For those who wish to take refuge in this difference of opinion, there is an ample storm shelter in which to repair while the winds blow. But I do not think this particular "wind" will stop blowing, because distortion of the Court's opinions will probably increase. Therefore, the issue must be faced.

I deeply hope this fine committee and its excellent staff will be able to resolve the problems and pitfalls, and produce a fair and workable legislative product for presentation to the House. It is in that confidence and hope that I have not signed the discharge petition for the Becker amendment, for I feel it would be most unfortunate if this difficult issue came to the House floor by that method, and without full and objective hearings.

Finally, Mr. Chairman, I would like to cite the text of the key sections of my measure, House Joint Resolution 913:

"SECTION 1. Nothing in this Constitution shall be deemed to prohibit the offering or reading of prayers or Biblical Scriptures, in any governmental or public school, institution, building, or place, provided participation therein is on a voluntary basis: *And provided further,* That the right to decline to participate shall not be abridged.

"SEC. 2. Nothing in this Constitution shall be deemed to prohibit reference to reliance upon, belief in, or invocation of the aid of God or a Supreme Being, in any governmental or public document, proceeding, activity, ceremony, school, institution, or place, or upon any coinage, currency, or obligation of the United States.

"SEC. 3. Nothing in this article shall constitute an establishment of religion.

"SEC. 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

I thank the committee for its consideration of this statement.

Appropriations

EXTENSION OF REMARKS
OF

HON. ROLAND V. LIBONATI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 11, 1964

Mr. LIBONATI. Mr. Speaker, the Committee on Appropriations on recommendation of its several subcommittees considering deficiency appropriations for departments and agencies in Government for the fiscal year June 30, 1964, approved and submits to the House the following items for its consideration totaling $1,162,800,000, a reduction of $42,467,100 from the requests received. About 92 percent of the bill represents military pay costs and public assistance matching grants.

The various amounts appropriated represent those supplemental and deficiency appropriations for the current year to budget requests that are exceptions to the appropriations prohibited in the antideficiency statutes against accelerated or deficiency spending rates.

The Department of Defense—military; for military deficiency appropriation, reserve personnel accounts, and retired pay accounts. District of Columbia—operating expenses (schoolchildren, transportation), public safety (payments to widows and children of deceased policemen and to those retired); caseload increase in public assistance, service costs for Police Department of District of Columbia in connection with the funeral of our late martyred President, John F. Kennedy. The independent offices—Public Buildings Service, increased costs of selective service procurement operation, selectee travel costs and pay increases of personnel. Veterans' Administration pay increases, employees. Service-connected cases increasing costs per case—disability compensation cases. Loan guarantee revolving fund—program activity to quickly honor valid claims and obligations—Department of Agriculture—forest protection and utilization—funds to replace firefighting costs and provide for emergency firefighting, Department of the Interior—fire suppression, Bureau of Indian Affairs—also fire suppression, National Park Service—the same. Also maintenance and rehabilitation of physical facilities for pay increases. The same for Smithsonian and National Gallery of Art.

Department of Labor increases in costs of injuries, costs of medical care, wages of civilian employees have a direct effect on the cost of benefits.

Department of Health, Education, and Welfare—increased wages; St. Elizabeths Hospital increased costs of operating and wages. Welfare Administration—increased grants to States for public assistance. The future indicates need of additional funds for this program.

U.S. Soldiers' Home, approves withdrawal of funds for Soldiers' Home's permanent fund—increases of wages and operational and contract costs.

Legislative branch—Architect's Office wage increase and deceased members widow gratuities.

Department of Defense—civil. Increased wage costs—Department of the Interior—operation and wage costs for Bonneville Power project and costs incidental to Canadian contract under the Columbia River treaty.

Department of Justice: Costs incidental to fees and expenses of witnesses. Increases in wages of employees in prisons. Also increases of costs by State and county institutions for housing and feeding Federal prisoners awaiting trial or disposition of their cases.

The judiciary: Increases in wage costs.

The Treasury: Increases in wage costs, retired pay, and military increased pay.

Claims and judgments: To meet necessary payments of claims and judgments against the United States by the Court of Claims and the U.S. District Courts.

Thus the heavy responsibility of Chairman MAHON and his committee in presenting this bill to the Congress—the consolidation of the meticulous work of each of the respective subcommittees of the Appropriations Committee, whose responsibilities to determine these separative and respective demands for money to carry on the business of Government was twofold:

First. The study of the request in terms of present expenditures already allotted in their general appropriation; and

Second. The adjudication of the various requests both in projected estimates in some cases and the amounts to be appropriated.

The committees functioning in this consolidated bill and the respective chairmen are to be congratulated in their efforts as well as Chairman MAHON and his committee.

SENATE

TUESDAY, MAY 12, 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:

Our Father, God, Thou hast set us to serve the Nation and all mankind in crucial and decisive hours. With a new world emerging from the churning waters which engulf us, help us to be vividly conscious that Thou hast committed, as a trust to our hands, the great truths that make men free.

May our individual lives be more and more the incarnation of the principles which we profess—Thy Word made flesh in us for this tortured generation. Forgive us for our keenness in seeing human failings in others and our slowness in being aware of the virtues of those who toil by our side.

Grant us sweet reasonableness in all our dealings with our fellow man, and especially with each other in these halls of State, so that when the shadows fall on our working day, we may have the supreme satisfaction of the knowledge that we have given our best to every task, and that we have faced every duty without bitterness, with charity for all, and with malice toward none.

We ask it in the dear Redeemer's name. Amen.

THE JOURNAL

On request of Mr. INOUYE, and by unanimous consent, the reading of the Journal of the proceedings of Monday, May 11, 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 May 8, 1964:

S. 1341. An act for the relief of Gabriel Kerenyi.

On May 12, 1964:

S. 1605. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as

amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes.

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 Jay R. Farmer, to be postmaster at Centerville, Utah, which nominating messages were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

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 a bill (H.R. 11201) making deficiency appropriations for the fiscal year ending June 30, 1964, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 11201) making deficiency appropriations for the fiscal year ending June 30, 1964, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

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

The ACTING PRESIDENT pro tempore. With that understanding, and 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. 214 Leg.]

Aiken	Hartke	Moss
Allott	Hayden	Mundt
Anderson	Hickenlooper	Muskie
Bartlett	Holland	Neuberger
Bayh	Humphrey	Pastore
Bennett	Inouye	Pearson
Boggs	Jackson	Pell
Burdick	Javits	Prouty
Cannon	Johnston	Proxmire
Carlson	Jordan, Idaho	Saltonstall
Case	Keating	Scott
Church	Kuchel	Smith
Clark	Lausche	Sparkman
Cooper	Long, Mo.	Stennis
Cotton	Magnuson	Symington
Curtis	McCarthy	Talmadge
Dirksen	McClellan	Walters
Dodd	McGee	Williams, Del.
Dominick	McGovern	Yarborough
Douglas	Metcalf	Young, N. Dak.
Ellender	Miller	Young, Ohio
Fong	Monroney	
Gruening	Morton	

Mr. HUMPHREY. I announce that the Senator from Maryland [Mr. BREWSTER], the Senator from Virginia [Mr. BYRD], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Alabama [Mr. HILL], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Louisiana [Mr. LONG], the Senator from Montana [Mr. MANSFIELD], the Senator from New Hampshire [Mr. MCINTYRE], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Georgia [Mr. RUSSELL], and the Senator from New Jersey [Mr. WILLIAMS] are absent on official business.

I also announce that the Senator from Nevada [Mr. BIBLE], 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 Tennessee [Mr. GORE], the Senator from Michigan [Mr. HART], the Senator from North Carolina [Mr. JORDAN], the Senator from Michigan [Mr. MCNAMARA], the Senator from Wisconsin [Mr. NELSON], the Senator from Connecticut [Mr. RIBICOFF], the Senator from Virginia [Mr. ROBERTSON], the Senator from Florida [Mr. SMATHERS], the Senator from Mississippi [Mr. STENNIS], and the Senator from South Carolina [Mr. THURMOND] 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] is detained on official committee business.

The Senator from Arizona [Mr. GOLDWATER], the Senator from New Mexico [Mr. MECHEM], and the Senator from Texas [Mr. TOWER] are detained on official business.

The Senator from Nebraska [Mr. HRUSKA] is absent on official business.

The Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

The ACTING PRESIDENT pro tempore. A quorum is present.

Morning business is in order.

ORDER FOR RECESS TO 10 A.M. TOMORROW

Mr. HUMPHREY. Mr. President, I ask unanimous consent that when the Senate completes its business today it convene on tomorrow, Wednesday, at 10 a.m.

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

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

AMENDMENT OF LAW RELATING TO SETTLEMENT OF ADMIRALTY CLAIMS

A letter from the Under Secretary of the Navy, transmitting a draft of proposed legislation to amend provisions of law relating to the settlement of admiralty claims (with an accompanying paper); to the Committee on Armed Services.

REPORT ON FEDERAL CONTRIBUTIONS PROGRAM

A letter from the Director of Civil Defense, reporting, pursuant to law, on the Federal contributions program, equipment, and facilities, for the quarter ended March 31, 1964 (with an accompanying paper); to the Committee on Armed Services.

AUTHORIZATION OF DISPOSAL OF CERTAIN MOLYBDENUM

A letter from the Administrator, General Services Administration, Washington, D.C., transmitting a draft of proposed legislation to authorize the disposal, without regard to the prescribed 6-month waiting period, of approximately 11 million pounds of molybdenum from the national stockpile (with accompanying papers); to the Committee on Armed Services.

REPORT ON UNNECESSARY RETENTION OF SPARE PARTS AT WESTERN PACIFIC SUPPLY DEPOTS

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on unnecessary retention of spare parts at western Pacific supply depots, Department of the Navy, dated May 1964 (with an accompanying report); to the Committee on Government Operations.

NORA ISABELLA SAMUELLI AND KATHERINE NABOKOFF

A letter from the Acting Secretary of State, transmitting a draft of proposed legislation for the relief of Nora Isabella Samuelli and Katherine Nabokoff (with an accompanying paper); to the Committee on the Judiciary.

ADMISSION INTO THE UNITED STATES OF CERTAIN DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting admission into the United States of certain defector aliens (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered, granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

RESOLUTION OF MASSACHUSETTS SENATE RELATING TO THE CLOSING OF THE WATERTOWN ARSENAL

The ACTING PRESIDENT pro tempore laid before the Senate the resolutions of the Senate of the Commonwealth of Massachusetts, remonstrating against the proposed closing of the Watertown Arsenal, which was referred to the Committee on Armed Services; and, under the rule, ordered to be printed in the RECORD, as follows:

RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO TAKE SUCH ACTION AS MAY BE NECESSARY TO REVOKE THE DIRECTIVE OF THE DEPARTMENT OF DEFENSE ORDERING THE CLOSING OF THE WATERTOWN ARSENAL

Whereas the proposed closing of the Watertown Arsenal and the resulting unemployment of thousands of skilled workers will seriously affect the economy of the Commonwealth; and

Whereas in this era of rapid industrial expansion with the attendant problems of location, in which industry is seriously concerned about the relative business climate of the various States and the available supply of skilled labor, it seems to be contrary to good judgment to close a governmental facility which has contributed so immeasurably in the past to the quality and effectiveness of the weapons which enabled the country

to protect itself in time of war and to assure it of adequate defense at all times; and

Whereas the existence of the Watertown Arsenal, with its thousands of skilled workers will be of vital importance in maintaining the position of the United States in the tense years ahead: Therefore be it

Resolved, That the Massachusetts Senate respectfully urges the Congress of the United States to instruct the Department of Defense to revoke its directive ordering the closing of the Watertown Arsenal; and be it further

Resolved, That copies of these resolutions be transmitted forthwith by the secretary of the Commonwealth to the President of the United States, to the Secretary of Defense, to the presiding officer of each branch of the Congress, and to the Members thereof from the Commonwealth.

Senate, adopted, April 29, 1964.

THOMAS A. CHADWICK,
Clerk.

A true copy.
Attest:

KEVIN H. WHITE,
Secretary of the Commonwealth.

CIVIL RIGHTS—RESOLUTION OF BINGHAMTON, N.Y.

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD a resolution adopted by the city of Binghamton, favoring the enactment of the pending civil rights bill.

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

RESOLUTION 13

Resolution urging the passage of the civil rights bill by the Congress of the United States

Whereas there is before the Congress of the United States, a civil rights bill which guarantees the rights of all citizens regardless of race, color, creed, or place of birth; and

Whereas the council of the city of Binghamton urges the Congress of the United States to enact the civil rights bill without further dalay: Now, therefore, be it.

Resolved, That the council of the city of Binghamton hereby requests that the Congress of the United States enact the civil rights bill now pending before the Congress; and be it further

Resolved, That the clerk of the city of Binghamton, forward a copy of this resolution to Senator KENNETH B. KEATING, Senator JACOB K. JAVITS, and Representative HOWARD W. ROBISON.

WALTER O. IRVING,
City Clerk.

MAY 6, 1964.

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. MAGNUSON, from the Committee on Commerce:

George M. Cole, Jr., for permanent appointment in the Coast and Geodetic Survey;

Alexander E. Tanos, and George J. Thompson, to be permanent commissioned officers in the Regular Coast Guard;

Max H. Casper, and sundry other officers, to be permanent commissioned officers in the Regular Coast Guard;

Richard Lee Anderson, and sundry other persons, to be permanent commissioned officers in the Regular Coast Guard; and

Walter R. Goldhammer, and sundry other persons, to be chief warrant officers in the U.S. Coast Guard.

BILLS INTRODUCED

A bill was introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. CHURCH (by request):

S. 2829. A bill to provide for the disposition of funds from judgments in favor of the Nehalem Band of the Tillamook Indians and the Tillamook Band of the Tillamook Indians; to the Committee on Interior and Insular Affairs.

RESOLUTION RELATIVE TO DEATH OF REPRESENTATIVE CLARENCE CANNON, OF MISSOURI

Mr. SYMINGTON (for himself and Mr. LONG of Missouri) submitted a resolution (S. Res. 328) relative to the death of Representative CLARENCE CANNON, of Missouri, which was considered and agreed to.

(See the above resolution printed in full when submitted by Mr. SYMINGTON, which appears under a separate heading.)

CIVIL RIGHTS—AMENDMENTS

(AMENDMENTS NOS. 596, 597, 598, 599, 600, 601, AND 602)

Mr. MILLER. Mr. President, I submit seven amendments which I intend to propose to the civil rights bill (H.R. 7152), and ask unanimous consent that they be considered as having been read for the purposes of the rule on cloture, and that they be printed and lie on the table, and be printed in the RECORD.

The PRESIDING OFFICER (Mr. WALTERS in the chair). Without objection, the amendments will be printed and lie on the table as the Senator has requested, and they will be considered as having been read, and will be printed in the RECORD.

The amendments submitted by Mr. MILLER are as follows:

AMENDMENT No. 596

On page 40, lines 14, 15, and 16, strike out "Nothing said or done during and as a part of such endeavors may be used as evidence in a subsequent proceeding." and insert in lieu thereof the following: "Nothing said or done during and as a part of such endeavors may be used by the Commission or any party thereto as evidence in any court proceeding or made public prior to the institution of any court proceeding. Nor may anything contained in the charge be made public by the Commission or any party thereto prior to the institution of any court proceeding. Any officer or employee of the Commission, or any party to a charge, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

On page 46, after line 5, insert the following new subsection:

"(d) It shall be unlawful for any officer or employees of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any court proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

AMENDMENT No. 597

On page 32, line 19, insert the word "SEX," immediately after "RELIGION,".

On page 42, line 16, insert the word "sex," immediately after "religion,".

