year beyond. On most other questions they were brimful of information. Here the questions were met with the syntax of silence, the candor of clams.

When the hearings on this so-called poverty bill were announced, May 1 was announced as the deadline for bringing it to the floor for action.

In a frantic effort to meet this deadline, testimony of witnesses was discouraged, afternoon and evening sessions were held, and at the conclusion of the public hearings, it was announced that the Poverty Subcommittee would meet the second day at 10 a.m. to approve the bill and the full committee would meet at 10:30 the very same day to give it final committee blessing and send it to the House.

But something happened. The Democrats who for a period of 3 weeks had sung the public praise of this bill suddenly found themselves in disagreement. Apparently some of them actually read what was in it. The Johnson poverty express had jumped the tracks.

The Committee on Agriculture, concerned over strange provisions of title III, initiated its own hearings.

Those of us on the Education and Labor Committee are advised that the Republicans are to be locked out of further deliberations until the Democrats have worked out a compromise and close ranks. Best available information indicates the compromise will be presented to the Republicans on a take-it-or-leave-it basis.

In all the wordy discussions of this so-called poverty package, there is no reference to responsibility, no encouragement for effort, no directive for determination. But what about those millions of Americans who are making their own way, who are working willingly at whatever tasks may come to hand to stay solvent and move ahead? They will be called upon to pay for this purely political proposal, and they are entitled to know what the cost of this program will be to them this year, next year, and every year thereafter.

We, in America, have always prided ourselves on the fact that this is the land of opportunity. That those with the will to achieve can achieve.

We have always aided and nurtured the oppressed and the downtrodden. But we have never, and we should never, deprive any man of need—indeed the obligation—to achieve by his own efforts. A program which makes idleness attractive will beget idleness.

A program which preempts local responsibility will destroy local responsibility. A program which undermines community and State governments will supplant community and State governments.

The concept of the all-pervading, all-powerful Central Government must be resisted by each of us in the name of survival, for if this power is not contained, neither we nor the free institutions we have created will survive.

If President Johnson really wants to do something new and effective in the area of combating poverty, he might well turn on the White House lights and look carefully and critically at the $40 billion now being spent to combat poverty.

If these United States are actually as poverty stricken as the President is telling the world, the $40 billion antipoverty effort now underway is missing its target, but good.

Instead of establishing a new layer of the same old programs, past and present, let us find out what is wrong with the expensive programs already in motion and redirect them.

Surely the President can do better than to offer a war on poverty so thin it will not even pay a respectable sales tax on the programs already in being, so transparent politically that it was promoted directly by the Democratic National Committee, and so harmful internationally that it projects to the world a false image of America as a place of economic squalor.

The clear political motivation was clearly reflected in the May 1 issue of the Wall Street Journal, which quoted an unnamed Democratic member of the Education and Labor Committee as saying:

> We want a Lyndon Johnson bill.

Let us be realistic. This is presidential election year, and the President wants a poverty program he can call his own. There is a way to satisfy the President's political appetite and still be merciful to America's long-suffering taxpayers.

It is easy.

All we need to do is pass a bill imprinting the "L.B.J. brand" on all existing Federal programs which are aimed at meeting some aspect of poverty.

Here are the major items:

The public works acceleration program would become the Johnson public works acceleration program to combat poverty. It is already budgeted at $214.2 million.

The cooperative extension—Smith-Lever Act—would become the Johnson cooperative extension program to combat poverty. Is is already budgeted at $39.8 million.

The agricultural research—Hatch Act—program would become the Johnson agricultural research program to combat poverty. It is already budgeted at $39.8 million.

The Farmer Cooperative Service would become the Johnson Farmer Cooperative Service To Combat Poverty. It is already budgeted at $1.1 million.

The Economic Research Service would become the Johnson Economic Research Service To Combat Poverty. It is already budgeted at $6.3 million.

The special milk program would become the Johnson special milk program to combat poverty. It is already budgeted at $99.8 million.

The school lunch program would become the Johnson school lunch program to combat poverty. It is already budgeted at $374.5 million.

The food stamp plan would become the Johnson food stamp plan to combat poverty. It is already budgeted at $51.1 million.

The direct distribution program—surplus foods—would become the Johnson direct distribution program to combat poverty. It is already budgeted at $204.4 million.

The Farmers Home Administration rural housing grants and loans program would become the Johnson rural housing grants and loans programs to combat poverty. It is already budgeted at $23.1 million.

The rural renewal loan program would become the Johnson rural renewal loans program to combat poverty. It is already budgeted at $2.1 million.

The rural areas development coordination program would become the Johnson rural areas development coordination program to combat poverty. It is already budgeted at $100,000.

The Farmers Home Administration direct loan program would become the

Johnson direct loan program to combat poverty. It is already budgeted at $327.5 million.

The rental housing for elderly program would become the Johnson rental housing for elderly program to combat poverty. It is already budgeted at $5 million.

The Area Redevelopment Administration program would become the Johnson Area Redevelopment Administration program to combat poverty. It is already budgeted at $222.5 million.

The vocational education program would become the Johnson vocational education program to combat poverty. It is already budgeted at $190.4 million.

The National Defense Education Act student loan program would become the Johnson National Defense Education Act student loan program to combat poverty. It is already budgeted at $135 million.

The National Defense Education Act school equipment program would become the Johnson National Defense Education Act school equipment program to combat poverty. It is already budgeted at $62 million.

The National Defense Education Act guidance program would become the Johnson National Defense Education Act guidance program to combat poverty. It is already budgeted at $24.7 million.

The National Defense Education Act area vocational-technical program would become the Johnson National Defense Education Act area vocational-technical program to combat poverty. It is already budgeted at $15 million.

The cooperative research and demonstration program would become the Johnson cooperative research and demonstration program to combat poverty. It is already budgeted at $17 million.

The education of handicapped children program would become the Johnson education of handicapped children program to combat poverty. It is already budgeted at $16.5 million.

The vocational rehabilitation grants to States program would become the Johnson vocational rehabilitation grants to States program to combat poverty. It is already budgeted at $100.1 million.

The vocational rehabilitation research and training program would become the Johnson vocational rehabilitation research and training program to combat poverty. It is already budgeted at $40.6 million.

The chronic diseases and health of the aged program would become the Johnson chronic diseases and health of the aged program to combat poverty. It is already budgeted at $53.7 million.

The communicable diseases program would become the Johnson communicable diseases program to combat poverty. It is already budgeted at $30 million.

The community health practice program would become the Johnson community health practice program to combat poverty. It is already budgeted at $22.6 million.

The hospital construction program would become the Johnson hospital construction program to combat poverty. It is already budgeted at $270 million.

The environmental engineering and sanitation program would become the Johnson environmental engineering and sanitation program to combat poverty. It is already budgeted at $9.2 million.

The Indian health activities program would become the Johnson Indian health activities program to combat poverty. It is already budgeted at $62.2 million.

The public assistance grants to States program would become the Johnson public assistance grants to States program to combat poverty. It is already budgeted at $2,739.4 million.

The public assistance administration, services and training program would become the Johnson public assistance administration, services and training program to combat poverty. It is already budgeted at $262.6 million.

The Bureau of Family Services program would become the Johnson Bureau of Family Services program to combat poverty. It is already budgeted at $5.9 million.

The maternal and child welfare program would become the Johnson maternal and child welfare program to combat poverty. It is already budgeted at $131.8 million.