AMENDMENT No. 598

On page 13, line 9, immediately after "action", insert the following: "if (1) such action is founded upon a complaint filed with the court in writing under oath and (2) the Attorney General certifies that the signer or signers of such complaint are unable to maintain appropriate legal proceedings for relief and that his intervention is necessary to further the public policy of the United States as set forth in the Constitution or declared by the Congress of the United States. The Attorney General may deem a person or persons unable to maintain appropriate legal proceedings on the same basis as provided in subsection 301(b)."

AMENDMENT No. 599

On page 12, line 5, strike out ", in his judgment,".

On page 12, line 7, strike out "will materially" and insert in lieu thereof "is necessary to".

On page 17, line 14, strike out ", in his judgment,".

On page 17, line 16, strike out "will materially" and insert in lieu thereof "is necessary to".

AMENDMENT No. 600

On page 11, line 7, strike out "hereby created" and insert in lieu thereof "covered by this title".

On page 11, line 9, immediately after "created" insert "or covered".

AMENDMENT No. 601

On page 9, line 20, imediately after "(2)" insert the following: "subject to the provisions of this section,".

On page 9, strike out lines 22 and 23, and insert in lieu thereof the following: "upon receipt of a complaint in writing under oath if he certifies to the court that the person or persons aggrieved are unable to initiate and maintain appropriate legal proceedings for relief and that his institution of an action is necessary to further the purposes of this title."

On page 10, beginning with line 4, strike out all through line 24, and insert in lieu thereof the following:

"(c) Except as otherwise provided in subsection (d), in the case of any complaint in writing under oath received by the Attorney General, alleging a violation or threatened violation of section 203, the Attorney General, before instituting an action, shall notify the appropriate State or local officials and afford them 90 days from the date of such notice to utilize any local, State, or Federal agency or instrumentality which may be available to attempt to secure compliance with the provisions of this title by voluntary procedures and to otherwise take action under State or local laws or regulations forbidding the act or practice involved.

"(d) Compliance with the foregoing provisions of subsection (c) shall not be required if (1) the Attorney General shall file with the court a certificate setting forth his determination that the delay consequent upon compliance with such subsection in the particular case would adversely affect the in-

terests of the United States, or that compliance with such subsection in the particular case would prove ineffective or result in unreasonable delay, and (2) the court finds that the determination of the Attorney General is supported by a preponderance of the evidence.

"(e) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation by such person or persons would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property."

AMENDMENT NO. 602

On page 9, line 20, immediately after "aggrieved", insert the following: "if he files a complaint in writing under oath setting forth the facts on the basis of which he alleges a violation or threatened violation of section 203".

On page 11, line 21, immediately after "complaint" insert the following: "in writing under oath".

On page 17, line 3, immediately after "complaint", insert the following: "in writing under oath".

STUDENT ASSISTANCE BILL—ADDITIONAL COSPONSOR OF BILL

Mr. HARTKE. Mr. President, as Members of the Senate have become increasingly familiar with my bill for assistance to college students, with its fourfold package of scholarships, National Defense Education Act improvement, student loan guarantee, and work-study program, one after another has asked me to request that he be listed as a cosponsor. With 21 Senators previously listed as cosponsors, I now have a further request, raising the number to 22. Mr. President, I ask unanimous consent for the addition of the name of the Senator from Rhode Island [Mr. PELL] as a cosponsor for S. 2490, to be included at the next printing of the bill.

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

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. SCOTT:

Address entitled "Egyptian and Soviet Threat to Western Positions in the Middle East," delivered by him before American-Israel Public Affairs Committee at Mayflower Hotel in Washington, D.C.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, communicated to the Senate the intelligence of the death of Hon. CLARENCE CANNON, late a Representative from the State of Missouri, and transmitted the resolutions of the House thereon.

DEATH OF REPRESENTATIVE CLARENCE CANNON, OF MISSOURI

Mr. SYMINGTON. Mr. President, it is with profound sorrow that Mrs. Symington and I heard this morning of the passing of one of the great statesmen of our times—the Honorable CLARENCE CANNON, of Elsberry, Mo.

Mr. CANNON first came to Washington with Speaker Champ Clark, more than half a century ago. Since that time he has been noted for many things, including the fact he was the foremost expert on parliamentary procedure in the United States today.

Above all, however, he was noted for his devotion to duty. As chairman of the all-important House Appropriations Committee, he worked long days and nights to foster the security and prosperity of the country through the bills that went through his committee.

In addition, no Congressman in our time was closer to his constituency than CLARENCE CANNON. Each and every citizen of the Ninth District of Missouri knew him, and his gracious and beloved wife, as a devoted friend.

Missouri and the Nation will miss him.

My wife and I extend our deepest sympathy and love to his children and to Miss Ida, the woman who had so much to do with making it possible for him to carry successfully the burdens placed on his shoulders as an outstanding public servant of this century.

Mr. LONG of Missouri. Mr. President, it is a sad duty for me to speak this morning about the death of Missouri's beloved Congressman CLARENCE CANNON. Congressman CANNON, Representative of the Ninth Congressional District of Missouri for over 40 years which is my home district—our homes for many years have been just a few miles apart—was the second ranking Member of the House of Representatives. His tenure was longer than that of any elected Representative from Missouri.

The people of Missouri, the Nation, and the world have lost a devoted champion in CLARENCE CANNON. I have lost an old, dear friend and mentor. He will best be remembered for his chairmanship of the House Appropriations Committee and his monetary policies, for his many attempts to put this country on a sound fiscal program. Millions will remember him as one of the most outstanding parliamentarians of any age.

CLARENCE CANNON was more than the elected Representative of Missourians. He was a man of all the people, working always to assure that this Nation and our people remained strong. His life was motivated by integrity and the highest principles. Throughout his service to this Nation—running in innumerable election campaigns—Congressman CANNON never accepted contributions for his campaign expenses. This fact was a great source of pride to him.

CLARENCE CANNON was one of few men whose sense of history was real. As a former instructor of history in one of our State's outstanding schools and a longtime student in the field, CLARENCE CANNON understood the present in terms of what had gone before and what was to come.

Mrs. Long and I extend our heartfelt sympathy to Mrs. Cannon—Miss Ida, as we affectionately know her in Missouri—and to other members of the family. His life was devoted to this Nation; we shall not forget his efforts on our behalf.

Mr. SALTONSTALL. Mr. President, will the Senator from Missouri yield?

Mr. SYMINGTON. I yield to the distinguished Senator from Massachusetts.

Mr. SALTONSTALL. Mr. President, both as senior Republican on the Appropriations Committee and as a regent of the Smithsonian Institution, I often came in contact with CLARENCE CANNON. I have known him for the past 15 years. As a regent of the Smithsonian he always was attentive to the needs of that fine Institution and took an important part in the building of its new Museum of History and Technology.

He certainly was a most conscientious and effective legislator. As chairman of the very important Appropriations Committee of the House, he followed the work of the committee very closely, had an excellent grasp of the details of the legislation before it, and carried forward its work on schedule.

He was supposed to be an autocrat. I never found him to be an autocrat. I always found him open to persuasion. He had very firm and clear ideas as to what Congress should do concerning problems of appropriations, but he was always willing to listen. He was always willing to participate in conferences between the House and the Senate on matters involving differences of opinion. Perhaps he was oversensitive at times to the actions of the House as opposed to those of the Senate, but in the end we always got together.

My relations with him were pleasant, and we respected each other. I always found him a friendly person with whom to deal—a teacher, a lawyer, an author, an expert parliamentarian, and an outstanding legislator.

As a member of the Appropriations Committee of the Senate, I shall miss him in many conferences.

I extend my deepest sympathy to his wife and family.

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

Mr. SYMINGTON. I yield to the able senior Senator from Louisiana.

Mr. ELLENDER. Mr. President, I regret very deeply the sudden death of Representative CLARENCE CANNON.

Soon after I joined the Senate Appropriations Committee in 1948, I became chairman of the Subcommittee on Public Works. At that time, it happened that Mr. CANNON was chairman of that same subcommittee of the House Appropriations Committee.

He and I had quite a struggle at times, in conference. But I always found Mr. CANNON amenable to providing funds for the protection and preservation of the Nation's most important resources—land and water. He and I found ourselves in complete agreement that unless these were protected now, for the use of future generations, all the metal and minerals which might be dug out of the ground would count for nothing.

But the interests of the late chairman of the House Appropriations Committee ranged far and wide. He is perhaps best known as the author of House Document No. 122, entitled "Cannon's Procedure in the House of Representatives." The title page of that volume, in a very few words, tells the story of a lifetime of service and devotion to the public business. It reads as follows: "By CLARENCE CANNON, Member of Congress; sometime Parliamentarian of the House, Speaker pro tempore, Chairman of the Committee of the Whole; chairman of Committee on Appropriations, etc." And, Mr. President, that little et cetera, if expanded to cover all his activities and attributes, would speak volumes in itself.

In closing, I should like to point out that the same title page of "Cannon's Procedure" contains a quotation from Shakespeare's Merchant of Venice, whose import should not be lost on us today. The quotation begins with one of the characters, Bassanio, speaking as follows:

> And I beseech you wrest once the law to your authority; to do a great right, do a little wrong.

But Portia, the heroine, answers:

> It must not be * * * 'twill be recorded for a precedent, and many an error by the same example will rush into the state.

Mr. CANNON recognized the great wisdom embodied in those words. I regret his death, and I extend my condolences to "Miss Ida," his lovely wife.

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

Mr. SYMINGTON. I yield to the able and distinguished Senator from New Hampshire.

Mr. COTTON. Mr. President, the Senator from New Hampshire happens to be one of the Members of the Senate who served in the House and served on the Appropriations Committee in the House under the leadership of the late CLARENCE CANNON. I served on that committee for 6 years. I came to know CLARENCE CANNON as chairman of the committee on which I served. He was a resolute, stanch man in upholding his convictions. He was a fair man. He was considerate in every way of the individual members of his committee.

On at least one occasion Mrs. Cotton and I found ourselves with Mr. CANNON and his charming wife, traveling on a vacation trip. When he was away from the confining labor to which he devoted himself unflaggingly and was relaxed, I found him to be a delightful companion and his mind a veritable storehouse of exceedingly interesting information which he had accumulated during a long, distinguished career. I shall never forget my association with him.

Our hearts go out to Mrs. Cannon. I take this opportunity to pay my tribute to a man under whom I served and for whom I always had the deepest respect and admiration.

Mr. SYMINGTON. I now yield to the Senator from Idaho [Mr. CHURCH].

Mr. CHURCH. Mr. President, I join in the expressions of sadness at the unforunate passing of CLARENCE CANNON.

I knew him to be one of the strong men in Congress.

It is always an occasion of special sadness when a strong man dies.

Mr. SYMINGTON. I now yield to the Senator from Kansas [Mr. CARLSON].

Mr. CARLSON. Mr. President, I wish to associate myself with the remarks that have been made regarding the passing of a very distinguished neighbor of ours, Representative CLARENCE CANNON, of Missouri. For 12 years I had the privilege of serving with him in the House of Representatives.

We who live in the Midwest are deeply indebted to him for the favorable consideration which he gave to us in the State of Kansas and the surrounding area, when it came to the control of water runoff and development of the States water resources.

He was always a great student of the needs of that section of the country and a great proponent of programs for the improvement of the rural sections.

Personally I have had many pleasant associations with him and meetings in regard to these programs. He was always courteous to me and I appreciated so much the many favors we received from him. We will all miss him in the Middle West. We will all miss him in Congress and in the Nation.

He was a great legislator. He was a great citizen of his country.

I share with other Senators in expressions of sympathy to Mrs. Cannon and the family.

Mr. SYMINGTON. I now yield to the Senator from Georgia [Mr. TALMADGE].

Mr. TALMADGE. Mr. President, I, too, wish to associate myself with the expressions of the distinguished senior Senator from Missouri [Mr. SYMINGTON] as well as other Senators, who have expressed their deep regret at the passing of the Honorable CLARENCE CANNON.

Our country has lost an outstanding statesman. Our country has lost a fearless fighter for economy in Government.

He will be sorely missed in the Congress and in the Nation.

Mr. SYMINGTON. Mr. President, I now yield to the Senator from North Dakota [Mr. YOUNG].

Mr. YOUNG of North Dakota. Mr. President, I join in a well deserved tribute to the late Representative CLARENCE CANNON, who served long, and honorably in the Congress of the United States.

He was one of the most distinguished Members, and the able chairman of the House Appropriations Committee. I do not know of any single Member of Congress who made a greater contribution toward economy in Government than CLARENCE CANNON.

He was one of the closest Members to rural America now serving in Congress. I do not know of any Member of Congress who knew rural America as well as he did, or who was more sympathetic to its problems.

I, too, wish to extend my sympathy to his good wife and very fine family.

Mr. SYMINGTON. Mr. President, I now yield to the distinguished Senator from New York [Mr. JAVITS].

Mr. JAVITS. Mr. President, I served with CLARENCE CANNON in the House for many years and learned to respect and admire him. I wish, on behalf of myself and Mrs. Javits, to extend sincerest condolences to Mrs. Cannon—who my distinguished colleague has described in such beautiful terms—and to the family.

A signal attitude of Representative CANNON, who lived to such a beautiful, ripe age, full of years, full of honors, and full of service, was what I heard described in Israel as a "sabra"—sometimes a prickly exterior, but always a sweet interior.

I hope that his family will think of him as we think of him, in those terms.

Mr. SYMINGTON. Mr. President, I now yield to the Senator from Florida [Mr. HOLLAND].

Mr. HOLLAND. Mr. President, I thank the Senator from Missouri. I wish to join in the expressions of sorrow and of appreciation to the late CLARENCE CANNON.

On two different occasions I had to appear on the platform in rather heated arguments during Democratic conventions when CLARENCE CANNON's advice to the presiding officer was, of course, controlling on very serious questions as to what rules were in effect at the time, and how those rules should be applied.

I found him to be so completely fair and so completely thorough in his understanding of the rules that, in spite of the heated nature of the arguments, everyone who participated came down from the platform giving praise to him for his sense of fairness and for his great knowledge of parliamentary procedure.

Mr. President, I wish to speak on another point, if I may, which is well known to my distinguished friend, the senior Senator from Louisiana [Mr. ELLENDER].

There was one matter affecting a public project from the State which I represent in part, in which there was serious disagreement between the distinguished late chairman of the Appropriations Committee of the other body and myself, and other members of the Senate Appropriations Committee. We had all felt, when those matters came to a rather heated climax in 1962, that it was quite likely there would be some carrying over of that rough fight into the procedures of the committee in 1963.

I should like to say for the RECORD that not only was there no carrying over of any sense of resentment or hostility, or anything of the kind, either toward me or toward my State, or toward any member of the Senate Appropriations Committee, or the Senate conferees in the field of public works, but on the contrary we all felt that our distinguished late friend was even more understanding in the conference of last year than had been the case before that time, if such were possible.

I believe he was the essence of fairness and impartiality, and of distinct devotion to duty when it came to trying to save the taxpayers' money.

I am deeply grieved at his passing. Mrs. Holland and I wish the RECORD to reflect our affectionate sympathy to Miss Ida, for whom we have the greatest affection and esteem.

Mr. SYMINGTON. Mr. President, I now yield to the Senator from Texas [Mr. YARBOROUGH].

Mr. YARBOROUGH. Mr. President, I thank the Senator from Missouri for yielding to me for a moment of tribute to the late Representative CLARENCE CANNON.

He was a man of great power in the House, who wielded it so modestly and self-effacingly that one had to be told he was chairman of the most powerful committee in the Congress.

He never wore his honors on his sleeve. He never assumed ostentatious airs. He was a very modest man.

I became acquainted with him through the late beloved Speaker Sam Rayburn, during the years that he was alive. I knew CLARENCE CANNON far more then than since, but I never went to an occasion where Sam Rayburn was present that CLARENCE CANNON was not there also. They were close friends. They worked in harmony for many years.