The Office of Aging program would become the Johnson Office of Aging program to combat poverty. It is already budgeted at $600,000.

The cooperative research for social security program would become the Johnson cooperative research for social security program to combat poverty. It is already budgeted at $1.8 million.

The Indian education and welfare program would become the Johnson Indian education and welfare program to combat poverty. It is already budgeted at $96.9 million.

The Indian resources management program would become the Johnson Indian resources management program to combat poverty. It is already budgeted at $40.7 million.

The Indian construction and irrigation program would become the Johnson Indian construction and irrigation program to combat poverty. It is already budgeted at $51.1 million.

The manpower training and development program would become the Johnson manpower training and development program to combat poverty. It is already budgeted at $411 million.

The area redevelopment training program would become the Johnson area redevelopment training program to combat poverty. It is already budgeted at $9 million.

The apprentice training program would become the Johnson apprentice training program to combat poverty. It is already budgeted at $5.5 million.

The unemployment insurance service and U.S. Employment Service would become the Johnson unemployment insurance service and U.S. Employment Service program to combat poverty. It is already budgeted at $13.4 million.

The low-income housing demonstration programs would become the Johnson low-income housing demonstration programs to combat poverty. It is already budgeted at $5 million.

The public facility loans program would become the Johnson public facility loans program to combat poverty. It is already budgeted at $110 million.

The urban renewal grants program would become the Johnson urban renewal grants program to combat poverty. It is already budgeted at $1,320.3 million.

The housing for elderly loan fund program would become the Johnson housing for elderly loan fund program to combat poverty. It is already budgeted at $100 million.

The low-rent public housing grants program would become the Johnson low-rent public housing grants program to combat poverty. It is already budgeted at $230.6 million.

The low-rent public housing development loans program would become the Johnson low-rent public housing development loans program to combat poverty. It is already budgeted at $399 million.

The business loans program would become the Johnson business loans program to combat poverty. It is already budgeted at $197.1 million.

The investment and development company assistance; debenture purchase and loans program would become the Johnson investment and development company assistance; debenture purchase and loans program to combat poverty. It is already budgeted at $105.3 million.

All this comes to the grand total of $8,738,600,000 already budgeted for fiscal 1965.

Simply by changing the names the President could proudly refer to his $8.7 billion program to combat poverty. If the dollar total is an accurate measure of the political sex appeal of a program, then this name-change approach should yield the President more than eight times the votes next November, compared with the vote-pulling power of his billion-dollar package now before the Education and Labor Committee.

If $8.7 billion does not sound fancy enough, we could rename the social security, unemployment compensation, and other similar programs. This would bring the new total to $40 billion.

This indeed would be a Texas-size program to combat poverty, and the beauty of it is the only extra burden of all this—beyond the amounts already budgeted—would be the trifling cost of routing the name-change bill through Congress.

Facts About Antitrust Myths

EXTENSION OF REMARKS

OF

HON. EMANUEL CELLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 5, 1964

Mr. CELLER. Mr. Speaker, in each of the last 2 years anti-antitrust articles have appeared in Fortune magazine. Whether we will be favored with another article in the same vein this year, I do not know. After considering the articles at some length I have concluded that an extended comment, at least as to the latter of those two articles, should be made. To echo one whose years and attainments exceed mine, I have not been chairman of the Antitrust Subcommittee of the

House Committee on the Judiciary these many years merely to preside at the liquidation of our valuable antitrust laws.

On reading the article by Professors Bork and Bowman in the December 1963 issue of Fortune, I could only conclude that the Yale Law School of the Thurman Arnold era had gone downhill rapidly. Out of their compound of errors of fact and logic Fortune has found that they have demonstrated that "antitrust has been perverted from preserving competition to preserving competitors from their more efficient rivals." Fortune suggests, therefore, that businessmen urge legislative redress.

Last year Fortune published an article mounting an extreme attack upon the antitrust laws and antitrust policy. In a complementary editorial of much more moderation, Fortune invited debate. The debate in Fortune thus far appears to have been on one side.

One wonders whether the editors of Fortune realize that the authors of the article they so warmly espouse appear to endorse an expanding area of per se violation rules. Is this what Fortune and business desire?

I can certainly agree with the authors' appreciation of the value of per se rules in price-fixing cases. Their general support for competition is also welcome. From there on the area of my disagreement with the writers far exceeds the area of agreement.

Professors Bork and Bowman say that "practices conventionally labeled 'exclusionary'—notably, price discrimination, vertical mergers, exclusive dealing contracts, and the like—appeared to be either competitive tactics equally available to all firms or means of maximizing the returns from a market position already had." This is like saying that the rich man and the poor man are equally free to go to the Riviera or to sleep on a park bench.

The authors pose the example of firm X, which already has 10 percent of a market, signing up on full requirements contracts an additional 10 percent. They suggest that this is meaningless because if this 20 percent entered into such arrangement because of X's greater market acceptance, X's market share would have been enlarged anyway. To this one might answer that greater market acceptance might have taken X only up to 10 percent of the market or a little beyond, and that to obtain the 20 percent it might have been thought necessary to obtain exclusive contracts.

The authors suggest, as another possible reason, that X might have offered an extra inducement. But, they say such extra inducement was available to its competitors. Here again the well-heeled and less well-heeled are deemed to be equally well situated.

They admit the possibility of full line forcing and the imposition of higher costs upon a competitor, but this possibility is summarily disposed of as unlikely or rare. Regarding the use of reciprocity to bring about exclusionary practices, the professors are silent.

From this prefatory rationale we are led to the myth theory of exclusionary practices. The authors aver that "a moment's thought indicates moreover, that the notion of exclusionary practices is not merely theoretically weak but is, for such a widely accepted idea, remarkably lacking in factual support. Has anybody ever seen a firm gain a monopoly or anything like one through the use of requirements contracts? Or through price discrimination? One may begin to suspect that antitrust is less a science than an elaborate mythology, that it has operated for years on hearsay and legends rather than on reality."

The myth theory of antitrust has, in recent years, been advanced on a number of fronts. Thus, under the myth theory, corporations and businessmen plead nolo contendere not because they have violated the antitrust laws, but just because they want the Government to go away. Under the myth theory of antitrust every case lost by the Antitrust Division is proof that it is attempting to enforce the antitrust laws improperly, while the great preponderance of antitrust cases in which the Government obtains a judgment is proof of nothing.

But it has remained for two Yale professors to bring the myth theory to exclusionary practices, going back as far as the 1911 Standard Oil case. I regard such charge as extremely serious. I have, therefore, in an appendix to this article, collected a number of instances of exclusionary practices. There are many more such examples. From these examples one may judge whether it has been the influence of Bullfinch's "Mythology" that has shaped antitrust.

Bork and Bowman made a direct attack upon the incipiency theory of attacking the poison before it has taken effect. They say that "the difficulty with stopping a trend toward a more concentrated condition at a very early stage is that the existence of the trend is prima facie evidence that greater concentration is socially desirable." Under this theory one might rationalize that a trend toward juvenile delinquency is desirable.

One might agree that at the incipiency stage one may be uncertain as to what may happen in the future, but prima facie certainty of the desirability of a final result, because there is a trend toward it, is not supported by experience.