We shall all miss CLARENCE CANNON. The second ranking member of that committee, is from my State, Representative GEORGE H. MAHON, and he spoke many times how wonderful a chairman CLARENCE CANNON was to work with.

Those who worked with him closest will miss him the most. We shall all miss him from the Halls of the Congress of the United States.

Mr. SYMINGTON. Mr. President, I now yield to the Senator from Colorado.

Mr. ALLOTT. Mr. President, it was never my privilege to know CLARENCE CANNON socially, or outside the Halls of Congress, but for the past 6 years I had occasion within the field of appropriations to sit with him across the table on many conference committees. So what I say about him I say as the attitude of one legislator toward another.

It would be impossible for anyone to sit at a conference table with a man like CLARENCE CANNON and not be impressed over and over again, not only with the seriousness and acuity of his mind but also with the great integrity and sense of fairness and reasonableness which characterized his every action.

He was also a great adherent to principles. When he felt strongly about a particular question, it was most unlikely that he would yield upon that question. But one would also find that he had behind his own position very strong and logical reasons for the conclusions which he had reached.

Mr. President, as a younger member of that committee, I wish to pay this tribute to him. He was a gentleman. In his activities in this area, he was one of the finest legislators I shall ever meet. The Congress and the Nation, as well as all the citizens, will miss his services and and his devotion to our country.

Mr. HUMPHREY. Mr. President, I shall take only a moment to pay my tribute and respects to the late Representative from Missouri, CLARENCE CANNON, whom we lost today. We have lost a very powerful force and voice in the Halls of Congress.

As I recall, he came to Congress and served for about 60 years, first as an aid to a distinguished Member of the Senate, and then in his own right as a Representative from the State of Missouri.

He has exercised tremendous influence in the development of public policies and, of course, has been a powerful force and voice in governmental appropriations. He was always frugal and responsible, and one who sought to serve the public interest as he saw the public interest.

To the Senators from Missouri and the people of Missouri I extend my heartfelt sympathy and condolences. I know that I speak not only for myself in my capacity, but inasmuch as the majority leader is engrossed with other business, I know I speak also his sentiments.

Mr. SYMINGTON. Mr. President, I thank all my colleagues in the Senate for their kind and gracious remarks about the dean of the Missouri congressional delegation, one of the great parliamentarians and one of the great men of our time. I am sure his wife and his daughters will deeply appreciate these expressions of sympathy from Members of the Senate.

EXPLANATION OF QUORUM CALL 211 OF YESTERDAY

Mr. ALLOTT. Mr. President, on page 10520 of the CONGRESSIONAL RECORD of yesterday, May 11, 1964, there appears the quorum call numbered 211. I wish to state that the two Senators from Colorado were in attendance in the meeting room of the Committee on Interior and Insular Affairs in the Senate Office Building. Both of us were there, and no bell rang at that time. Since neither of us is recorded as having answered to the quorum call, I wish the RECORD to show why we were not present.

CIVIL RIGHTS—A BILL FULL OF CIVIL WRONGS

Mr. TALMADGE. Mr. President, there appeared in the May issue of the Progressive Farmer an excellent editorial by Eugene Butler, the editor in chief of that magazine, which in very forceful terms calls attention to the dangers inherent in the so-called civil rights bill.

Pointing out that this proposed legislation is unconstitutional as well as unneeded and unwarranted, Mr. Butler calls attention to the fact that this package of bills constitutes a "flagrant intrusion of Government into the private lives of citizens." I would like to quote a portion of his editorial in which I believe he succinctly summarizes the evils of this legislation:

> The bill takes away from State governments many rights the Founding Fathers thought they had guaranteed under the Constitution. If it is passed and sustained by the Supreme Court, it will prove once and for all that the States have left no rights that the Federal Government is obligated to respect.
>
> The bill would do these things:
>
> It would take away from the States their constitutional right to set voters' qualifications. It would force the States to qualify automatically for voting any of their citizens with a sixth-grade education.
>
> It would tell business people, including farmers, how they may use their property and whom they may hire and fire.
>
> It would take tax money from the people of the States and then refuse to give back to them their fair share unless they buckled under to the Federal Government's ideas of social equality and civil rights.

I share the view of Mr. Butler that all qualified persons should have the right to vote and that all of our citizens should be afforded every right guaranteed them by the Constitution. But, as the editorial points out, the so-called civil rights bill, instead of achieving these desired ends, infringes upon the rights of the citizens of this country.

I commend this editorial to the Members of the Senate, and ask unanimous consent that it be printed in the RECORD.

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

CIVIL RIGHTS—A BILL FULL OF CIVIL WRONGS

(By Eugene Butler)

Ever since the War Between the States settled beyond doubt the supremacy of the National Government, States' rights have been whittled away by legislative action and court decisions. Now comes the National Government with a misnamed package of bills called civil rights that still further erodes States' rights. By its flagrant intrusion of Government into the private lives of citizens, it makes a mockery of their constitutional rights.

The bill takes away from State governments many rights the Founding Fathers thought they had guaranteed under the Constitution. If it is passed and sustained by the Supreme Court, it will prove once and for all that the States have left no rights that the Federal Government is obligated to respect.

The bill would do these things:

It would take away from the States their constitutional right to set voters' qualifications. It would force the States to qualify automatically for voting any of their citizens with a sixth-grade education.

It would tell business people, including farmers, how they may use their property and whom they may hire and fire.

It would take tax money from the people of the States and then refuse to give back to them their fair share unless they buckled under to the Federal Government's ideas of social equality and civil rights.

The bill proposes to regulate public accommodations. But what it does is to control privately owned establishments that cater to the public. There is a vast difference. Recent Supreme Court decisions have already legally desegregated public accommodations such as trains, streetcars, parks, and schools. The new bill goes much further. It seeks to control the business life of hotel owners, theater owners, and store owners, denying them the right to use their private property as they see fit.

The authors of the bill seek constitutional authority to regulate private business through the 14th amendment to the Constitution and that part of article 1, section 8, known as the commerce clause.

The 14th—the tainted amendment that was never legally ratified—states that: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

There is not a word in the amendment that gives Congress authority to legislate against a private business. It was designed solely to prevent a State from passing discriminatory laws.

Realizing how little the 14th amendment supports their position, the authors of the

public accommodation proposal sought help from the commerce clause of article 1, section 8. This clause gives Congress power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

It is difficult to read into this simple statement Federal authority to tell a storekeeper whom he must serve.

It seems obvious that those who drafted the Constitution meant exactly what they said. They were granting Congress power to regulate commerce among the several States. Moreover, records of the Constitutional Convention and a knowledge of the times bear out this interpretation.

The public accommodations clause not only applies to persons traveling from State to State or establishments doing business in many States. It applies to establishments doing business entirely within a State, if a substantial portion of the goods they use or services they offer have at one time or another traveled from one State to another.

Over the years, this commerce clause has been used time and time again to take rights away from the States and give them to the Federal Government.

In discussing what part of commerce Congress has the power to regulate, Woodrow Wilson said:

"Clearly, any part of the actual movement of merchandise and persons from State to State. May it also regulate the conditions under which merchandise is produced which is presently to become the subject matter of interstate commerce?

"Clearly not, I should say. Back of the conditions of labor in the field and in the factory lie all the intimate matters of morals and of domestic and business relationships which have always been recognized as the undisputed field of State law.

"If the Federal power does not end with the regulation of actual movement of trade, it ends nowhere, and the line between State and Federal jurisdiction is obliterated."

Historically, Congress began first to regulate the carriers; that is, the railroads, that moved goods from one State to another. Then it broadened its powers to regulate the goods themselves. Eventually, it claimed to have power under this simple clause to regulate the conditions under which goods were manufactured. It did seem that when Congress set itself to regulate the wages, hours of overtime, and labor relations under which goods move in interstate commerce, it had tortured and twisted out of the commerce clause all the Federal power possible. But under this new bill, it attempts to use the commerce clause to open up an entirely new field of control. It would control a soda fountain, if its syrup moved across State lines. The next step would be to control doctors whose patients travel across State lines.

The bill provides for Federal regulation in hiring, firing, promoting, and handling employees of all businesses with as many as 25 employees. It would be unlawful to fail or refuse to hire or to discharge any individual because of his race, color, religion, and national origin. No "right" to be free from discrimination is anywhere stated in the Constitution save in the 14th amendment. And that amendment prohibits States, not individuals or businesses, from denying equal protection of the laws. Moreover, in no previous interpretation of the commerce clause were private employment practices considered to affect commerce. The personnel—the people—that work for a business often determine whether it makes a profit or fails. If Congress has the right to tell a business whom it can hire or fire, then by all that is fair and right, it should guarantee that business a profit.

The 15th amendment to the Constitution gives Congress the power to pass appropriate legislation to protect the right to vote from abridgment by reason of race or color. But this new civil rights legislation would give Congress the power to decide the qualifications of voters. Nowhere in the Constitution is Congress given this power.

It is said that in many localities, literacy tests are mere subterfuges under which people are not allowed to vote because of the color of their skin. We do not believe anyone should be disqualified from voting by reason of his color. We realize there are areas of the South in which Negroes are in a majority. In those areas, heavy block voting by Negroes could create serious problems. But there is no way around giving all qualified persons the right to vote.

And the sooner all areas of the South make up their minds to this fact and educate their Negroes to vote intelligently, the better off we shall be in the South.

Under the Constitution, any requirement for voting imposed by a State must apply equally to all comers. But those who would pass this new "civil rights" bill are confusing the abuse of a thing with the thing abused. It is one thing for Congress to pass legislation to require the even application of a literacy test to all persons desiring to vote. This is constitutional; it is right and proper. But it is something entirely different—and decidedly wrong—to take away from the States the right to decide what sort of literacy test is to be applied to all. If anything, we should raise, rather than lower, requirements for voting. A sixth-grade education is not enough. If there is any one cornerstone upon which good government is based, it is an informed public.

There are no doubt people who believe the civil rights bill serves a good purpose. They are sincere in believing that a person has a right to buy a meal here or to be lodged there. But they are not weighing the consequences. Good ends ought never to be sought by bad means. The civil rights bill is an evil means of seeking an evil end. If it passes, the States will be further reduced to nothing more than appendages to the Central Government and largely subject to its control.

LENGTH OF CIVIL RIGHTS FILIBUSTER

Mr. DOUGLAS. Mr. President, the Senate is now in the 53d day of the filibuster on the civil rights bill. In other words, 2 months and 3 days have passed since the debate ostensibly began. I am informed that this is already the longest filibuster in the history of the U.S. Senate. It is obvious that unless we take steps to limit the debate, the end is relatively far off. In fact, the Senate has made little progress. Possibly the 53 days are merely the beginning.

The impression is going out over the country that the advocates of civil rights, on the floor of the Senate, at least, do not mean business and are not serious in their efforts to pass the bill. I sincerely hope that this is not the case. I do not want to believe that it is so. But the Senate will soon have to take vigorous steps if it is to clear itself of this suspicion, which is rapidly gaining ground. The events of last night, when it took the Senate and hour and a half to develop a quorum, certainly have not done anything to dissipate that suspicion.

I am well aware of the difficulties created by rule XXII and the fact that while only a majority is needed to adopt an amendment or to pass a bill, a two-thirds vote is needed to limit debate. Some of us have tried for 15 years to change that rule but always we have been defeated. I can well understand the feelings of the leadership that they do not want to move until they feel they have the votes of two-thirds of the membership. But if they wait for that, they may wait forever.

I suggest that we who believe that the Senate ought to proceed to limit debate should make that fact known. I am willing at this point to vote for a limitation of debate. I hope that other Senators will so signify.

One final point should be noted. Although the technical term used to limit debate is "cloture," the adoption of what is termed "cloture" does not really close debate.

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

Mr. DOUGLAS. Mr. President, I ask unanimous consent that I may be permitted to proceed for 2 additional minutes.

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

Mr. DOUGLAS. If cloture should be adopted, each Senator thereafter would be entitled to a full hour of debate, on the bill and on all amendments. This would permit our southern friends—and they are our friends—to propose at least 22 amendments, and they could be discussed for an additional 22 hours by Senators on the other side. Certainly this would permit full and free debate.

I would be opposed to any motion after cloture is voted to table amendments submitted by our friends from the South. I believe that the procedure that was followed on the Telstar bill in 1962, in automatically tabling amendments, was wrong. I would defend the right of southern Senators to propose amendments and have them debated for an hour or more on their side and an hour on our side, if necessary.

I think the country is tired of the procedure that the Senate has been following. The debate is being used not to illumine the subject but to prevent a decision from being taken. I very much favor moving toward action. The country is tired and the Senate is tired of what has been taking place. I urge the leadership to propose action to limit debate at the earliest convenient and practicable moment.

Mr. LONG of Louisiana. Mr. President, will the Senator from Illinois yield?

Mr. DOUGLAS. I am speaking on limited time, but I shall be glad to yield with the permission of the Chair.

Mr. LONG of Louisiana. Did not the Senator from Illinois vote against a standard motion to table all amendments when the Telstar bill was before the Senate, notwithstanding which the procedure was used by the leadership to see to it that no amendment was considered on its merits, after gag rule had been imposed?

Mr. DOUGLAS. I voted against the motions to table.

Mr. LONG of Louisiana. Is it not true that the Senate did?

Mr. DOUGLAS. The Senate voted to table them.

Mr. LONG of Louisiana. Every one?

Mr. DOUGLAS. Yes. But many Senators who then approved arresting absent Senators and who railroaded the Telestar bill through the Senate by invoking cloture and tabling all amendments are, however, apparently defending unlimited debate now.

ADDRESS BY HON. WILLIAM PROXMIRE, of WISCONSIN, BEFORE KANSAS INDEPENDENT OIL & GAS ASSOCIATION

Mr. DOUGLAS. Mr. President, I ask unanimous consent to have printed in the body of the RECORD an able and courageous address delivered by the distinguished senior Senator from Wisconsin [Mr. PROXMIRE] before the Kansas Independent Oil & Gas Producers Association at Wichita, Kans., on May 7. The address is entitled "What's Wrong With the Oil Industry." I commend the address to all members of the oil industry.

I have been informed, not by the Senator from Wisconsin, but by others, that he was received with great applause, both when he began and when he finished. Possibly the smaller oil producers are waking up and realizing that they have been used as cat's paws by the big oil operators. I hope this address may help them be truly independent.

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

WHAT'S WRONG WITH THE OIL INDUSTRY

(Speech by Senator WILLIAM PROXMIRE, Democrat, of Wisconsin, before Kansas Independent Oil & Gas Association, Wichita, Kans., May 7, 1964)

I have selected as my topic today "What's Wrong With the Oil Industry." This makes things easy for me because it is always simpler to be a critic than to be a constructive advocate. However, I want to make it perfectly clear at the very beginning that I recognize your industry as great and absolutely essential.

NATIONAL CONTRIBUTION OF OIL

Your industry contributes vitally to our Nation. You produce a product which is essential to our society. You are a source of substantial employment in the Nation and a director of massive investment capital. You explore for an urgently needed raw material and you convert that raw material into important products.

Moreover, your industry is composed of many individuals for whom I have a particularly warm spot in my heart; namely, small businessmen. Your industry has been characterized by the small independent operators who have the courage to take long chances for large rewards. Such men typically operate best in small units and this has been the nature of your industry.

However, I am a consumer, a citizen, and a taxpayer. While I recognize how vital this great industry is to American strength and prosperity, I judge from your invitation to speak that you are interested in my view of the oil and gas industry as a consumer, a citizen, and a taxpayer, as well as a U.S. Senator concerned with American strength and prosperity.

In my judgment, your industry is not operating in the best interests of the American consumer or the American economy, or, in the last analysis, the individual producers in your own industry. The oil industry is operating under State and Federal regulations and tax laws that enfeeble competition and encourage inefficiency. Oil regulations shove an annual multibillion dollar price-fixing subsidy burden on the American oil consumer. Oil tax loopholes hand other taxpayers an additional multibillion-dollar tax bill. Your industry operates to the great advantage of the passive wealthy loophole-seeking investor and to the cruel disadvantage of the oil industry's own enterprising small businessman and explorer.