But, say the professors, such trend indicates there are economies of scale which make larger size more efficient. I submit that this is an arrant non sequitur:

First. It is just as likely that a merger trend may be to eliminate competitors or price cutters, to stabilize an industry, to acquire captive outlets, or to obtain capital gains benefits;

Second. As I have noted in an article, in the December 1963 issue of the Antitrust Bulletin, large size is not an assurance of efficiency. Some of our large companies have been notoriously lazy and inefficient. In others, their very size mitigates against optimum efficiency. What is one to think of a company which, in order to become more efficient, needs to acquire other companies?

In the General Electric Co. case—see appendix—the Court pointed out that the dominating position of that company gave it the power of setting the standard of efficiency of incandescent lamps for the entire industry and thus determine what should be their length of life.

Does integration of the small into the large insure efficiency? The independent retailer, prior to his merger, may have bought all or most of his needs from other manufacturers. This may have been because he preferred their prices, their service, their styles, or their quality. Does it make for efficiency or inure to the benefit of the public if he becomes a captive to a manufacturer who wants to make sure his product comprises most of the wares of the retail outlet?

This is not an academic problem. The Government has brought a number of antitrust cases against gasoline companies which prevented their dealers from purchasing auxiliary supplies from other companies. It is worth pointing out that Bethlehem Steel Co., prevented from acquiring Youngstown Steel Co. because of an antimerger suit, has announced plans of building a new modern plant.

Professors Bork and Bowman object to testimony that competitors have been, or are likely to be, injured by a merger or other antitrust action. They argue that it is with competition, not competitors, with which the antirust laws are concerned. They do not suggest what better proof of adverse effect on competition may be available than adverse effect on competitors. Seemingly, in the wonderful world of Nod, in which the professors dwell, there may be competition without competitors.

It would be unusual if a conspiracy to restrain trade or to monopolize, was not aimed at particular competitors. In the abstract the antitrust laws may generally be concerned with competition; in the concrete they can hardly avoid being indifferent to what happens to competitors. The two concerns will often coincide. And in the case of mergers, since the test is probability of substantially lessening of competition or tendency to monopolize, it would ordinarily take more than an isolated instance of injury to a competitor to come within that test, but once a number of competitors are injured, the likelihood of a substantial lessening of competition becomes more real.

The professors argue, seemingly, that it should make no difference how the inefficient businessman is eliminated, whether because of natural forces, merger, or because of unfair tactics. As to the latter, they would use the myth theory. As to a merger, they would say that mergers are part of the natural business process—Adam Smith said this was also true of price fixing. The presence of even an inefficient competitor as a brake on monopolistic pricing is not thought worthy of mention. And since inefficiency may be a reflection of poor management, the inefficient competitor of today may be the efficient competitor of tomorrow—not so if it has been merged.

Seemingly, moreover, a merged company is ipso facto considered to be less efficient than the merging company. To the writers to be of small size or unintegrated is to be inefficient. Actually often the contrary is true. A reason

not infrequently given for acquiring a smaller company is to acquire its know-how which the larger company was unable to match.

As to the attitude of Congress, I would call the attention of the authors to the legislative history of the Celler-Kefauver Act which made it clear that the Congress was concerned over the growth of oligopoly through the merger route. I ought to know; I was coauthor of that act.

The writers return to their inefficiency theme by asserting that the antitrust laws are being used to subsidize the inefficient. Except for the alleged case of the Brown Shoe merger—which I shall come to later—they give no example of such subsidization. I might point out that law enforcement generally "subsidizes" those protected by its enforcement. It does so on the theory that there are recognized wrongs and recognized rights. The fact that the law may protect the embezzler, as well as the saint, from the thug may disturb the professors. I do not want a system of law under which a man's right to the protection of the law may depend upon someone's estimation of whether he is good or bad.

A final word on this question of efficiency. One might well shudder at the legal battles which might ensue over an issue as to comparative efficiency.

Professors Bork and Bowman charge that the Government's attack on conglomerate mergers is merely an attack upon the competitive advantage of enhanced efficiency. They say, "any law that makes the creation of efficiency the touchstone of illegality can only tend to impoverish us as a nation." This argument assumes many things. It assumes that the greater advertising power arising from greater capital resources is a mark of efficiency which will inure to the benefit of the consumer in better products and cheaper products. It assumes that a company operating as a part of an integrated complex, will be operated efficiently. It assumes that such merger will encourage other independent companies to become more efficient rather than to become more interested in merging into larger companies. It assumes that the likelihood of a substantial lessening of competition or tendency to monopolize—the requirements of the Merger Act—is more apt to promote efficiency and to be more beneficial to the public than the absence of such likelihood.

I note that, ironically enough, in the Brown Shoe Company case, Brown argued in the Supreme Court that examples of unsuccessful integrated shoe companies demonstrated that vertical integration in the shoe industry had no significance.

In the General Electric case referred to in the appendix, the Court noted, with respect to that large integrated company:

> Only when General Electric was caught in a draft of competition to satisfy the demand of the market created by an independent manufacturer of the three way lamp base did it activate itself to produce a similar type base of which its policy had heretofore discouraged the manufacture.

The authors say that the Supreme Court "has with increasing frequency taken extreme anticompetitive positions." To those of us who have had antitrust policy and antitrust enforcement at heart, this is an incredible statement. It will, I wager, create equal amazement among businessmen and the antitrust bar. It has been the Supreme Court which, time and time again, has upheld and promoted antitrust policy and antitrust enforcement when others have faltered badly.

Congress and such antitrust stalwarts as the late Senator Kefauver are taken to task as foes of the free market and as proponents of less competition. Since I am not mentioned by name I shall merely note a few facts. The Civil Investigative Demand Act of 1962 is not referred to by the authors, nor is a pending bill, introduced by this writer, to strengthen section 5 of the Clayton Act. Since the writers have mentioned the quality stabilization bill, I might note that I know Senator Kefauver was opposed to it, and I have been one of its most active opponents.

I consider the authors' generalized remarks about the personnel of the Antitrust Division and the Federal Trade Commission grossly inaccurate and grossly unfair. I have known many of them, some have been members of my staff. In most instances their balance of perspective is in sharp contrast to the absence of such balance evidenced in the authors' article.

Professors Bork and Bowman reserve their heaviest artillery for the Brown Shoe Co. case. To hear them tell it, the Department of Justice was wrong in bringing the case, the district court was wrong in its adjudication of violation, and the nine justices of the Supreme Court, who also found the law violated, were woefully in error. On reading what the professors have to say about that case, I find it hard to believe that they were familiar with the Brown Shoe record.

In that merger case, Brown Shoe Co. acquired the Kinney Shoe Co. Let us see what Professors Bork and Bowman say the facts were and compare what they say with the actual facts.

BORK AND BOWMAN

Brown was first primarily, a shoe manufacturer and Kinney was primarily a retailer; second, Brown had 4 percent and Kinney had 0.5 percent of the Nation's shoe output; third, Kinney had 1.2 percent of total national retail shoe sales by dollar volume and together they had 2.3 percent of total retail shoe outlets.

Say Messrs. Bork and Bowman:

Fourth:

> With over 800 shoe manufacturers, the industry was as close to pure competition as is possible outside a classroom model.