These are strong statements, but they are true.

PRODUCTION AND PRICE FIXING BY STATE COMMISSIONS

What are these regulations? Let's start with you who produce oil in Kansas. You prospect for oil, you get a mineral lease on land, you get a permit to drill, you drill, you find oil, and what happens? The State commission steps in immediately, estimates your potential rate of output, and then permits you to produce only a small percentage of this rate. Does the ultimate consumer get the benefit of the increased supplies of oil because you have found a new pool? Does he get the benefit of lower prices for petroleum products because of increased supplies of oil? The answer is an obvious and emphatic no.

Instead, there is an almost complete absence of freedom of action available to you. You have to get permission from the State to drill, to complete your well, to hook up a connection, and to sell your oil. The State, not you, determines how many acres there can be in a drilling unit and how many barrels of oil you can produce this month or this year. Is this freedom under a private enterprise economy or is this a tight State socialism that fixes prices and profits?

What is the justification for these policies? The State commissions control the output so that no more oil is available to consumers. Why? Because if more oil is available, prices will fall. Regulations prevent the consumer from benefiting from oil production.

STATE BENEFITS FOR INEFFICIENCY

But the situation is much worse than this. As a result of your discovery, other producers throughout the State are forced by the State commission to cut back on oil production. As a result of your new find, output of all other wells is cut back. The result of this cutback is to make all other wells less efficient. Their costs are higher relative to their more limited output. Hence, inefficiency is imposed upon your industry. Result: it is made absolutely sure that the American consumer does not benefit. Is this free enterprise or controlled, socialistic, State-dominated production?

Now let's go even further. Others hear of your good fortune and so they drill wells into the same pool you have already penetrated. Since the guiding rule is that the market still must not be expanded, everyone who drills a well gets an allowable portion of the existing market. To provide this "fair share" the portions for existing producers must be cut back even further. Hence, an additional reason exists even within your new pool for inefficient use of our national resources. You all know far better than I that the most efficient operation, namely, the maximum recovery at lowest cost, can be obtained from a pool with very few wells. The analogy is a tired one, but I shall use it anyway—this is exactly like putting more straws in a bottle of soda pop. The additional wells reduce the efficiency of all wells, including the previous ones that existed in the pool. Investment costs rise much more rapidly than additional yields. Then, on top of this, the yield of each existing well must be steadily cut back as new wells are sunk. Is this maximum efficiency produced by free competition for the benefit of consumers or a socialistic state in its purest form?

The result of all this is increased costs which are then used by the major companies as another justification for holding final prices to consumers high, rather than letting them fall. The circle and the policy are vicious—more overdrilling, increased costs, further restrictions supporting high prices, which encourage more drilling.

There are still other policies designed explicitly to hurt the consumer. The marginal or stripper wells are typically exempt from regulation because otherwise many of them would be simply shut down. In the oil industry, as you know, there is only one thing worse than a dry hole and that is finding a deposit which looks commercial, but which the operator finds out the hard way is not commercial—after he has spent his money developing it. In other words, he and society would have been better off had the reserve never been found. So the ridiculous policy is then adopted of permitting these most uneconomic strippers to continue in the market.

Some countries classify a well producing less than 20 barrels daily as inactive. They wisely close down the well as soon as possible. We follow the reverse policy of encouraging the margin wells. For example, in Texas, wells which produce less than 20 barrels a day escape regulation. So a science exists of operating wells that provide only 19 barrels a day. In other words, we cherish and fertilize the weeds at the expense of the flowers. An explicit policy is adopted to keep the most inefficient operators in business. And who pays the cost? The consumer. Is this private enterprise or a State economic dictatorship at its inefficient worst?

What's the significance of this policy? Is it that in 1962 of the approximately 3 billion barrels of oil produced in the United States some 582 million—more than one-sixth—were obtained from wells producing 10 barrels per day or less. The average production by these stripper wells in 1962 was 4 barrels per day. Can this be called maximum efficiency?

CONTROL BY BIG BUYERS

The most effective control, however, is not by the State commissions but by the major integrated companies which dominate the industry and particularly its production level. They control how much of the oil they take and how much they will pay for it. And the independent producer, especially the small producer, has no real alternative but to do exactly as the majors say.

What happens when you wish to sell your crude oil? Do the major refining companies come flocking to your well and compete to obtain your oil? Of course not. They already have more oil than they need to meet the market at the existing high prices which they charge the final consumer.

Therefore, you must go begging to a company to buy your oil. There will be only one pipeline connected to your well. In other words, there is only one buyer, a buyer who is a monopoly purchaser from you. If he doesn't want your oil, you don't sell oil. Therefore, he can and does completely control the prices he pays you. Is that free competition? Or is that corporate enforced socialism? Name me one other industry where the manufacturer has a monopoly buying power over his suppliers of raw material.

The State authorities set a top limit on how much oil a particular well can produce and on the total that all State wells can produce. If a purchaser is a small business refiner whose total supply is in the control of one State, you can compel him to come to terms if the State conservation agency agrees. If the purchaser, however, is an integrated major company with production and pipelines in other States and in foreign countries, such as Kuwait, there is nothing your State agency can do except speak politely.

Thus, if the major companies who purchase oil agree, the independent producers can operate. If the major companies decide to take less from a particular field, there is

nothing the small producers in that field can do except complain; that is, unless current experiments are eventually successful at making oil into an edible substance; then you can eat it.

The State system does succeed in keeping off the market any stray oil in excess of major company marketing requirements. This gives those companies a nearly complete control over the price of the crude oil they purchase. Can this be called anything except corporate economic dictatorship?

INFLUENCE ON PUBLIC OFFICIALS

Not content, however, with Government controls and with corporate dictatorship, your industry has also insisted upon infiltrating the Federal Government in order to insure its continuing profits. It has been estimated that the American Petroleum Institute alone spends about $50 million a year in public relations. The industry uses much of these funds to influence Government.

One of these ways is through political contributions. In my own State of Wisconsin we are not oil producers, we are oil consumers. Yet it is usual for candidates for Federal office from my State to show contributions from leading figures in the oil industry from Texas, California, and other States.

I understand that your industry operates more aircraft than all U.S. airlines put together. These planes are used in many ways, one of which is to carry influential politicians.

EFFECTS ON CONSUMERS

What is the effect of all this on the consumers of oil and oil products? Your industry is fond of saying that despite the rise in costs since the twenties, gasoline prices before taxes are about the same per gallon as they were then. This, in my view, is the most devastating criticism of the effectiveness of this industry's concern for the consumer. Over the past 40 years the technical efficiency of your industry has grown many times. Look at the big trunk pipelines moving crude oil and products at a fraction of the cost per barrel of the tank cars and small pipelines of prewar years. Look at refinery efficiency with its vastly increased production of high-value products and the decrease of residual oil to nearly nothing. Look at the increased technical efficiency in oil production. In the twenties your predecessors in this industry were only able to extract 10 percent of oil in reservoirs. The other 90 percent was lost. This extraction percentage has increased to the 30 or 40 percent now common and the 60 percent which is easily possible. These increases in technical efficiency should have given the consumer a much, much lower gasoline price, not one based on the low volume, high-cost predepression years.

The annual cost of this organized waste to the American consumer has been conservatively estimated at about $4 billion per year. What is the cost to the consumer? A reasonable estimate, based simply on the free world price of oil, without considering the greater efficiencies possible in this country, is that gasoline prices could be at least 5 cents a gallon cheaper. Imagine: every 20 miles we drive, we pay a nickel in tribute to wasteful regulations and practices.

DEFENSE: AN OIL ALIBI OR THE REAL M'COY

I view the oil industry also as a citizen. As a citizen, your industry says to me that it is my patriotic duty to pay the industry price in the name of national security. In my opinion, the present methods of operation of your industry are not essential to our national security but rather a menace to it.

Let me make this clear. Oil is an essential of national security. For many years to come planes, both supersonic and otherwise, will fly on petroleum fuels, ships will move by oil power, land operations will be driven by petroleum power.

But to say that your product is essential to national security is not to say that your methods of fixing prices are equally essential to national security.

One of our greatest sources of national security is the effective operation of our free market economy. The methods used by your industry are sabotaging this effective operation of our economy. You are not making efficient use of the national resources over which you have obtained command and which are so vital to our survival. Moreover, you are not using free market techniques but subverting these techniques.

But let us look at national security simply from the standpoint of logistics. Does anyone here honestly believe that if we get into a World War III, Heaven forbid, it will be fought entirely from fortress America? If this were true, our defense authorities would be sadly derelict in their policy of building bases abroad. Instead of building up our reserves in the United States, we should permit defense planning in petroleum, as in other materiel of war, to be free of political and industrial pressure. These materials should be located where, in the judgment of our defense officials, and no one else, they can best serve the national security interests of the United States.

And look what we are sacrificing in terms of increasing the strength of our private economy during this peacetime period. In Boston, an area of high fuel costs, fuel oil could be landed from Venezuela at under $1.75 per barrel, if it were not for restrictions on residual fuel oil, even putting aside crude oil quotas. Residual fuel oil quotas have not the slightest justification on grounds of national security. As you know, there is not a single refiner of oil in this country who is making residual fuel oil deliberately or who does not regard it as a terrific waste of important oil resources. Yet these quotas are retained, thereby increasing the price of a product which we could draw cheaply from a foreign source.

But let's make the assumption which is the basis for your industry's position; namely, that we need to rely wholely upon domestic oil in time of emergency. The question then arises how much oil do we need in reserve for this purpose? In my judgment, this is one of the points at which the oil industry is most vulnerable. During the last 30 years there has been this monotonous insistence upon the need for domestic oil reserves for security needs. Yet there never has been any significant effort by the industry to measure, estimate or even guess how much reserve we should have for this purpose. There is, in other words, no gage provided for the determination of this policy. The only rule is the rule of your industry—there should be more and more and more.

But let's look at the facts. In 1941 we went into war with wells producing at about 90 percent of capacity. In other words, we had a reserve of about 10 percent. It was enough, when supplemented by the regular imports of Venezuelan crude oil that took place in 1944 and 1945, to satisfy our full military demands. In the early 1950's one estimate made outside the industry was that we needed something like a 15 percent reserve. However, in 1959, when our reserves undoubtedly exceeded 30 percent, the argument of the need for a reserve was used as the basis for supporting import controls. Today our reserves are probably in excess of 50 percent and we are still asked to intensify import controls so as to increase that reserve capacity. You are operating at less than 50 percent capacity. Or to put it another way, you are operating on the basis of at least five times more need for national security than at the beginning of World War II. Your industry is exploiting our own domestic national resources on grounds of security that simply cannot be justified.

But then when a national security crisis does arise, where is your industry? The administration declared that the national interest required increased oil output during the Suez crisis. Yet the State commissions would not permit such increases in oil output until a month after the shortage had already forced up domestic prices of petroleum products. We had plenty of unused capacity at the gulf coast. Yet tankers had to be sent half way around the world to the Middle East, avoiding the Suez Canal, in order to obtain necessary supplies of oil. Efficiency, competition and the national interest required more oil to be produced near the tidewater in Texas. However, the concept of "fair shares" determined that no more oil would be produced until west Texas inventories were down.

The policies of your industry also discourage efforts to discover more domestic oil reserves, as contrasted with the exploitation of existing reserves. Wildcat wells are down by a third since 1956 and there is a similar decrease in newly discovered pools. The reason is evident. Why should individuals risk money to find new oil when, after a brief grace period, the new oil can be produced at only a fraction of capacity. The reason that it can only be produced at a fraction of capacity is because of the solicitude for the present marginal producers. A freely competitive economy would eliminate the high-cost producers and encourage the discovery of new and more profitable resources within the United States. The wildcatter under free competition would be able to profit from the jackpot if his gamble were successful. Isn't that what free enterprise is all about?

Our national security also depends upon our reputation in the rest of the world. We are, or should be, the leading advocate of freedom, of free markets and of free trade. Yet our own market for oil is a tightly controlled monopolistic one with essentially no freedom of competition. We have here at home thousands of firms but only about five production decisionmaking units—that is, the State commissions—with no antitrust inhibitions.

Compare this with the situation abroad. There are about eight producers—nine if we include the Soviet Union—who do not collaborate and, in addition, there are a steadily growing fringe of independents. New producers can easily enter the market. For example, the Japanese entered with only a $10 million investment. The number of sellers is increasing. There is active competition both among buyers and sellers.

The result is decreasing prices. Arabian crude oil, which in 1957 was posted and actually selling at $2.08 per barrel, today is posted as $1.80 per barrel and actually can be sold at about $1.40 and sometimes less.

Our national interests lie in expanding world trade but we are confronted with the arguments of your industry that quotas are necessary for national security purposes. What do we say to other nations that refuse to open their markets to our products when we continue to bar the free import of residual fuel oil in the name of national security? The limitation of these imports accomplishes nothing in the way of stimulating additional production of residual fuel oil and certainly nothing in the way of adding crude oil markets.

FEDERAL OIL OFFICIALS AND THEIR PRIVATE INTERESTS

If the national security question is on the side of the oil industry, why is it necessary to populate the oil policy agencies only with people who are sympathetic to the oil industry? The Assistant Secretary of the Army need not be a soldier, the Deputy Secretary of State need not be drawn only from the ranks of the Foreign Service, and an Assist-

ant Secretary of Agriculture need not be a farmer. Why then must it be considered essential that the oil industry furnish the Assistant Secretary of Interior for Mineral Resources and his principal policy aid in the Office of Oil and Gas. If oil is essential in the national security, and I believe it is, should not the national policies aimed to further that security be determined by disinterested public servants, chosen for ability and competence, not their sympathy to the industry or to any segment of it.

Your industry—and your industry alone—insists upon its own appointments to top policymaking positions in our Government. The present Governor of Texas was appointed Secretary of the Navy when he was executor of one of the largest private oil estates in the world. Of course, this had nothing to do with the fact that the Navy then bought all the oil for the Armed Forces.

Mr. Lawrence O'Connor was appointed to the Federal Power Commission, although he spent his lifetime in the oil industry and was an oil lobbyist. This, of course, had nothing to do with the fact that the Federal Power Commission influences the prices the oil industry can charge.

Mr. John M. Kelly was appointed nearly 3 years ago as Assistant Secretary of Interior for Minerals, the prime oil policymaking job in Government. Secretary Kelly held millions of dollars worth of oil properties at the time of his appointment. He had spent virtually a lifetime in the oil industry. This, of course, had nothing to do with the fact that he would supervise the Bureau of Mines, the Geological Survey, the Oil Import Administration, the Office of Mineral Exploration, the Office of Oil and Gas, and the Office of Geography.

Mr. Jerome O'Brien was appointed head of the Office of Oil and Gas. He previously had spent a lifetime in the oil industry and was a vice president of Humble Oil Co. This, of course, had nothing to do with the fact that in his Government position he was the primary developer of oil and gas programs, that he provided leadership in coordinating and unifying oil and gas policies of all Federal agencies and was the principal channel of communication between the Federal Government and the Interstate Oil Compact Commission, State regulatory bodies, and the industry.

To succeed Mr. O'Brien, Mr. Joe Dickerson was nominated, although Mr. Dickerson's appointment was withdraw for various undisclosed reasons. Mr. Dickerson spent a lifetime in the oil industry and was a chief lobbyist for the industry. In fact, he had such a long life with the oil industry that he held a substantial pension from Shell subject to his doing nothing inimical to Shell's interests. This condition was explicitly in his contract while his appointment to be head of the Office of Oil and Gas was pending. It would be hard to imagine a more shocking or conspicuous conflict of interest.