Fifth, the Court said the share of the market foreclosed when taken together with the trend toward vertical integration and Brown's avowed policy of forcing its own shoes upon its retail subsidiaries spelled out illegality. The trend was seen in the fact that a number of manufacturers had acquired retailing chains. Thirteen largest shoe manufacturers operated 21 percent of the census shoestores. Accepting that figure for the moment, it is impossible to see any harm to competition, since there would be room for over 60 manufacturers of equal size to integrate to the same extent; sixth, moreover, census shoe stores do not include such key outlets as department and clothing stores; seventh, even if there was complete integration, any new manufacturer could find or create outlets any time he chose. The Court's cited trend toward vertical integration was thus impossible to visualize as a threat to competition.

Eighth:

> Brown's avowed policy of forcing its own shoes upon its retail subsidiaries turn out, upon inspection of the Court's footnotes, to spring from the testimony of its president that Brown's motive in making the deal was to get distribution in a range of prices it was not covering, and also, as Kinney moved into stores in higher income neighborhoods and needed to upgrade and add new lines * * * it would give us an opportunity, we hoped, to be able to sell them in that category.

Say the authors:

> The empirical evidence of coercion was no more impressive than this "avowal."

At the time of the merger, Kinney bought no shoes from Brown; 2 years later Brown was supplying 7.9 percent of Kinney's needs. Brown's sales to others had gone as high as 35 percent and in one case 50 percent of requirements. So, say Bork and Bowman:

> The "trend toward vertical integration" and the "avowed policy of forcing its own shoes upon its retail subsidiaries" was thus almost entirely imaginary.

Ninth. Even if accepted at face value, since Kinney supplied about 20 percent of its retail requirements, less than 1 percent, in fact less than one-tenth of 1 percent of the Nation's total retail sales had been foreclosed by the merger. The Court reached an incredible result on the vertical aspect of the case.

Tenth. The holding of the Court on the horizontal aspects was based on similar reasoning. The Court found creation of market shares as low as 5 percent in any city illegal because of fear of monopoly. Twenty firms in an industry is not oligopoly.

Eleventh. In view of ease of entry into shoe retailing, Supreme Court's fear of oligopoly is simply incomprehensible.

Twelfth. The Court was clearly wrong in suggesting that the merger was bad because Kinney's ability to get shoes cheaper from Brown would give it an advantage over other retailers.

Thirteenth. The Court's statement that the merger statute was designed to protect competition but not competitors is utterly inconsistent with its further statement that Congress desired to promote competition through the protection of "viable, small, locally owned businesses."

Fourteenth. The Brown Shoe-Kinney merger did not even remotely threaten competition.

THE FACTS

First. Although primarily a manufacturer, Brown was one of the largest shoe retailers in the country. It controlled over 1,320 retail outlets. Kinney was the

12th largest shoe manufacturer in terms of sales. It was the eighth largest in terms of assets.

Second, Brown was the third largest shoe manufacturer by dollar volume, and the fourth largest by volume of production. It produced over 25 million pairs of shoes.

Third and ninth. Kinney operated the largest family-style shoe store chain in the United States. It was a rapidly growing chain, with about 352 stores at the time of the merger, over 400 in 270 cities at the time of the trial, and over 500 when the case reached the Supreme Court. Its retail stores had sales of over $42 million annually. Among shoe sellers, either retailers or manufacturers, or both, it was the eighth largest.

Kinney sold 6.4 million pairs of shoes in 1955, which it purchased from outside sources. This exceeded the production of any of over 95 percent of the shoe manufacturers. A market of such size is one of great desirability for many shoe manufacturers. The record showed that in 1955 there were 66 suppliers of Kinney, each of whose sales to Kinney exceeded $50,000, and only 3 of which were large companies. At least each of five of Kinney's suppliers relied upon Kinney to purchase more than 40 percent of the company's total production in 1955.

Since Kinney did not sell high-priced shoes, it is obvious that even on a nationwide scale its market percentage of the type of shoes it sold was well above 1.2 percent, and as Justice Harlan noted:

> In terms of available markets for independent shoe manufacturers, the percentage of Kinney's purchases must have been substantially larger.

What the professors omitted also was the fact that in 27 cities, Kinney accounted for over 20 percent of all shoe sales; in 58 cities, over 15 percent; in 74 cities, over 13 percent.

I might suggest that even 5 percent of a market might mean the difference between a small manufacturer being able to sell in a particular city or having no outlet there.

It is a matter of common knowledge that at the retail level the most significant economic fact in recent years has been the growth of shopping centers. In such centers chain shoestores are common; independent stores, rare. Kinney had stores in 115 shopping centers in 1958. Kinney has been going into shopping centers, often as the sole store there, a situation not infrequently brought about by Kinney:

> I checked the particular shopping center in Washington, you referred to; your information is correct, that we have a shoe-exclusive there.
>
> We have a number of these exclusives, and try our darndest to get them in every shopping center we are interested in. (Letter of vice president of Kinney.)

One can hardly ignore, as the writers have, the significance of such markets and effect of a Brown-Kinney merger upon their availability to other manufacturers.

Fourth. Of the 800 plus shoe manufacturers in this country, the top four produced approximately 23 percent of the Nation's shoes. The five companies which were 45th to 50th in size, produced 1.4 percent of the industry's production. The fifth largest company produced substantially less than one-half the production of the smallest of the top four.

In terms of value of shipments, the top four had about 30 percent, the next four 6 percent, and the largest 20 companies 45 percent. In 1957 Brown's production of shoes was over 20 times as much as any company among 97 percent of the industry.

The four largest companies had total assets of over one-third of the total assets of all the other companies in the industry. In 1955 the total assets of 916 shoe companies were roughly equivalent to the total assets of 11 companies. The top 4 companies had 171 plants between them, the next 6 had a combined total of only 41, more than half of which were operated by 2 companies.

Now, what about the trend? There has been a constant decrease in the number of shoe manufacturers despite an increase in total production. In 1947, there were 1,077 manufacturers; in 1954, 970; in 1958, 872. During this same period there was a concomitant decrease in the number of operating shoe plants, but the number operated by the largest four increased by 35 percent—largely through acquisition of other shoe manufacturers. While the position of the smaller manufacturers was deteriorating, the top four from 1947 to 1954 increased their percentage of the value of total shipments by 2 percent.

In 1945 the difference between the volume of sales for the largest shoe firm and the 18th largest was about $139 million. In 1956 the disparity between the volume of the largest and the 11th was over $245 million.

The fact of the matter is that the business is very unevenly distributed. As the trial court commented:

> A few large firms * * * control sizable segments of the business with the balance decided among hundreds of others having minute segments.

Fifth. The authors omit to say that in 1956 six large firms operated 18 percent of the Nation's shoestores.

There was a definite vertical merger trend in the industry. In 1945 the largest company had no retail outlets; by 1956 it had acquired 130. The second largest had 80 retail outlets in 1945, and 526 by 1956. Only a merger suit halted it in that upward progression. Brown had no retail outlets of its own in 1951, but had acquired 845 by 1956. Two of the top six manufacturers had gone from 301 to 842, and 536 to 947 respectively, from 1945 to 1956. Between 1950 and 1956, 9 independent shoestore chains, operating about 1,300 retail stores, became subsidiaries-at-large shoe companies. The record shows other attempts at vertical mergers by the shoe companies. Brown, in the 4 years prior to its merger with Kinney, had been acquiring retail stores on a large scale.

In addition, the large shoe manufacturers were expanding their franchise system by which they controlled many more shoestores.

Moreover, between 1950 and 1956, 7 companies, with 25 shoe plants, were acquired by the 10 companies which operated 20 percent of all shoe manufacturing plants.

The president of Brown noted that "General, Brown, and International acquired the larger companies." It may be noted that when an integrated manufacturer acquires an independent manufacturer, as testified in the Brown Shoe Company case, an independent retailer may find his sources of supply drying up, since small manufacturers vary widely in the type and quality of shoe they make.

To talk of room for 60 integrated shoe companies of equal size in the context of an industry, marked by inequality of size, hardly measures up to responsible argument.

Sixth. There was no evidence that clothing stores represent an important shoe market. As to department stores, the evidence showed that, commonly, shoe selling in department stores was on a leasing arrangement. And the big manufacturers were very prominent lessees. Thus, Brown, in 1951, acquired Wohl Shoe Co., the Nation's largest operator of leased shoe departments. Wohl had 250 outlets in department stores.

Seventh and eleventh. That even though the industry might be wholly integrated "any new manufacturers could create or find new outlets anytime he chose," is poppycock. The case is replete with proof that affiliated stores favored their manufacturer affiliate, and that the independent manufacturer found it hard put to obtain any business from the captive stores. There was evidence, moreover, that since large shoe chains have many of their own brand names, they concentrate on manufacturers who will manufacture makeup shoes for them rather than shoe manufacturers who would prefer to promote their identity and independence through their own brand names.

If it were so easy to create new outlets, it is surprising that the major manufacturers were so eager to use mergers as a means to secure such outlets. One wonders also why so many shoe manufacturers have departed from the scene.

I have already mentioned the situation of the shopping-center shoe market.

A manufacturer cannot live on the business of one store. He has to have access to a number of them. Moreover, the manufacture and the retailing of shoes do not involve the same skills and know-how. The able manufacturer may be a poor retailer, and the cost and risk for a small manufacturer to go into retailing in competition with the existing giants is a real one.

Eighth. Even if Brown's alleged forcing policy rested upon its president's letter and upon the portion of Kinney's purchases Brown took over after merger, these would seem to be ample proof of the existence of such policy. But there was other evidence omitted by the professors.

The same president, in another memorandum, stated:

> One of our principal objectives in acquiring retail stores is to protect and guarantee distribution of our products in areas where

independent retailers could not give our brands adequate distribution because of their affiliations with other branded manufacturers.

Justice Harlan noted that—

The result of Brown's earlier acquisition of two retail chains, was in each instance a substantial increase in their Brown shoe purchases.

For instance, Wohl's purchases from Brown jumped from 12.8 percent before merger to over 33 percent after merger.

There was evidence that when other manufacturers acquired retail stores, such outlets curtailed their purchases from other manufacturers and took more from their parent. Thus, an independent manufacturer testified:

Question. Have you ever suffered any loss of business as a result of acquisition from any other corporation?

Answer. Yes, sir.

Question. Can you state an example of this?

Answer. Well, Bon Marche in Pensacola, Fla., is an account; we had an order of 427 pairs on hand when that was acquired by International Shoe Co. and the order was canceled and we since have sold them nothing.

Brown entered into contracts with a number of its franchised dealers which provided:

I will (1) concentrate my business within the grades and price lines of shoes covered by Brown Shoe Co. franchises, and will have no lines conflicting with the Brown Shoe Co. brands.

There was considerable other proof of forcing by Brown.

Tenth. There was proof that Brown and Kinney were in active competition with one another.

On the retail level the acquisition of Kinney moved Brown into second place in the number of owned and operated stores, and, including other stores controlled by Brown, gave the latter about 7.2 percent of the total. By May 1958, Brown with Kenney controlled about 1,840 retail shoe outlets.

The combination of Brown and Kinney gave the former control of over 40 percent of shoe sales in two cities, in five over 30 percent, and in seven from 25 to 30 percent. In 32 cities the combined share of Brown and Kinney sales exceeded 20 percent, and this was true of children's shoes in 31 cities. These figures, moreover, did not include sales of Brown shoes in these cities by retailers not controlled by Brown. Such sales significantly enlarged the extent of the local market occupied by Brown and Kinney shoe sales.

Twelfth. The proof shows that in some instances integrated companies charged less to their retailing subsidiaries than to their nonaffiliated retail customers.

The possible ability of Kinney to get shoes cheaper from Brown might not come from increased efficiency at all. It might be a matter of bookkeeping. In the long run Kinney might lose out by not having the benefit of a number of competitive manufacturers bidding for its trade. It might lose other retailing advantages which would offset lower prices from Brown.

Thirteenth and fourteenth. These points I have already answered. I find it utterly incomprehensible for anyone to say of the Brown Shoe merger that it did not even remotely threaten competition.

CONCLUSION

To me the basic flaw in the professors' thinking is apparent in the complete absence in their article of an awareness of an important aspect of our antitrust laws. On the basis of experience, these laws assume that all too often monopoly or oligopoly power will not be exercised to promote efficiency and low prices, but will be used either inefficiently or to maximize profits by high prices. I have noted some such examples in the appendix to this article. Moreover, such power has consequences in terms of choice of employment, deterrent to new entrees in the field, and political power that involve grave social and economic considerations.

I certainly would not want to eliminate big business from the American scene. A large-scale landscape without some mountain peaks would be dull indeed. They can add much to the welfare of all of us. But I think there is room for, and desirable that there be, enterprises of moderate and small size. I believe that the latter have survived, and have been of great benefit to our competitive system, largely through the policy and enforcement of our antitrust laws.

To the professors I would say: When you use a shotgun, make sure the target is there.

APPENDIX

A. ILLUSTRATIONS OF EXCLUSIONARY PRACTICES

First. *Glass Containers—Hartford-Empire Co.* (323 U.S. 386): A footnote to the Fortune article advises that Professor Bowman was with the Antitrust Division during most of the years 1938 to 1946. It was during that period that the Division brought a landmark antitrust case, known as the Hartford-Empire case. That case involved glass container and glassmaking machinery industries. There was a far-reaching conspiracy between leading glass makers and Hartford-Empire, a patent holding company, to restrict production, restrict entry, and competition. The case abounded in exclusionary practices. But, perhaps the best way to combat a myth is with actual documents.

Thus the secretary of Hartford-Empire wrote in 1928:

(3) We began our commercial expansion in 1917 when our first feeders were put in production. It was at once apparent that if we put out these machines broadcast, without restriction, we would disorganize the whole industry * * *. In fact, our first group of licensees said so expressly and urged us to take measures to prevent such a result.

(4) Consequently, we adopted the policy which we have followed ever since of restricted licensing. That is to say:

(a) We licensed the machines only to selected manufacturers of the better type, refusing many licensees whom we thought would be price cutters, and

(b) We restricted their fields of manufacture, in each case, to certain specific articles, with the idea of preventing too much competition.

(c) In order to retain more complete control of the situation, we retained title to the machines, and simply leased them for a definite period of years, usually 8 or 10 years, with the privilege of renewal of a smaller additional term.

* * * * *

(6) * * * We felt it to be to our best interests, as well as for the best interest of the whole industry that we should use our influence to steady the industry as much as possible, with a long-distance view toward its general prosperity. The men at the head of our concern took this long-distance view deliberately and have ever since maintained it.

Some 7 years after the Standard Oil case Hartford purchased the Hitchcock patent—exhibit 1852:

(a) Because of the probable value to us of the Hitchcock rights in suppressing other feeders, particularly that of Tucker & Reeves; (b) to prevent Hitchcock's rights from being acquired by our competitors, and (c) because of the probability that any drawback feeder we might use would infringe the Hitchcock claims.