These policies of the industry serve to weaken the very industry that the policies are designed to protect. Your industry is now extremely vulnerable to minor fluctuations in policy. Just imagine what would happen if prorating were abolished, if there were a suspension of the ban on interstate shipment of oil produced in violation of State regulations, a substantial increase in import quotas, or the removal of offshore production on Federal lands from the State allowable levels. Is it national security which justifies making your industry so vulnerable?

OIL: FAIR-HAIRED TAX BOY

I also view the oil industry as a taxpayer. Here we find the final insults to our national economy. Despite all the monopoly protection your industry has provided for itself and despite all the protection you have obtained in the name of national security, your industry has also consistently demanded and received special tax concessions available to no other group in the Nation. Through these concessions, you have sharply reduced your financial support of your Government. Through your tax concessions alone you have become a national example of the most notorious loopholes, recognized as such even by Fortune magazine.

The tax structure upon which our Government depends is largely self-enforcing. When individuals and companies generally pay their taxes, they must have confidence that everyone else is paying his "fair share," to use a term you know so well. When it becomes generally known that one group fully capable of paying taxes is not paying taxes, the individual taxpayer feels resentful—with complete justification—and less willing to pay his own taxes. Not only is your industry not carrying its fair share—it is encouraging others to avoid their fair share.

Does your industry pay taxes? Let's look at the ugly facts. We had a Federal corporation tax rate of 52 percent in 1963. Yet the seventh largest industrial corporation in the country, Texaco, with net income of over $500 million made provision for income taxes in 1963 of only 13 percent. Standard of Indiana, the 14th largest corporation, with a net income of over $180 million paid in all income taxes, Federal and other, only 14 percent of its net income. Shell, the 16th largest corporation, paid only 18 percent in all income taxes. Continental Oil paid only 10 percent in Federal income taxes. Tidewater in 1962 paid only 8 percent in all income taxes. Atlantic in the same year had over $46 million in net profit and yet paid no income taxes and has apparently not paid any income taxes since 1956. Pure Oil ended up 1963 with virtually $30 million in net profit and yet had a net tax credit. It received several hundred thousand dollars in refunds.

But what of idividuals in your industry? The lowest individual tax rate in 1963 was 20 percent on taxable incomes from 0 to $2,000 or $4,000 for married couples. Believe it or not, our Nation is made up of persons who actually pay this rate. Imagine 20 percent, $800, on the first $4,000 of net income. In the oil industry, and in the oil industry alone, you have an entirely different type of person—men from another world, who take but do not pay for taking.

Your industry has a man who made over $28 million in 1960. How much did he pay in taxes? Nothing. Your industry has a man with an income in 1960 of over $4 million. How much did he pay in taxes? Nothing. Your industry has a man with an income in 1960 of $1.5 million. How much did he pay in taxes? Nothing.

The rest of the world, the world of taxpayers, is beginning to learn about this other world—the world of nontaxpayers. Its boundaries are identical with the boundaries of the oil industry. We get glimpses into this other world, although we are not allowed to enter. We assume, from outward appearances, that the oil industry is a world inhabited by people exempt from taxes. Is this advantage good for your industry? Is it good for our Nation to contain such a tax-exempt world?

The effect of this special privilege is to rob the rest of the Nation. The robbery occurs first because Government expenses, whether the oil industry recognizes it or not, must be paid. Therefore, since the oil industry is legally enabled to reduce its taxes sharply, other industries, small businesses, and individuals must make up the difference through higher taxes than they would otherwise pay if the oil industry carried its, to use the term again, "fair share." Therefore, the world of taxpayers has less funds left to it after taxes because of the exemption status of the oil industry.

But the robbery goes even further than this. We in this Nation grow and prosper because of increased investment and increasing effectiveness in the use of our resources. The oil industry, however, represents another world that lures investment funds. Therefore, instead of investment funds being used for the greatest gain of the Nation, these investment funds are attracted away from their most effective uses and toward the oil industry, which already has an excess of investment funds. This robs the Nation of a part of its economic growth.

Again, let me make myself clear. Every businessman should be able to deduct his costs. You, as businessmen, incur depletion costs and you should be able to deduct these costs. But businessmen in the oil industry, and in that industry alone, know that for every dollar of costs you can obtain an average of $19 of deductions, according to Treasury Department statistics. You should have the first dollar of deduction for the dollar of cost. You should perhaps obtain deductions for 10 times the amount of your depletion. But surely not 19 times the amount of cost you incur. Let us try to be reasonable for the benefit of other taxpayers throughout the Nation.

SUMMARY

What is wrong with your industry?

1. Your industry has accepted State commission regulation of the supply of oil to the market. In the process you have lost your own freedom to produce and sell.

2. The State commissions encourage inefficiency. The best producers are cut back; too many wells are drilled in existing pools; and the most inefficient producers are guaranteed a market so that more than one-sixth of all oil production is from wells that any efficient marketing system would close down.

3. Independent producers are forced to beg the bigs for business. You must accept the largess of some companies who dominate your industry.

4. Your industry's built-in insecurity leads to undue pressure through fabulous funds for public relations, through contributions to political campaigns and through other expenditures that come out of your pockets.

5. The effect of these policies on consumers has been to lose much of the price benefits from increased efficiency obtained during the last 40 years. The current cost out of consumers' pockets is $4 billion a year.

6. Your great contribution to national defense has been enfeebled by inefficient production restrictions. Our Nation's strength has also been weakened by the oil industry's success in limiting the free import of fuel oil. This has forced us to use up our own precious limited oil reserves.

7. Of all American industries yours alone has won control of the very Federal policymaking office that regulates it. This constitutes the most shocking and continuous conflict of interest in the Federal Government.

8. Finally, your industry enjoys a notorious privileged tax-exempt status worth billions of dollars and designed primarily to benefit high-income investors. This not only imposes a heavier cost on other taxpayers, it diverts excessive investment to your industry.

CONCLUSION

If your essential industry were organized and operated for the best interests of the Nation, the economy, and you as oil producers, look what a contribution you could make. You would be a prime example to the world of free enterprise, working independently of Government for the benefit of the Nation. You would be a producer of a vital commodity under methods of maximum efficiency. You would provide substantial incentives in return for substantial risks. You would continue to be a major employer of workers, capital, and natural resources.

And you would better serve your Nation. These are the things that I hope the oil industry will become, and this is why I spoke to you today.

CURRENT CIVIL RIGHTS FILIBUSTER ALREADY GRANDDADDY OF THEM ALL

Mr. PROXMIRE. Mr. President, in order to appreciate the length to which the present so-called educational debate has been carried, I have compiled some statistics on past filibusters. The record is most revealing, and I wish to read it to the Senate.

First, however, I should point out that the list does not contain all of the filibusters ever staged in the Senate. But it does contain, to the best of my knowledge, a fairly accurate count of those which lasted 10 days or longer, and which dealt with substantive rather than procedural issues.

In some cases, my information contains only the opening and closing dates of debate. Where this occurs, my calculation of total days is approximate, based upon the assumption of a 6-day debating week, which is certainly conservative. Nevertheless, the count is close enough to provide a yardstick by which to measure the present talkathon.

There have been 22 filibusters; and if we include procedural filibusters, there have been only 2 or 3 additional ones. The fact is that the present filibuster is already the longest in the history of the Senate.

The only ones that came close to this one for length of time were: The debate over the Oregon bill in 1846, which lasted almost 2 months; the debate over the Versailles Treaty in 1919, which lasted approximately 55 days, but in which there were interruptions—more interruptions than have occurred in the present debate; the debate over the Harding ship subsidy bill, which lasted from December 11, 1922, to February 28, 1923; however, in that debate it is apparent that there were many interruptions.

As a matter of fact, the book by Burdette, entitled "Filibusters in the Senate," discloses how extensive those interruptions were. I quote briefly from the book:

> Even before the Christmas holidays, the majority felt obliged to allow other urgent business to be considered; and after the holidays, until the 9th of February 1923, other legislation occupied most of the Senate attention.

It is clear that the present debate is already the granddaddy of all filibusters; and, as has been made clear by Senators who are opposed to the bill, the end is nowhere in sight, for the opponents of the measure show no signs of relenting in their struggle against the bill; and the friends of equal rights and equal justice under the law show no signs of uniting to put an end to this exercise in futility.

The plea made by the distinguished Senator from Illinois [Mr. DOUGLAS] should receive the sympathetic attention of all Senators. After all, if the debate proceeds much longer, it will bring the U.S. Senate into serious disrepute. It is perfectly obvious that virtually any bill can be debated in full in a matter of a week or, at most, 2 weeks. But the debate on the civil rights bill has dragged on so long that the time certainly has arrived for cloture.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD statistics relating to filibusters, by bills.

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

In 1841: Bill relating to the Bank of the United States—2 weeks.

In 1846: The Oregon bill—"most of session hours from February 10 to April 16"—2 months.

In 1890: Federal supervision of elections—29 days.

In 1891–92: Federal supervision of elections—December 2 to January 26—approximately 45 days.

In 1893: Repeal of the Silver Purchase Act—42 days, including 13 continuous day and night sessions.

In 1908: The Breeland-Aldridge emergency law—28 days.

In 1914: Rivers and harbors bill—11 days. Clayton amendments to Sherman Act—21 days. Federal Trade Commission bill—30 days. Panama Canal tolls bill—30 days.

In 1915: Wilson's ship purchase bill—33 days.

In 1919: Treaty of Versailles—September 10 to November 19—cloture filed November 13, adopted on November 15—approximately 55 days.

In 1921: Emergency tariff bill—January 25 to February 16—approximately 18 days.

In 1922–23: Harding's ship subsidy bill—December 11, 1922, to February 28, 1923—approximately 75 days.

In 1933: The Glass branch banking bill—2 weeks.

In 1937–38: Antilynching bill—29 days.

In 1939: A monetary bill—16 days.

In 1942: Antipoll-tax bill—10 days.

In 1946: FEPC Act—approximately 19 days.

In 1953: The Tidelands oil bill—35 days.

In 1954: Atomic Energy Commission revision bill—13 days.

In 1957: Civil rights bill—June 19 to July 16 when the bill went to committee with instructions to report back—approximately 23 days. Was reported back a week later and debated further from July 22 to August 7—approximately 15 days.

In 1960: Civil rights bill—February 15 to April 8—approximately 32 days, including 9 days and nights of continuous session.

In 1962: Literacy test bill—10 days. Communications satellite bill—intermittent filibuster over a 2-month period.

WORLD MONETARY REFORM

Mr. JAVITS. Mr. President, I invite the attention of my colleagues to an extremely important speech made by the Managing Director of the International Monetary Fund, Mr. Pierre-Paul Schweitzer, to the New York Chamber of Commerce on May 5.

In this speech, Mr. Schweitzer, the head of the pivotal international organization in the world monetary system, put forward two ideas as to how the future liquidity needs of the system may be met through the IMF. The first involves an increase in the quotas of member countries. This proposal has already been discussed widely and is the most likely reform to gain acceptance. The effect of this step would be to increase the availability of total monetary reserves to member countries by increasing their currency contributions to the Fund.

The second would involve a more far-reaching innovation; namely, acceptance by the Fund of deposits and the introduction of investments at the initiative of the Fund. Both of these innovations would result in significant expansion of existing world monetary reserves and the evolution of the IMF toward a world central bank.

I believe that it is significant that Mr. Schweitzer felt it necessary to publicly acknowledge the need to increase world monetary reserves at this time. It adds great weight to the concern of those, such as myself, who expressed similar sentiments over the past months.

His statement comes on the eve of the final phase of negotiations between the members of the 10-nation "Paris Club"—a group composed of the 10 most industrialized members of the free world appointed at last October's annual IMF meeting in Washington to study the adequacy of the existing monetary system. Their recommendations are to be submitted to the forthcoming annual meeting of the IMF in Tokyo this September, along with those to come from an independent IMF study.

Since the beginning of their study reports persisted of serious disagreements among the members of this group regarding the form and substance of proposals being advanced.

It is rather important that prior to a revision of the existing monetary system there should be a full discussion and detailed negotiations so that everybody's interests are well considered in any new arrangements. Nevertheless, the existence of the basic problem cannot be denied any longer. Undersecretary of the Treasury Roosa, in his now famous article in the October 1963 issue of Foreign Affairs, clearly recognized the problem when he stated that there is need for a "systematic and searching appraisal of the international monetary system," to consider "whether a continuation of recent evolutionary changes or more sweeping reforms will be needed for the probable dimensions of future requirements." Secretary Dillon, in his October 1, 1963, address to the IMF meeting also endorsed the study to be conducted by the IMF and the Paris Club of Nations. Mr. Schweitzer's speech of May 5, recognizing the needs for additional international liquidity for the long haul, lends further credence to the advocates of reform.

Whether in the end increased liquidity will be achieved through increased quotas in the IMF or through deposits at the IMF or through a new composite international reserve unit, reportedly under consideration by the Paris Club, is immaterial. What is essential is that the suggestions for reforms that are to come from the two studies next fall should make it possible, under the circumstances now indicated which are quite different from those prevailing in 1946, to fulfill the most basic function of the international monetary system which is stated in section (ii) of article I of the articles of agreement of the IMF:

> To facilitate the expansion and balanced growth of international trade, and to con-

tribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

The major shortcoming of the existing world payments mechanism is that though the system has demonstrated effectiveness in such a situation as the Cuban crisis and the rejection of the British application for membership in the European Economic Community, when the international monetary system is confronted with the problem of the maladjustment of the free world's economy, the corrective mechanisms of the existing system cannot be relied upon to operate quickly and effectively enough.

Major imbalances take years to eliminate unless they are corrected by measures which hamper economic growth or world trade. That is the fundamental dilemma which we face. The measures which we tend to take are measures which tend to hamper economic growth or world trade. What the world's monetary system needs is a growing stock of international credit which would permit corrective action without penalizing one nation or one group of nations, and without disrupting international trade.

I ask unanimous consent that Mr. Schweitzer's speech along with an editorial from the Washington Post and articles from the Wall Street Journal and the New York Times commenting on his speech and on developments concerning the Paris Club studies may be printed in the RECORD at the conclusion of my remarks.

There being no objection, the speech, editorial, and articles were ordered to be printed in the RECORD, as follows:

RECENT INTERNATIONAL MONETARY DEVELOPMENTS

(Address by the Managing Director of the International Monetary Fund, Pierre-Paul Schweitzer, to the New York Chamber of Commerce, New York, May 5, 1964)

Mr. Chairman, I have been told I have about half an hour to speak to you today. For this time I seem to have given myself a rather large subject. But I would like for a few minutes to say some words about recent developments in world trade and payments and then to go on to talk briefly about the work which is at present being done in the monetary sphere to try to ensure the future orderly expansion of the world economy.

It is valuable from time to time to turn from national preoccupations to review conditions internationally and to see each country's problems to some extent as they relate to those of others. For no country today, not even the United States, is insulated from major international trends in the general economic and financial field. The degree of international cooperation which has been built up since the war, the rapid increase in and dependence on world trade, and the size of capital movements following the restoration of convertibility amongst the major industrial countries, make it impossible for countries to live in isolation economically, any more than they can politically.

What of the present position? Recent developments in the world trade and payments picture have, on the whole, been encouraging. In the past 2 years there has been a broad growth of production throughout the world, while international prices have been reasonably stable. The most disturbing major imbalances of trade and payments have shown improvement. In particular, the deficit of the United States has recently been reduced to more manageable levels. During the first quarter of 1964, the balance of payments, aided by transitory favorable factors, was even in approximate equilibrium. Moreover, the developing countries as a group, after a long period of considerable difficulty, have had their positions substantially improved by better prices for their export products. Although there are other developments which portend difficulties for the future, it is a matter of satisfaction that these major improvements have occurred.