* * * * *

Corning's patent counsel, V. M. Dorsey, reported to Corning in October 1920 (Ex. 677): "the whole bulb situation would be strengthened if a monopoly could be gotten into one hand, of the flowing field, with right to take bulb licenses from the owner of such monopoly, and that unless the Hartford-Fairmont Co. succeeded in doing this, as they expected to do, there would be a purely competitive field * * *."

In 1921 an officer of Hartford warned his board of directors—exhibit 1889—that—

The Howard feeder was sufficiently good to upset trade conditions in general, inasmuch as this feeder when operated by the small glass concerns would permit the small concerns to continue to exist and at the same time quote prices which would be detrimental to the general trade.

Hartford met this threat by acquiring control of Howard.

The general manager of Owens-Illinois, the largest glass container manufacturer, in a conversation with an officer of Hartford, said—exhibit 26:

There should be in the glass industry some concern like Owens in a sufficiently strong position practically to force a stable price policy upon all important producers; that if Owens, by the plan as above suggested, had the free use of its own suction feed and the free use of the gob feed it could then go to any other producer who threatened to cut prices and unstabilize the market, and inform him that such a policy was detrimental, but that if the outsider persisted in doing so Owens has a sufficient margin, by reason of its free use of both devices, so that if necessary it could come out on top in a price war and still make money.

According to a contemporaneous memorandum by Carter of Owens, in November 1923, two leading executives of Owens believed—exhibit 611:

The advantage of having the feeder field under some patent control is so great, from a business standpoint, that this company would rather see such control in the hands of Hartford than to have the field open.

And the Court found from the evidence that the purposes of the 1924 agreement between Owens and Hartford were:

(1) Stabilize the prices of glassware.

(2) Restrict its production.

(3) Exclude outsiders from the glassware industry (exhibit 23).

(4) Exclude users of bottles from the glassware industry (exhibit 55).

(5) Effect a monopoly of all patents relating to glassmaking machinery and the issuance of licenses thereunder.

(6) Eliminate competition of other manufacturers of glassmaking machinery.

(7) Allot the control of the licensing of suction to Owens and the control of the licensing of gob feeding to Hartford and Owens.

(8) Avoid competition in glassware by the adoption of a restricted licensing policy by Hartford.

Owens was given veto power over Hartford's licensing others.

Among the competitors the conspirators tried to put out of business was T.R. & B. Hartford and Owens finally bought out T.R. & B. and the latter's licensees were compelled by Hartford to submit to numerous added restrictions to their licenses.

In 1930 an officer of Hartford explained:

In taking out patents, we have three main purposes:

(a) To cover the actual machines which we are putting out, and prevent duplication of them. * * *

(b) To block the development of machines which might be constructed by others for the same purpose as our machines, using alternative means. * * *

(c) To secure patents on possible improvements of competing machines, so as to "fence in" those and prevent their reaching an improved stage (exhibit 388).

* * * * *

We now have a number of applications which were filed to definitely forestall the development of competing machines by others (exhibit 388).

* * * * *

The district court found (U.F. 194, R. 7319) that in the 3 years 1927, 1928, and 1929, Hartford filed a total of 112 applications for the purpose of "fencing in" and "blocking off." During the same 3 years, it filed only 88 applications for the purpose of obtaining "direct patent protection," that is, for the purpose of affording patent protection to its own commercial machines (exhibit 388).

In 1933, while patent litigation was going on, Safford of Hartford noted:

To Hartford's smaller licensees a breaking down of Hartford's licensing system meant freedom from royalties and ware restrictions, which they considered burdensome. To Hartford's larger licensees the amount of royalties paid meant less.

Their chief worry was the unsettled industry which would inevitably result from a breaking down of Hartford's system of limited and restricted licenses. This system had offered very substantial protection in times past to certain restricted fields, and had prevented numerous manufacturers from competing on a par with Hartford's licensees (exhibit 1772 * * *).

Automatic glassmaking machinery consisted primarily of a feeder, a former, and a lehr. Hartford was early in the feeder field but later decided to go into the forming field as well. In connection with the acquisition of a company having former machinery patent applications, an officer of Hartford wrote:

If some kind of control of forming machines can be obtained, it will * * * practically put us into a position where any bottle manufacturer will be forced to come to us for his equipment (exhibit 295).

The Lynch Corp. was an important factor in the forming field. In 1933 negotiations for a deal between Hartford and Lynch were had in which it was noted that:

(1) All parties agree that it is desirable to corner the forming machine business.

(2) The Lynch Corp. is willing to cooperate if they can get a reasonable break assuring them of a future volume of business (exhibit H–6048).

An official of Hartford wrote of this plan:

Reasons for the plan are as follows:

(1) It will prevent extra capacity being put into the glass industry.

(2) Lynch being unwilling to furnish formers it will take away from them [nonlicensees] the incentive to build feeders.

(3) It will also have the effect of taking from other persons the incentive to build feeders that might be used with Lynch machines.

* * * * *

(6) The former patent situation will be considerably stabilized.

Reasons against the plan:

(1) It is very definitely an extension of our feeder monopoly by means of our patent control as opposed to the commercial situation.

* * * * *

We are trying to bolster up a feeder situation, not as strong as we should like, with a spurious forming machine situation (exhibit 320).

Several nonlicensees felt compelled to accept Hartford feeder licenses, in part because they desired to secure Lynch forming machines. They, in common with other Hartford feeder licensees who signed "Former Licenses," could not thereafter use any but Hartford feeders with the Lynch forming machines without subjecting themselves to the payment of the same royalties to Hartford for the use of forming machines that they would have to pay for the feeder and forming machine licenses together.

The district court found that one of the purposes and effects of the forming machine agreement was to cause nonlicensees of Hartford's feeders to accept such feeder licenses and thereby to bolster Hartford's monopoly of feeders. It found that the agreement also had the purpose and effect of giving Hartford complete control over the distribution and use of all narrow-neck forming machines and substantially all efficient fully automatic wide-mouth forming machines and of preventing new capital and additional concerns from entering the glassware industry.

In December 1920 Hartford granted the Thatcher Mills Co. exclusive rights to make milk bottles under certain patents, and some 20 years later it still had such rights. A rebate arrangement as to other patented machinery protected its discriminatory position. In 1927 an officer of Hartford noted that "the milk situation is such that it is practically, to all intents and purposes, equivalent to an exclusive license."

Furthermore, every manufacturer initially licensed to produce milk bottles on Hartford feeders after 1923, except Owens, Liberty, and Winslow (* * * [later] acquired by Owens), was restricted to a specified quota of bottles or was limited in the area in which they could be sold.

On August 2, 1932, W. E. Levis of Owens wrote to R. H. Levis (Ex. 783 * * *): "With the plans we now have, there is certain to be a curtailment of the promiscuous manufacture of milk bottles on nonlicensed feeders, which will result in our company's and the Thatcher Co.'s securing a greater proportion of the available milk bottle business. This should stabilize the price and increase the earnings of the Thatcher Co."

When Thatcher acquired price-cutter Peerless, an officer of Hartford wrote to an officer of Corning in 1934:

The purchase of the Peerless plant was an advantage to the industry and did relieve us of a troublesome situation.

* * * * *

(5) We have not been legally prohibited from licensing single feeders for milk bottles to anybody we saw fit, but during all these years we have protected Thatcher and Berney Bond and Buck by refusing to grant additional licenses for milks. This action on our part has stabilized the price situation and has been worth hundreds of thousands of dollars to Thatcher. It would have been a very simple thing for us to decentralize the production of milks throughout the country (exhibit 246).

In 1932 Hartford informed Ball, of fruit-jar fame, that—

Hartford was continually declining new business in the belief that an association with your company would be more beneficial to us than to take our fruit-jar rights and license a number of concerns. The easiest thing we could do would be to license Kerr, Brockway, Underwood [Knox], Monaca, and five or six more concerns in the East and South, as well as on the coast * * *.

On the other hand, it seems rather a pity to disrupt the existing general fruit-jar situation which, barring a few soft points, is pretty well in hand and affords a reasonable margin of profit (exhibit 181).

In 1933, Brockway asked Hartford for the right to manufacture fruit jars, but "Hartford was absolutely obdurate, the explanation being made that fruit jars were being reserved for Ball Bros." Thereafter, in 1933, Brockway sold out to Ball. Ball was not anxious to have Owens as an active competitor in the fruit jar field, so a side agreement was entered into between Owens and Hartford restricting the former's production of fruit jars.

In 1930 H. K. Smith wrote of "Hartford's present and long established policy of endeavoring to limit competition between its licensees within reasonable bounds." (Ex. 392).

Exclusionary tactics included fraud upon the Patent Office. Thus, in 1924, patent counsel for Owens in a letter to patent counsel for Hartford stated:

That in his opinion, if we should prove by court testimony what happened at the Hitchcock demonstration at Fairmont, there would be no chance whatever of making an ironclad monopoly on feeders, and that personally, he believed that under such conditions, the Owens Co. could work a plunger feeder, and get away with it, without being held as infringers. He stated, on the other hand, that if we did not disclose the secrets of the Charnel house, he thought we might close up everybody between us (exhibit H–5847).

The "secrets of the Charnel house" were kept secret until the Government instituted its antitrust suit.

Second. Motion pictures: The Schine Theatres case is a classic example of exclusionary practices. Schine was the largest theater circuit, not affiliated with a major producer, in the United States. In 1942 it had approximately 148 motion picture theaters in 76 towns. In 60 of such towns Schine had all the theaters. The late thirties and forties were the hayday of the motion-picture industry. There were eight major distributors of motion pictures in the United States. Large numbers of pictures were produced and distributed by them. It was customary for exhibitors to negotiate with the various distributors for a season's product.

The Schine case had many witnesses and many documents. For the most part the witnesses were former or current exhibitor competitors of Schine who, because of the conspiracy between Schine and the distributors, had either taken it on the chin or were taking it on the chin. The two professors would have us believe that this was because of the exhibitors' inefficiency and that the Government was attempting to subsidize competitors by bringing the suit.

Let us see what the case disclosed:

Schine used the buying power of its theaters in the towns where it had a monopoly as a lever to have the distributors deny pictures to its competitors in competitive towns, whether the competitor had better theaters or not, to impose unreasonable clearances upon them, and to subject them to other substantial discriminations.

Schine obtained franchises from the distributors on their product, covering a number of years. Thus, in 1936, Schine made a 3-year agreement with Fox and, as a result, the Fox product was committed in all the towns in which Schine then operated. Later this agreement was amended to include subsequently acquired theaters by Schine. In 1938 another 3-year agreement was made with Fox.

Schine obtained selective contracts with distributors whereby it could tie up a year's product and play only those pictures it desired to play. It leased closed theaters and renewed leases on closed theaters, paying substantial sums therefor to keep competitors out of towns in which Schine operated. In some instances, where competition started, it would keep such theaters open until a competitor was driven out and then close them again.

In a number of instances it was able to price-cut admission prices, in order to eliminate competition, by obtaining film license contracts with distributors from which minimum admission-price limitations had been deleted, while its competitors' contracts contained such limitations. Schine used a hatchetman to threaten competitors and in at least one instance tried to get his competitor's landlord to break his lease or to lease to Schine effective after the expiration of the competitor's lease.

To look at a number of specific examples:

First. In Amsterdam, N.Y., a competitor asked Warner for a second run. Schine asked Warner not to sell to the competitor, and although Warner's branch manager favored such sale, Warner declined to sell to Schine's competitor. This was so even though the competitor was the only second-run theater in the city.

Second. In Auburn, N.Y., a competitor of Schine, deprived of first runs by Schine, was unable to obtain second runs during a 3-year period when no Schine theater there played second runs.

Third. In Medina, Ohio, a new theater in opposition to Schine's old 300-seat theater, was able to obtain only Columbia product, and one-half the product from two of the eight distributors. As a result Schine got an interest in the new theater without paying therefore, and closed the 300-seat theater.

Fourth. In Corning, some distributors permitted Schine's theater to charge a lower admission price on an earlier run than Schine's competitor was required to charge for a later run.

Fifth. In Lexington, Ky., Schine's "subsidized" price warfare against a competitor was done on a large scale. Inability to get products, and discriminatory terms, led Schine's competition to leave the field, and Schine had all the six motion-picture theaters in the city.

Sixth. In Van Wert, Ohio, Schine's competitor, when it found most of its first-run taken away, tried to run on a second-run policy. With respect to Universal Pictures, we find that the Albany office of Universal wrote to the company's eastern sales manager:

In Van Wert, Dave Miller (district manager) advises that upon Mr. Grainger's (general sales manager) suggestion, he took away the first run from the opposition and sold him a second run. Lynch claims that he does not want a second-run policy to prevail at the second run opposition and has promises from other major companies that they will not sell second run. Wants Dave Miller to reinstate first run at opposition as they will give up the pictures for this town. (Lynch was an official of Schine.)

There also, Fox licensed second run to a Schine competitor for the 1936–37 season on a 90-day clearance after Schine's theaters, but in the following year Fox licensed second run to a Schine theater there on a clearance which read "after Schine Van Wert. Sixty days on third run."

Seventh. In Rochester, N.Y., a competitor of Schine had two neighborhood theaters, the Madison and the Monroe. Schine acquired the Dixie in August 1932 and relinquished the Webster, the first time, in December 1933. When Schine acquired the Dixie the Madison lost its clearance over the Dixie, although the Dixie is a much smaller theater; whereas when the Webster was dropped by Schine it ceased to enjoy the clearance it had previously held over the larger Madison and Monroe. Schine paid less for films for prior runs than his competitor was charged for later runs, and even though the competitor offered even higher prices for an earlier run, with the exception of a second run from one distributor, he could not buy an earlier run at any price.

Eighth. Schine, the efficient monopolizer, in 1933 wrote to Metro relative to six towns:

If there are any other opposition towns where you believe you can sell a second run, I would appreciate it if you would take the matter up with me first before selling.

Ninth. In Corbin, Ky., Schine had two theaters. When a new, superior theater was built in Corbin, its operator was unable to get either first-run or second-run pictures from the distributors. Between the fall of 1938 and the spring of 1940, when Schine was threatened with competition in Corbin, Schine had tied up all the first- and second-run product of all major distributors except Columbia second run. This amount of product was more than the operation of their two theaters in Corbin could use.

After the new theater opened Schine reduced its balcony admission prices at one of its theaters. Fox assisted Schine in this reduction by omitting from its license to Schine any minimum admission prices. After the operator of the new theater sold out to Schine, the latter raised its admission prices and closed one of the theaters.