The growth in world trade and production, which has now continued for many years, was especially satisfactory in 1963 because it was so widespread. In continental Europe the growth of production has been encouraging for many years. In Japan there was a dramatic recovery of industrial production which increased by 18 percent during the year. In the United Kingdom the growth in production, while less dramatic, was particularly welcome as output had risen little for several years. In the United States, output has now been moving upward for more than 3 years with clear signs of an acceleration this year. The simultaneous advance in all the major industrial countries was a main factor behind the increased export earnings of the primary producing countries, which to some extent were also due to accidental factors. The improvement in this latter group of countries was, of course, not universal. Some had no share in the rise in export earnings. In others, the increase in output was disappointing—the more so in view of the importance that the inequality be reduced as rapidly as possible.

The growth of production during 1963 took place in economies running at different levels of capacity. In both the United States and Canada, relatively high unemployment and unused capacity permitted the expansion to occur with little pressure on prices and wages. In the United Kingdom and Japan, while initially there was some excess capacity, there was evidence of a renewal of strong demand pressures in late 1963 and early 1964 requiring some restraining measures. In continental Europe, pressure on wages and prices was in evidence throughout the period. In Italy and France, in particular, the rate of price advance reached such proportions during 1963 that the authorities felt impelled to undertake significant restraining measures on demand.

After the middle of 1963 there was a rather broad tendency for interest rates to rise as monetary policy shifted in the direction of restraint. In both the United States and Canada, the increase in long-term interest rates during 1963 was much less than in short-term rates. In the United Kingdom, long-term rates actually declined until the third quarter of 1963, but, with the tightening of monetary policy later in the year, long-term interest rates rose significantly.

Although monetary measures in most countries have tended, on the whole, to be restraining in recent months, there was more diversity in fiscal action. In Europe, the growing concern about price increases created a pattern generally for a restrictive fiscal policy. In other areas where there was evidence of unused capacity, there were some significant attempts to use fiscal policy for expansion. This occurred most notably in the United States with the recent income tax reduction. But during 1963 and 1964 the budget was used in Japan, the United Kingdom, and Canada to stimulate the economy.

The expansion in demand in the industrial countries in 1963 had an immediate and a valuable result in the acceleration of the growth of world trade. World exports increased by 8½ percent in 1963, substantially above the increase in the order of 5 percent in the 2 preceding years. More important even than the amount of the increase was its improved distribution. For some time the developing countries had not shared equally in the growth of exports, but in 1963 this pattern was no longer true, and they obtained a full share of the overall growth. In fact, in 1963 there were very few countries in which exports were lower than those in 1962, and in most of these, exports were rising in the latter part of the year and in the early months of 1964.

There were some substantial changes in the balance of payments of major countries during 1963. The most important of these was undoubtedly the sharp improvement in the balance of payments of the United States after mid-1963, to which I have already made reference. Even though I believe—and this is a view shared by the authorities in this country—that developments in the first quarter of 1964 were more favorable than can be expected during the remainder of this year, I feel that the U.S. balance of payments may now have turned the corner. Several factors are tending to support it. First, the substantial rises in costs in Europe and Japan compared with their stability in this country have tended to improve the competitive position of the United States in international trade. Secondly, 3 years of sustained growth, combined with price stability, have, in view of these rises in costs abroad, reduced the attractiveness of making foreign investments. Thirdly, Government programs to stimulate exports are taking effect. But despite these influences, a balance-of-payments deficit of some $2 billion is seen by the authorities for 1964, and it is clear that they will have to give continuing close attention to the payments situation for some time to come. In this connection it must also be kept in mind that the balance of payments of the United States cannot be said to have attained a satisfactory equilibrium until there is a surplus on goods and services sufficient to provide a flow of capital exports and aid, especially to the less developed countries, on a scale consistent with the capacity of the huge American capital market.

At the same time that the U.S. payments position was improving, there was a significant reduction in the surplus of the Common Market countries. Much of this welcome adjustment, coming after a long period of surplus, has unfortunately been concentrated in Italy where it has caused considerable difficulty. There has also been, however, a substantial reduction in the surplus position of France. Even though there has at the same time been a reemergence of a large German surplus, present trends suggest that the surplus problem of the Common Market area—in some respects the mirror image of the deficit problem of the United States—has also come much nearer to its solution.

This relative improvement in the outlook for the United States is of great importance to the stability of international monetary arrangements. Despite all the innovations in new payments arrangements, it remains vital to the smooth operation of the international monetary system that the ability of the United States to manage its payments situation be unassailable. The accumulating evidence that the problems of adjustment are being met has done much to stimulate the belief in the continuity of world prosperity and monetary stability which is now in evidence.

One of the more serious aspects of world trade and payments developments in recent years has been the relatively slow growth in the less industrialized countries. This has been due in part to declining prices for foods and raw materials. In 1963 and early 1964 there was an important reversal in this trend. During 1963 there was an increase of around 10 percent in the prices of such products. This increase, while not fully represented in the balance-of-payments developments in

1963, was responsible for substantial improvement in the positions of the developing countries. This was recorded in part in an increase in the payments surpluses of primary producing countries, but it was also instrumental in financing a rise in their imports from the industrial countries.

Despite this trend the position of the developing countries remains a difficult one and it was largely to focus attention on their problems that the United Nations World Conference on Trade and Development was organized. This Conference is now meeting in Geneva, attended by the representatives of 122 countries. When speaking to this Conference just over a month ago, I quoted a sentence from the Articles of Agreement of the Fund—our basic rules of conduct. It states that one of the major purposes of the Fund is:

"To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy."

To insure the continued steady growth of world trade and all the benefits which flow from it, the Fund and the financial authorities of 10 major industrial countries have been engaged in studies to examine the functioning of the international monetary system and the probable future needs for liquidity. One must not expect these studies to lead to overnight changes. The international monetary system is, to a large extent, the product of organic growth, and not something neatly defined in a set of laws or regulations. In one sense it is not a system at all. The term is used rather to describe the existing practices by which the various national monetary systems are meshed together. Until World War II these practices had largely developed over time with little conscious planning. But out of the grim experience of the depression years of the thirties a strong and sustained attempt has been made after World War II to introduce some more effective coordination of action.

Under the old gold standard, countries held gold reserves to give them the necessary resources to meet payments deficits. In the course of time, gold holdings were supplemented by holdings of foreign currencies considered to be in practice as good as gold. The pound sterling was the outstanding currency for such purposes until comparatively recent times, when the U.S. dollar has grown to a place of preeminence.

These practices have, on the whole, proved satisfactory but there are limitations to the system of reserve currencies. Their use depends on confidence in the maintenance of their gold value. Eventually the accumulation of claims, implicit in this system, can undermine this confidence and at that time any indication of a continuing payments deficit for the reserve currency can create a type of liquidity panic where countries scramble for the greater security provided by gold. There has, therefore, been a continuing search for ways to provide a more secure source of the necessary continuing expansion of liquidity. Over the years much has been done to achieve this through international cooperation. The first stumbling steps were taken in this direction in the 1930's—notably in the Tripartite Agreement of 1936 between the United States, France, and Great Britain.

Since then, efforts in this direction have become much more substantial. Foremost among them was the establishment of the International Monetary Fund, set up at the Bretton Woods Conference in 1944. The Fund has been the principal instrument for developing international cooperation in the monetary field. Signatories of the articles of agreement undertook jointly international obligations by which countries agree to follow certain practices and to shun others. Thus were effectively established broad lines of international financial policy aimed particularly at the achievement of convertibility of currencies based on stable and realistic par values and the avoidance of restrictions or payments. In addition, the Fund was provided with a very substantial pool of resources which it can use to give short-term assistance to members who are trying to follow the agreed, broad policy and who are encountering temporary payments difficulties. Since its creation, this pool of gold and convertible currencies has grown to substantial proportions. At present there are available to the Fund $3 billion in gold assets, about $7 billion in convertible currencies, and over $5 billion in other currencies. In addition, in 1962, the Fund entered into an arrangement with 10 major industrial countries by which a further $6 billion of convertible currencies is available to enable the Fund to cope with any possible crisis in the international monetary system.

Resources to meet payments problems have been brought together in a number of other international arrangements as well. The European Payments Union was one such arrangement which served a very useful purpose in facilitating the recovery of European trade until other reserves grew to adequate levels. More recently, a system of bilateral swap arrangements has been developed between the United States and other industrial countries. These facilities, which now total more than $2 billion, are particularly designed to meet very short-term difficulties, particularly speculative pressures in which immediate availability is vital.

This combination of arrangements, multilateral and bilateral, formal and informal, has served the world well. World trade has been expanding steadily at a remarkable rate and the expansion shows no signs of coming to an end for lack of liquidity or for other reasons.

This does not mean, of course, that every individual country considers its level of reserves adequate. In almost every country the authorities would feel more secure if they had a somewhat higher level of reserves. Moreover, in many developing countries the authorities feel that the available reserves are totally inadequate to meet their immediate needs. This, however, is not a problem of the world monetary system; any foreseeable addition to the reserves of these countries would soon be expended in increased imports. The problem of the developing countries is not primarily one of short-term resources, but rather of long-term development loans and aid. In my view, reserves are adequate when their level insures that countries generally feel sufficiently secure to promote a sustainable expansion of the world economy.

Although arrangements for the provision of liquidity have been adequate in the immediate past, there is every reason to study carefully the prospects for the future. Gold production can reasonably be expected to provide an addition to official gold and foreign exchange reserves of perhaps at most 1½ percent per annum, an increase well below the potential for growth of world trade. Up to the present, the tremendous excess holdings of gold in the United States at the end of World War II provided a substantial source for liquidity for other countries, but this is now ending. Furthermore, the accumulation of adequate reserves is contingent on continuous balance-of-payments surpluses which is not within the means of all countries, so owned reserves will to some extent have to be supplemented by borrowing. In addition, the gradual adjustment of many of the developing countries to lower levels of reserves relative to trade has also now reached a point at which further adaptation may be difficult. At the same time, the growing level of foreign debt in the developing countries has added to their need for reserves. Above all, the relative reduction in the dominance of the United States in the world economy since the reemergence of the economic strength of the principal European nations has added to the need for liquidity.

For these and other similar reasons, I am sure that we will have to make provisions for increasing liquidity in the future through international cooperation. But I would again emphasize that I find no major cause for concern in the present position of the international monetary system. As long as the major reserve currencies are managed in ways which can give rise to continued confidence, there is no danger of crisis. Further, the growing cooperation of the major countries in these fields, as evidenced by their active support of the Fund and such new arrangements as the bilateral swaps of the United States, is strong assurance of continued sensible management of international finances.

Thus, I would look forward not to drastic change but rather to continued innovation along the lines presently followed. Gold production and, to some extent, a further expansion in the holdings of reserve currencies will provide a major part of the necessary liquidity. But, in addition, a growing role will undoubtedly be played by an expanding International Monetary Fund. Under present procedures the most direct way to increase the role of the Fund would be through an increase of quotas by the member countries. In this step the member countries, by supplying an increased amount of their own currencies to the Fund, would provide an increased pool of reserves available to all members in accordance with the general principles which have been evolved. In general, these principles provide that a member has assured access to the resources when it is following policies that will insure that its payments problems are short lived. In this way the Fund preserves a revolving fund available to those in need of its assistance.

The ways in which the Fund might contribute to the solutions of these problems is, of course, by no means limited to this possibility. The techniques of consultation through which the Fund can make clear in advance the actual availability of resources are being restudied in order to perfect them. In this connection it should be realized that many countries have confined their use of the Fund's resources to times of crisis. It is essential, if the creation of extra liquidity is to be effective, that resort to the Fund become a normal method of dealing with swings in the balance of payments. In addition to these extensions of existing Fund practices, consideration is being given to the possible value of more far reaching innovations, such as the acceptance by the Fund of deposits and the introduction of investments at the initiative of the Fund.

The implications of greater reliance on international agreements for the creation of liquidity are considerable. It is my belief that such an evolution can best take place through the gradual creation of precedent in a continuing agency so that adequate assurance is given of the way in which the international authority will be used. The Fund has a unique opportunity to play the central role in such a cooperative development. It has already shown an ability to make prudent step-by-step adjustments to meet changing circumstances. It has the advantage of membership of the developing countries as well as the industrial countries. It is important, for economic as well as political reasons, that the voices of the developing countries be heard in the councils of decision. It is important too that the measures which are taken assure full access to any benefits by these poorer countries.

The issues involved in all these changes are unusually complex. It is, therefore, particularly satisfactory that the present favor-

able developments in world trade and payments permit full consideration of all aspects of these questions in an atmosphere of calm. We have time to achieve a deeper understanding of the direction in which we should move and yet still to take action in advance of any need that may arise.

[From the Washington Post, May 8, 1964]

EVOLVING MONETARY FUND

If the International Monetary Fund adopted the proposals of Pierre-Paul Schweitzer, its managing director, the reform of the world monetary system would be accomplished within the confines of the established organization rather than through the efforts of an extramural group.

In an important address before the New York Chamber of Commerce, Mr. Schweitzer somewhat elliptically pointed to the directions in which the Fund can evolve to meet the needs for international liquidity as the volume of international trade expands. The proposal for increasing member country quotas in the Fund and the suggestion that its facilities be utilized to deal with normal swings in balance of payments as well as in times of crisis should occasion little surprise. Quotas are to be reviewed in 1966, and the only difficulty in expanding them will be the modification of the present regulation which requires each country to make 25 percent of its subscription in gold, a ratio far too high for members grappling with payments deficits.

Mr. Schweitzer's most significant remarks were those which he could hardly elaborate. "Consideration," he said, "is being given to the possible value of more far-reaching innovations, such as the acceptance by the Fund of deposits and the introduction of investments at the initiative of the Fund."

One can quarrel over the precise meaning of these words, but despite an element of ambiguity, they are clear within the context of recent discussions. The reference to deposits raises the possibility that countries with payments surpluses might be able to deposit unneeded foreign currencies in the Fund. Investments by the Fund might be made in the following manner. A country in need of external financing and not wishing to draw upon its quota could obtain a foreign currency from the IMF—presumably one that had been deposited by a surplus country—in exchange for its own government securities. Once these changes were instituted the gap between the present functions of the Fund and those of a supranational central bank would be substantially closed.

A long and hard road will have to be traveled before Mr. Schweitzer's speculations can become realities. But the fact that he is publicly speculating is as significant as it is welcome. With the Paris Club of 10 industrial nations reportedly deadlocked in their negotiations over monetary reform, the initiative for change may have to come from within the Fund.

[From the Wall Street Journal, May 6, 1964]

IMF SEES EVENTUAL NEED FOR AN INCREASE IN LIQUIDITY TO MEET WORLD TRADE GROWTH

(By Philip Geyelin)

NEW YORK.—The International Monetary Fund, cautious and conservative by nature, has become increasingly openminded toward changes in international credit machinery designed to expand world monetary reserves.

This is how monetary authorities interpret a speech here yesterday by IMF Managing Director Pierre-Paul Schweitzer, who moved into the Fund's top post less than a year ago.

Addressing the New York Chamber of Commerce, the former French Government financial official praised the United States for management of its balance-of-payment problem, which he said "may now have turned the corner." The easing of the U.S. payments deficit, he said, has been accompanied by an equally welcome diminution of Europe's balance-of-payments surplus.

But while stressing that there is no major cause for concern in the present position of the international monetary system, Mr. Schweitzer warned that, for the longer haul, existing monetary reserves won't be adequate to finance anticipated growth in world trade. "I am sure that we will have to make provisions for increasing liquidity in the future through international cooperation," he said.

Fund officials termed this statement the strongest yet by the IMF chief in support of new moves to expand liquidity. Liquidity is the total supply of gold and convertible currency available to pay for world trade.

RULES OUT DRASTIC STEPS

Mr. Schweitzer took pains to rule out "drastic change," such as the proposal by some experts for the creation of an international central bank, and even more modest measures, such as IMF guarantees for currencies used most frequently in world trade. But he did specify some steps by which the IMF's role might be expanded.