Third. *United States* v. *General Electric Co.*, 82 F. Supp. 753 (1949): This opinion of more than 150 pages contains a wide ranging survey of exclusionary practices. To illustrate:

The evidence discloses that the relationship between Corning and General Electric generated a condition whereby Corning preferred Westinghouse and General Electric's B licensees' business and that its other and independent customers were required to pay prices in excess of those with which Westinghouse and General Electric's licensees were favored.

* * * * *

The evidence is convincing that the relationship between Corning and General Electric inspired the negotiations between Corning and Hartford-Empire in order to protect the field in which Corning and General Electric had agreed they would operate and it also appears that Hartford-Empire in its dealings with Corning and other glass-producing interests always reserved the rights within Corning's field.

* * * * *

Corning negotiated with Hartford-Empire and Libbey and with Kimble to divide their glass production in such a manner that the electrical glass field would be strictly the domain of Corning and through it to General Electric. * * *

* * * * *

It is my understanding that we have for many years adhered closely to the policy of declining to sell incandescent lamp parts or materials (with the single exception of bases) to domestic manufacturers who are not licensed under the incandescent lamp patents of the General Electric Co. This has been true of unpatented as well as patented parts and materials (exhibit 239–G).

* * * * *

It is apparent that when either General Electric or Westinghouse could not secure public business on the basis of the lowest bid, their purpose was to exclude competition through the activities of their sales representatives in having bids thrown out and readvertised after new specifications drawn encompassing terms favorable only to them had been adopted.

Fourth. Medicine: In the early days of prepaid medical care, the American Medical Association and local medical societies tried to stop such plans. Their tactics included expelling doctors from medical societies or refusing to admit them to such societies, if they worked for such plans or if they were willing to be reimbursed for their bills through

such insurance plans. Consultation was denied to such doctors as were hospital privileges needed to take care of their patients. A case of this sort involving the Group Health Association in the District of Columbia reached the Supreme Court (317 U.S. 519).

Fifth. The press: Not until an antitrust suit was brought were the bylaws of the Associated Press, which prevented competitors of existing members of AP from obtaining AP service, altered (326 U.S. 1 (1945)).

Sixth. Titanium: Letter of president of one of the companies in titanium cartel:

May I call the proposed combination, for simplicity, a cartel? The whole purpose of the cartel is to obtain a monopoly of patents, so that no one can manufacture it excepting the members of the cartel, and so can raise the prices by reason of such monopoly to a point that would give us much more profit on our present tonnage, but also prevent a growth in tonnage that would interfere with their greater profits in lithopene. *United States* v. *National Lead Co.*, 66 U.S.P.Q. 141, 150 (S.D.N.Y., 1945).

SENATE

WEDNESDAY, MAY 6, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

The Reverend J. Bruce Weaver, pastor, Lutheran Church of the Reformation, Washington, D.C., offered the following prayer:

Almighty God, sovereign Lord of the nations, Redeemer of time, of history and of man, allow Thy holy presence to be felt today in this Chamber of the Senate of the United States of America.

We heartily thank Thee that Thou hast given us many reasons to believe that our beloved country has a place of favor and of grace within the mighty scope of Thy sovereign will for mankind. Thou hast not abandoned us to the consequences of our persistent follies and instead hast raised us to a place of privilege and responsibility unprecedented in the memory of man. Even as we thank Thee for these evidences of Thy favor we hasten to pray that we have read them correctly and that we may appreciate them fully.

Mindful of the rich heritage Thou hast bestowed upon us, the standards of moral and ethical leadership Thou dost require of us, and of the many frightening opportunities we have for losing the one and betraying the other, we beseech Thy special guidance for these Thy servants, the Senators of the United States. Guide their deliberations to prompt and wise decisions. In their endeavors to discharge the vast and complex burden of the public trust vested in them by reason of their election by the people, may they never lose sight of the higher sovereignty by which they are called and to which they are ultimately answerable. May every word spoken here this day and every action contemplated or taken be informed by the very highest understanding of Thy will for us that can be brought to bear upon the present troublesome and troubling questions.

Above all else, we pray that Thou wilt renew the vision of our Nation, multiply its witness to the abiding value of freedom held in trust to Thee. May our usefulness to Thee remain undiminished by anything we do, or fail to do, this day.

In our Redeemer's name we pray. Amen.

THE JOURNAL

On request by Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, May 5, 1964, was dispensed with.

MESSAGES FROM THE PRESIDENT— APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries, and he announced that the President had approved and signed the following acts:

On April 29, 1964:

S. 2394. An act to facilitate compliance with the convention between the United States of America and the United Mexican States, signed August 29, 1963, and for other purposes.

On April 30, 1964:

S. 1565. An act to amend the act of June 25, 1910 (36 Stat. 857; 25 U.S.C. 406, 407), with respect to the sale of Indian timber;

S. 1931. An act to provide that the United States shall hold certain land in trust for the members of the Alamo Band of Puertocito Navajo Indians;

S. 2111. An act to fix the beneficial ownership of the Colorado River Indian Reservation located in the States of Arizona and California; and

S. 2279. An act to authorize the transfer of the Piegan unit of the Blackfeet Indian irrigation project, Montana, to the landowners within the unit.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, and withdrawing the nomination of Stewart J. Hyland, to be postmaster at Lakehurst, N.J., which nominating messages were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Acting President pro tempore:

S. 1005. An act to amend paragraph (2) of subsection 309(c) of the Communications Act of 1934, as amended, by granting the Federal Communications Commission additional authority to grant special temporary authorizations for 60 days for certain nonbroadcast operations;

S. 1193. An act to amend section 309(e) of the Communications Act of 1934, as amended, to require that petitions for intervention be filed not more than 30 days after publication of the hearing issues in the Federal Register;

H.R. 1252. An act for the relief of Bozena Gutowska;

H.R. 1266. An act for the relief of John Kish (alias John Mihai);

H.R. 1435. An act for the relief of Leon Llanos;

H.R. 1439. An act for the relief of Ioanna Ganas;

H.R. 3654. An act for the relief of Paolo Armano;

H.R. 5083. An act for the relief of John Stewart Murphy;

H.R. 6133. An act for the relief of Miss Carmen Rioja and child, Paloma Menchaca Rioja;

H.R. 6568. An act for the relief of Frances Sperilli;

H.R. 6837. An act for the relief of Mrs. Eleonora Vasconi (nee Trentanove);

H.R. 8469. An act for the relief of Dr. Salim Akyol; and

H.R. 9573. An act for the relief of Wolfgang Stresemann.

ORDER FOR RECESS UNTIL TOMORROW AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business today, the Senate stand in recess until 10 a.m. tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of a quorum call, there be a morning hour, under the usual circumstances, with statements therein limited to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CALL OF THE ROLL

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

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

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

[No. 196 Leg.]

Aiken	Cotton	Inouye
Allott	Dirksen	Jackson
Anderson	Dodd	Javits
Bartlett	Dominick	Johnston
Bayh	Douglas	Jordan, Idaho
Beall	Ellender	Keating
Bennett	Ervin	Kennedy
Bible	Fong	Kuchel
Boggs	Goldwater	Lausche
Burdick	Gruening	Long, Mo.
Cannon	Hart	Magnuson
Case	Hartke	Mansfield
Church	Hruska	McCarthy
Clark	Humphrey	McGee