"The most direct way," he declared, "would be through an increase of quotas by the member countries." This means IMF members would increase contributions to the pool of gold and currencies available for member nations to draw on when afflicted by balance-of-payments difficulties. A nation suffers a balance-of-payments deficit when its total spending abroad, public and private, exceeds total receipts from foreign nations.

Mr. Schweitzer also spoke of the "introduction of investments at the initiative of the Fund." Officials said this referred to two possible innovations in Fund procedures.

At present any increase in IMF quotas has to be filled 25 percent by gold and 75 percent by currency. But this would encourage member nations to buy gold to contribute to the Fund—and thus encourage them to turn in foreign currencies for U.S. gold. This could ultimately weaken backing for the dollar. Hence, one thought receiving attention from top monetary authorities is that a certain part of a country's gold contribution be made instead in its government securities.

Another IMF investment approach would involve simply using IMF resources—either the new deposits which might be made voluntarily or regular Fund resources—to buy government securities of member nations encountering balance-of-payments problems or other economic difficulties. The aim would be to offer an alternative form of aid to nations that might otherwise have to use up their rights to draw on regular Fund resources.

COMMITTEE STUDYING REFORMS

Mr. Schweitzer's remarks carry him beyond his previous noncommittal stance on monetary changes, though they leave him well short of some of the thinking among members of a special Committee of 10 industrial nations. This group, whose members include the United States, Britain, West Germany, France, and Japan, is conducting a yearlong review of monetary problems and preparing a report for September's annual meeting of the Fund and the World Bank in Tokyo.

Presumably it also will give some insight into its thinking to a closed international meeting of government and private bankers later this month in Vienna.

Although its final report isn't finished and its deliberations have been secret, the group has been considering a more adventuresome monetary reform which calls for creation of a new composite international monetary unit, made up of leading currencies, to supplement gold and dollars as the leading monetary reserves. The betting is, however, that this plan will be only mentioned in passing in the group's report; while some think it might ultimately find favor, others predict it will be studied to death.

Its omission from Mr. Schweitzer's list of possibilities strongly suggests that he is unenthusiastic about such extreme measures, at least for now. As most experts interpret Mr. Schweitzer's address, it was largely aimed at displaying publicly those items under consideration by the Committee of 10 that are favorably viewed by the IMF. It is perhaps significant that Mr. Schweitzer put special stress on monetary changes conducted within the fund's framework. The IMF, he declared, "has a unique opportunity to play the central role * * *."

[From the New York Times, May 6, 1964]

SCHWEITZER HINTS A NEW FUND ROLE—MONETARY CHIEF INDICATES SWEEPING SHIFTS MAY BE MADE IN BASIC POLICY—LIQUIDITY NEED NOTED—SPEECH HERE ACKNOWLEDGES NECESSITY OF INCREASE IN CONVERTIBLE CURRENCIES

(By Philip Shabecoff)

Pierre-Paul Schweitzer, Managing Director of the International Monetary Fund, hinted yesterday that sweeping changes were being considered in basic Fund policies.

Discussing recent international monetary developments in a speech before the New York Chamber of Commerce, Mr. Schweitzer mentioned several methods by which the Fund could help increase world liquidity.

Observers noted that it was the first time Mr. Schweitzer had publicly acknowledged the need for positive action to increase international liquidity since he became head of the Fund last year.

International liquidity refers to the availability of gold and convertible currencies to settle international payments that arise, chiefly, from trade and capital movements.

NO CONCERN NOW

Mr. Schweitzer emphasized that there was "no major cause for concern in the present position of the international monetary system."

He added, however, that "I am sure that we will have to make provisions for increasing liquidity in the future through international cooperation." This, he said, could be done through innovations along the lines of policies now being followed instead of through "drastic change."

However, observers said that three of the innovations hinted at by Mr. Schweitzer were of broad significance. These were:

1. An increase in the quotas subscribed to the Fund by member nations.

2. An invitation to member countries to make fuller uses of the Fund's resources in normal financing operations as well as in times of crisis.

3. The possibility that the Fund might accept deposits from member countries and also might make investments on its own initiative.

NO ELABORATION

Mr. Schweitzer did not elaborate on any of these points. However, economists and other interested observers were drawing their own conclusions yesterday.

The call for member countries to increase their quotas was regarded as an acknowledgement that action would have to be taken to enable members to exercise their drawing rights.

One observer said that the increased quotas were necessary because the fund was running out usable dollars and sterling.

The so-called committee of 10 of powers that have been studying the liquidity question is said to have been considering an increase of IMF quotas but has not reached a decision as yet.

The invitation to make fuller use of the fund's resources was interpreted by some observers as an indication of a more liberal fund drawing policy. Member nations on

occasion have felt constrained to draw no more than the 25 percent of their quota represented by their gold contribution.

The implication that the fund might accept deposits from countries with a temporary excess of reserves, such as West Germany, was viewed as a variation on a plan originally proposed by Maxwell Stamp, a Briton.

HOW IT WOULD WORK

Under the plan, a country making deposits might receive interest-bearing IMF certificates denominated in a number of hard currencies. The rate of interest would be somewhat lower than that obtainable on U.S. Treasury bills of similar maturity. But presumably the IMF certificates would be guaranteed against devaluation.

Wholly new was the suggestion that the IMF, at its own initiative, use such funds for investment, in part in developing countries.

One explanation was that this would answer the criticisms of developing countries that the Fund had done little to meet their chronic payments deficiencies.

Another, simply, was that it would give the Fund greater operating freedom without requiring the increasing of member-nation quotas as much as they otherwise might have to be increased.

In the United States, for instance, Congress would not have to be asked to make as large a budget appropriation as it otherwise might. And the U.S. monetary gold stock would not have to be drained to the same extent.

[From the New York Times, May 4, 1964]

MONETARY FORMULA WOULD MIX GOLD WITH OTHER UNITS

WASHINGTON, May 3.—Out of the mists of necessary secrecy surrounding the monetary negotiations of the world's 10 leading industrial nations has emerged a glimmer of light concerning the direction the international monetary system may eventually take.

Although the 10 nations have been unable to agree on a major innovation for the present, they have concentrated their attention on a plan that had not even been dreamed of 2 years ago.

This is the idea of creating a new composite international reserve unit, made up of the leading currencies, as the needed supplement to gold and dollars in the world's reserves.

Mainly because of differences on the terms and conditions for establishing this new international currency unit, the 10 nations probably will not recommend its immediate creation when their negotiations are completed this summer.

POSSIBLE USE SEEN

It would surprise none of them, however, if the world had such a unit 5 years from now. The 10 are expected to mention the plan explicitly in their final report, as a useful possibility for the future.

Meanwhile, they are likely to choose an increase in national quotas in the International Monetary Fund as a reinforcement for the existing system. Among other things, the Fund is running short of usable currencies for its lending operations.

Ultimate creation of the composite reserve unit will depend on events, but the wind seems to be blowing in that direction.

The original brainchild of Edward M. Bernstein, former director of research for the International Monetary Fund and one of the architects of the present world system, the composite reserve unit is designed to deal with several potential flaws in the present system.

Its basic purpose is to make sure that the system continues in the future, as in the past, to provide a stable and yet flexible financial framework for general prosperity.

Among other things, the system must generate sufficient "international liquidity"—the global total of nations' reserves and their access to credit. Recently, new liquidity has been generated mainly by deficits in the American balance of payments, which pump dollars into other nations' reserves. It is universally agreed that these deficits cannot continue.

The new reserve unit would be a method of generating new reserves, the nations could create new units, either on a regular and automatic basis, or by periodic negotiations.

It is understood that a fundamental difficulty in establishing the reserve unit now is a disagreement among the 10 nations over the current state of international liquidity. Some of the Common Market countries, which have urged establishment of the new unit, though they differ on details, want to create it in such a way that, in the U.S. view, the total of liquidity would actually be contracted.

These European nations, currently suffering from inflation, believe there is already too much liquidity in the world. The United States and Britain, while not maintaining that present liquidity is inadequate, believe that it must grow with time.

BERNSTEIN PLAN

Another problem has arisen from the mechanics of the plan. Under some circumstances it could mean larger U.S. gold losses than with the present system. The Bernstein plan provides a formula for a mix of gold and international units in the leading nations' reserves.

In any event, the intensive negotiations over the crucial details of the plan form an essential preliminary to its ultimate adoption. The nations have confronted each other, and have taken a hard look at the present system. The result of their look is that innovation, in the future if not now, is a distinct possibility.

Meanwhile, there will be hard debate on the terms of an increase in members' quotas in the International Monetary Fund. A major question is whether the members should pay 25 percent of their quota increase in gold, as in the past, with the rest in national currency.

One plan that has support is for the nations to pay in perhaps only 5 percent in gold and the other 20 percent in gold promissory notes callable by the monetary fund on demand. In any case, an increase in fund quotas would provide a source of reserves for the years immediately ahead for nations with difficulty in their balance of payments.

The 10 nations conducting the negotiations are now looking over their positions on all points before the final sessions in May and June.

[From the Journal of Commerce, Apr. 15, 1964]

PARIS CLUB HITS SNAGS ON LIQUIDITY

(By Stanley Wilson)

WASHINGTON, April 14.—There is a growing prospect that the hard decisions which the Paris Club nations had hoped to reach during their current meetings here will have to be deferred until later this spring.

The 10 club members are engaged in highly secret efforts to hammer out agreed upon policies for improving world liquidity arrangements to present to the International Monetary Fund annual meeting next September.

TOUGH NEGOTIATIONS

Well-qualified sources say that the negotiations are proving even tougher than they were expected to be in the hard bargaining stage.

Continental European countries are reported as being adamant about any proposals including some way to run down the large stocks of dollars which they have accumulated in recent years.

They are also said to be resisting, firmly, proposals supported by this country to increase the member quotas of the International Monetary Fund.

With the current meetings slated to end, so far as is known, this Friday, it therefore appears the major decisions will be put over to May when the club will resume negotiations in Paris.

It is quite possible, informants say, that even the May meetings will not result in full agreement, and that this will be left for the finance ministers of the 10 who are scheduled to meet June 15.

The present talks, which began last Thursday, are the fifth series to be held since it was decided after last year's annual meeting of the IMF that the Paris Club nations would undertake liquidity studies.

The current sessions are the first the club has held on the subject in the United States.

According to some sources, they are also the first in which participants formally represent their governments as negotiators.

ORIGINAL SCHEDULE

Reportedly, the original Paris Club timetable called for the principal conclusions of the club to be drafted in Washington, then referred back to the respective governments for comment and reworked at May sessions so that they would be ready to show the finance ministers in June.

What the members are struggling to decide upon is clearly not a go-head for any of the far-reaching liquidity plans that have been suggested by economists.

It is plain that, insofar as their report to the IMF in September is concerned, they have much more modest agreements in mind.

Sources say that in the end, agreements will probably be worked out embracing perhaps an increase in fund quotas and/or a liberalizing of IMF lending rules.

Even these modest steps will not come easily if the Europeans, as sources allege, feel there is already enough liquidity for trade and perhaps too much.

One form of deadline pressure that may help push the Paris Club to a decision is the annual report of the IMF.

The club's efforts have been closely coordinated with the IMF, which will be sending its annual report to the printer early in July. Presumably, an effort will be made to have some sort of guidance from the club to the fund before the report goes to press.

[From the Journal of Commerce, Apr. 28, 1964]

WORLD BANKERS SET TO WEIGH LIQUIDITY ILLS

(By John Pryor)

LONDON, April 27.—Financial leaders of a score of the world's chief trading countries are preparing for what may turn out to be the most eventful meeting in the history of the International Monetary Fund, now less than 5 months away.

The next annual meeting of IMF, to be held in Tokyo in September, has lately been overshadowed in the world's economic headlines by the efforts being made to attack the international trade problems more directly—at the United Nations Trade Conference in Geneva and in the Kennedy round of tariff talks due to begin formally next month.

BEHIND-THE-SCENES WORK

But behind the scenes, central bankers are working away at the problem which may (some, though not all), financiers say underlies the sharp disparity in trade and balance-of-payments performances between the richer and poorer countries of the world.

This is the so-called liquidity problem, which means, basically, that there is not enough freedom of movement of funds between all countries to finance increasing world trade and avoid persistent payments crises in some.

The difficulty, as some see it, is that since the war, most of the world's buying and selling of goods, services, and securities has come to be conducted in terms of what were originally two national currencies, British sterling and the U.S. dollar, and so have come to depend on the health of these currencies and the economies behind them.

LONG-RANGE VIEW

If these economies get into payments difficulties, and restrictive measures have to be taken—as happened in Britain in 1961–62 and in the United States last year—international financial movements as a whole tend to be put out of joint.

A parallel problem is the tendency of the world's gold and foreign exchange reserves to hole up in the more advanced countries. This is partly because of the persistency with which these countries trade with one another, as opposed to trading with the poorer nations—partly because, when their own payments situations go wrong, they have a sophisticated machinery for stopping the outflow of reserves, and, through interest rate manipulations, attracting funds to themselves.

Thus, in spite of the much-publicized outflow of American reserves up to last year, and greatly increased British and Common Market purchases of raw materials, the developed Northern Hemisphere's share of world reserves has since 1954 remained constant at about 70 percent, or even increased a little. Over the same decade, however, the developing countries have been hard put to it to maintain a stake of about 18 to 20 percent in the world's monetary wealth.

RECTIFICATION MEASURE

Efforts to produce some plan, perhaps a revolutionary one, to remedy this gross imbalance have been redoubled in the last month or two, ahead of the Tokyo meeting.

The deputy finance ministers of the 10 Paris Club countries—more or less coterminous with the United States and developed Western Europe—have met in Washington over the problem this month and are due to meet again in May. There has also been a private meeting in Guatemala of North and Latin American central bankers which is also understood to have discussed the international payments situation.

A difficulty shown up by these meetings is that there is a divergence of opinion about the nature of the liquidity problem and even, in some cases, about whether it exists at all. This is particularly so between the United States and Britain, on one side, and the European Common Market, on the other.

The British and Americans seem to have composed differences of 1962, when the United States sharply criticized a proposal from Britain's Chancellor of the Exchequer, Reginald Maudling, for a world mutual currency account.

OUTSTANDING RECORD OF NEW YORK STATE DEPARTMENT OF COMMERCE

Mr. JAVITS. Mr. President, the New York State Department of Commerce is led by a very able and dedicated commissioner, Keith S. McHugh. The department of commerce, which he directs, has contributed much to the economic growth of the State of New York.

In administering the New York State commerce law, the department provides for the general promotion of business and industry, assistance to communities in planning and zoning, and research on the State's economy. Organized into a division of economic development, a division of economic research and statistics, a division of public information, and a division of international commerce, the department of commerce operates through its main office in Albany, 11 regional offices, the New York office, the Washington office, and industrial development offices in Chicago and Los Angeles. The Washington office, with which my office works closely, is under the very able directorship of Daniel F. Ruge.

The very fruitful efforts which the New York State Department of Commerce have made to strengthen the economy of New York State and to create a fine climate for business and employment in New York are to be strongly commended. The department's work with local communities to expand industrial and commercial development in New York has been especially valuable.

I ask unanimous consent to have printed in the RECORD an article from the New York Herald Tribune of May 10, 1964, on Keith S. McHugh, commissioner of the New York State Department of Commerce, entitled "He Sells Industry on New York State."

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

HE SELLS INDUSTRY ON NEW YORK STATE

(By Maurice C. Carroll)

Shortly before Keith S. McHugh left his $150,000-a-year job as president of New York Telephone Co. and became New York State's $18,500-a-year commerce commissioner, he invited five businessmen to a quiet luncheon. Mr. McHugh knew he was going to switch jobs and he wanted some background information.

"All these guys were in the defense products business. I wanted to sound them out on why things seemed to be moving out to California," Mr. McHugh recalled.

The beginning was inauspicious. One of the executives walked in and said, "Mr. McHugh, I feel sorry for you. Our company prepares a national rating of the States, based on their desirability for plant expansion. New York ranks 47th out of the 48.

"If it were up to me, I wouldn't let our company spend a damned dime in New York."

Soon after that, on May 1, 1959, Mr. McHugh went to work for the State. Five years and a couple of days later, he sat behind a desk in the commerce department's New York City office and told the story. Then he added:

PILE OF DATA

"Just last week, I got a letter from that firm. It said they had put $150 million in new money into New York State in the past 5 years and increased their payroll here by 15 percent."

Mr. McHugh slapped the wide wooden desk and let out a salesman's happy roar. "Now in their national rating scheme, New York is on top," he said.

For the State, as for Mr. McHugh, it was a happy ending, and it was just one of many. The thought of being interviewed, he said, had made him ask himself: "McHugh, just what the hell have you got to show for your 5 years?" He had gathered a heap of notes and charts and statistics to give himself an answer.

A graph showed the State's index of business activity trending upward at a sharp and steady rate. There was a note that 2,745 important plant expansions or new manufacturing plants had been recorded in the State from January 1959 through October 1963.

There was a report on research: 40 new research and development labs opened last year in New York State for a total of 1,100, twice the number listed for the next ranking industrial State.

There was a word about education, vital to the supply of top personnel: "you know, New York produced 15 percent of the Nation's masters and Ph. D. degrees, although it has only 10 percent of the Nation's population." And there was an optimistically open-ended list of 96 State actions, executive and legislative, that the commissioner assessed as making things more attractive for business.

What businessmen abhor most is anything that costs them money, and Mr. McHugh said that, for most plants, New York sites can show a tax advantage over out-of-State locations. "There are too many individual factors to make a generalization, but this State has built a fantastic business tax record. There has been no business tax rise in the past 5 years."

He produced statistics with fond persistence. They reflected said the Republican Mr. McHugh, the favorable business climate nurtured by the Republican administration of Governor Rockefeller.

But the commissioner's job is to sell New York and he said he doesn't view it in partisan terms. "Any sensible Governor can see the merits of gaining and holding a reputation as a good place for business."

PHONE EXPERIENCE

Mr. McHugh became the State's top salesman after a long career with the telephone company. He joined A.T. & T. as a clerk after World War I Army service and had been president of New York telephone 10 years and was nearing retirement when Governor Rockefeller asked him to take over the commerce department. The company worked out a pension plan to supplement Mr. McHugh's State salary.

His first State task, he said, had been to find what was biting business. So he assigned top department personnel, including himself, to conduct some 1,400 interviews with a cross section of New York businessmen, large and small.

"It was the first time anyone from the State had ever sat down with many of them and asked about their problems," he said. The interviews were unexpectedly successful as a public relations gesture, and they provided valuable information. The program was made continuous.

The next task was to form a team of top assistants, which was done by luring four business leaders into State service, tapping a couple of outside specialists and advancing four civil servants—"wonderfully able fellows, contrary to some hard-bitten businessmen's impressions of government employees"—to top jobs.

Then it was down to the main task: helping the State's business. That is something that demands top-to-bottom cooperation, Mr. McHugh said. In attracting new facilities, for instance, "if the local leaders don't take their coats off and work, you don't achieve a damned thing." There was a company that wanted to build a new plant somewhere in the East, employing about 2,000. State commerce and local development agencies matched up the firm's requirements, Mr. McHugh reported, and ultimately put together a 100-acre parcel. "By the time the final decision was made, not only had State and local groups joined in, but a railroad and another major company located nearby were giving important assistance."

What has 5 years on the job achieved? "Nothing near as much as I'd like," Mr. McHugh said with a grin. "But you have to play a percentage business. You gain a few. You lose a few. But we can document some successes."

He voiced particular pride in the department's oversea ventures. "I had made a business trip to Europe and 95 percent of the traffic in Rome and Paris seemed to be those little Vespas or motorbikes. Four years

later, on a similar trip, it looked as if 85 percent of the traffic was automobiles. 'Damn it, McHugh,' I said to myself, 'New York ought to get in on this.'

"So I went to Governor Rockefeller who, as you know, is no ABC'er on foreign trade and I asked him if we could try a sales promotion program for a couple of years. 'If it doesn't work, Nelson, I'll be the first to chop it off,' I said.

"The Governor wanted to know how much it would cost. I told him about $40,000 a year and he said to go ahead."

EMBARRASSING

A wide grin spread across Mr. McHugh's face. "It's been the damndest success story I've ever seen. To the point that it's embarrassing—we're having a hard time keeping up with the processing."

The statistics on results are not so specific as the statistic-minded commissioner would like, but they indicate, he said, that the program is selling $30 million worth of New York products a year overseas.

NEW THINKING ON U.S. AID TO AFRICA

Mr. CHURCH. Mr. President, since 1960, 25 African countries have become independent. There are now more African countries in the United Nations than there are from any other region in the world.

These revolutionary changes have made Africa a factor of great importance in world politics, and in the foreign policy of great powers. Africa is a prime target of the Communists, who have been exerting every effort to extend their influence throughout the continent.

The United States, at least from the time that John F. Kennedy entered the White House, has also accorded Africa the importance it deserves.

Experience with the problems of African development, however, has forced us to reconsider some of the assumptions on which our policy toward Africa has been based. This has led to a continuing revision in our foreign assistance program in order to make it a more effective response to not just the needs but the capabilities for development of African countries. I am pleased by the flexibility shown by the Agency for International Development in adjusting its policies and programs to the changing situation in Africa. I think the African part of the foreign aid program is being administered in a realistic and effective way.

The head of the African program in AID, the Honorable Edmond C. Hutchinson, recently discussed U.S. aid to Africa at the annual meeting of the American Academy of Political and Social Science. Mr. Hutchinson's speech is one of the best expositions of the subject which has come to my attention.

It is a speech which I think my colleagues and the general public will want to read. I ask unanimous consent to insert it at this point in the RECORD.

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

AMERICAN AID TO AFRICA

(Address by the Honorable Edmond C. Hutchinson, Assistant Administrator for Africa, at the annual meeting of the American Academy of Political and Social Science, Philadelphia, April 10, 1964)

It is a privilege to discuss American aid to Africa at the 68th annual meeting of the Academy. This topic, which in effect has been my principal concern and responsibility for the past 2½ years, is one that has understandably evoked much comment in the press, in the Congress and elsewhere.

The theme of this conference—"Africa in Motion"—is indeed appropriate in view of recent events in Africa. Newspaper headlines, almost daily call attention to negative indicators of this motion, such as mutinies in East Africa, revolution in Zanzibar, border clashes between Somalia and Ethiopia, internal problems in the Congo, anti-American demonstrations in Ghana, and the overthrow of governments. All these obviously complicate the administration of all aid efforts including American. But in view of the rapidity and problems of the transition from colonial to sovereign status, what is remarkable is that such political disturbances have not been more severe and more damaging in their impact on development.

The effects of the sweeping changes on the political map of Africa have been enormous. Thirty-one African countries have become independent since the end of 1951—25 since 1960. African States now constitute the largest regional bloc in the United Nations and the power they exercise in international bodies is an eloquent indication of the fulfillment of their greatest aspirations: freedom and independence. The independence movement, reinforced by new dignity and national pride, has released great new energy. It has spawned a drive for modernization and better living. Nearly everywhere in Africa progress is being made in nation-building—in government administration, in education, in health, in agriculture, in road-building, in electric power, and in virtually every other sphere. The energy and enthusiasm which these free young states give to their economic and social development are aspects of "Africa in Motion" which do not make sensational headlines. But these are equal in significance to the negative signs. Yet, even with substantial help from the United States and other nations, international agencies, and nongovernmental groups, the task for Africa is enormous and long range.

OBSTACLES TO AFRICA'S ECONOMIC DEVELOPMENT

The obstacles to African economic development are large and varied. The preceding papers at this conference have detailed many of these. Apart from the basic problems of maintaining internal security, political stability, and harmonious external relationships, there are other obstacles to development deriving from colonial heritage, cultural complexity, and persistence of traditional cultures.

You know of the unrealistic borders and boundaries, inherited by many African states, which ignore terrain and cut across ethnic and linguistic lines. The transformation of arbitrary colonial boundaries into national boundaries has caused a rash of border disputes. But in some cases it has also brought into existence sovereign countries so small or so poorly arranged as to raise serious obstacles to making the economic grade.

Tribalism is still strong in Africa. Generally, the more than 800 separate languages south of the Sahara, with their accompanying cultural differences make for tremendous diversity even in one country. In many, the tribe is still a social, spiritual and economic reality. It is also a potent political force as well as an administrative channel used of necessity by colonial powers and present governments alike. As one observer of the African scene has analyzed the situation, tribalism "is the embodiment and the fortress of primitivism and the past. To modernize and stabilize the new states, means will have to be found to reconcile tradition and change, to shift loyalties from the tribe to the Nation, and to convert the tribes into building blocks rather than road blocks to progress."[1] While the influence of tribalism and close family ties does extend into the commercial centers and capitals, its predominant impact is in rural areas where the vast majority of Africans live under primitive subsistence conditions in "traditional economies." A growing number of social scientists and others are coming to believe that the transformation of traditional economies is crucial to both African political stability and economic development.

Among the many other obstacles to African economic development, the most important of these are illiteracy (most countries of tropical Africa have 90 to 95 percent illiteracy) and lack of technical, managerial, and administrative know-how. Other obstacles are lack of capital and paucity of savings institutions, inadequate power, poor transportation, too much or too little water, poor health and sanitation, overdependence on one or two key commodities, low agricultural productivity, etc.

At the root of most of those obstacles to economic development is inadequacy or absence of necessary economic and social institutions. Africa badly needs sound institutional structures in government, politics, education, agriculture, trade, industry, and practically every other facet of the new societies.

Complicating the choice of an approach to Africa's development are widely contrasting development potentials of the individual countries. As large a consideration as the human and institutional factors already mentioned is uneven distribution of natural resources. Discovery and development of major deposits of oil in Libya, of iron ore in Liberia, Mauritania, and Gabon, and of bauxite in Guinea—to mention a few—have greatly improved their development outlook. Congo (Léopoldville), Ghana, Nigeria, and several other countries are well endowed not only with minerals but also with water, forest and agricultural resources.

In contrast, certain other African countries have low resource potentials as a consequence of unfavorable climate and soils and failure, thus far, to discover significant mineral deposits. Each country, therefore, has a unique combination of physical, economic, social, and political assets and liabilities that together produce striking contrasts in per capita income and development potential.

Another significant contrast between African nations is the extent and nature of assistance provided by former metropoles and other donors. Here again these contrasts are wide. Most of the former French dependencies still receive substantial aid from France ranging from trade subsidies to outright budget support. While former British areas have received independence loans and grants to assist them during the transition period, such assistance has been less significant than that provided by the French. In contrast, Liberia (independent since 1847) and Ethiopia (independent since antiquity) have not received consistent financial and technical aid from metropolitan sources and their infrastructure development has suffered accordingly. Former Belgian and Italian areas present a still different picture. In Ghana, Mali, Guinea, Somalia, Algeria, and several other countries the Sino-Soviet bloc has extended substantial credits and offers of technical assistance. All of these factors must be taken into account in determining the nature, direction, and amount of American aid.

THE U.S. AID RESPONSE

U.S. aid efforts in Africa are designed to meet the problems I have outlined. There were occasional U.S. aid projects in African

[1] Nielsen, Waldemar A. "Africa Is Poised on the Razor's Edge," New York Times magazine, Feb. 8, 1964, p. 2.

areas during the early days of the Marshall plan and later under point 4 (in Liberia, Libya, and Ethiopia). More recently, however, U.S. aid sharply increased, so that in fiscal year 1961 and fiscal year 1962 total obligations were $264 million and $315 million. It will be in excess of $200 million in 1963 and 1964.

While U.S. aid has increased significantly, care has been exercised to avoid supplanting aid provided by others. In fiscal 1963 AID assistance obligations to Africa amounted to $239 million. If surplus foods provided under Public Law 480 are included, U.S. economic assistance amounted to about $500 million each year. In comparison, other free world sources provided about $1.2 billion each year.

A second U.S. response to African development problems relates assistance to the country-development potential, to the extent and nature of assistance being received from others, and to the nature of U.S. interests and relationships. As a result, while aid has been provided in 34 countries, it is highly concentrated in a few. Nearly 60 percent of the estimated fiscal 1964 program is directed to Nigeria, Tunisia, Liberia, and the Sudan. Roughly 5 percent will be used for programs in some 15 former French and Belgian areas which receive substantial aid and trade benefits from their former metropoles and the EEC. The remaining 35 percent will cover programs in such areas as Ethiopia, Somalia, Morocco, Guinea, Kenya, Tanganyika, Uganda, and Congo (Léopoldville).

The third U.S. response emphasizes institution building. We have directed our efforts to establishing an institutional framework in education, training, planning, research, and government administration. Our projects are designed to produce or improve the efficiency of government departments, teacher training institutions, agricultural extension services, and universities. Examples of more specialized project goals are establishment of organizations for highway maintenance, cooperatives, development banks, and industrial productivity centers.

In our relatively small capital assistance program we emphasize the capital aspects of the institution-building program, for example, school buildings, laboratories, and training centers; infrastructure such as roads, powerplants, dams, water supply ports; and, if the opportunity arises, manufacturing plants.

QUESTIONS AND PROBLEMS

I have attempted thus far to sketch the situations in Africa relevant to our efforts to conduct an aid program and to indicate how the U.S. program responds to these conditions. I would now like to talk for a few minutes about two of the many problems and questions which face us and the African countries in connection with that program.

(1) The limitations on absorptive capacity and what can be done about them, and

(2) the necessity to reconcile long-term infrastructure requirements with the immediate need for increased income.

ABSORPTIVE CAPACITY

The phrase "absorptive capacity" is used here in the broad sense to include the whole gamut of cultural, technical, institutional and environmental factors that affect a country's capacity to develop. We, and the African countries themselves, find that these factors impose finite limits upon even technical assistance even if all costs are paid from the outside. In point of fact this is one of the basic reasons explaining the reduced AID appropriation request for fiscal year 1965.

This problem of absorptive capacity finds its expression in many ways. In its cultural dimension it takes the form of resistance to change. This has been an immemorial roadblock in the way of development and growth.

In its economic and administrative dimensions it involves the problems of mobilizing, allocating, and utilizing resources. It involves lack of the necessary effective planning at geographic and sectoral levels, of the institutional and administrative means for mobilizing and channeling resources, as well as inability to undertake the tedious and detailed work of project preparation and implementation.

In recognition of this situation the International Bank for Reconstruction and Development proposes to greatly expand its technical assistance activities and to concentrate on project formulation. The Economic Commission for Africa also recognizes the need and is gearing its efforts more and more in this direction. In our own program we have trouble getting well-organized project proposals and in getting action on them. We are therefore financing feasibility studies, providing experts in planning, engineering, and the like to deal in some measure with the problem. There are limits to a country's ability to use even this sort of assistance, however. In a broad sense our entire technical assistance program aims at this problem. It must be said that there are definite limits on our own ability to organize and administer such programs and to obtain trained personnel.

I recognize that the idea of limited absorptive capacity is not new. However, I consider it essential that more explicit emphasis be given to "effective demand" as contrasted with "needs" and "requirements." Even strong financial backing cannot alone overcome the effect of a weak institutional, managerial, and technical endowment.

INFRASTRUCTURE AGAINST INCREASED INCOME

The second problem which I would like to discuss, in addition to absorptive capacity, concerns reconciling the need for infrastructure with the need for immediate increases in income. This is in one sense another dimension of the problem of limited absorptive capacity. However, it is different enough and important enough to justify separate discussions.

African countries in general would certainly fall into that grouping which [2] Walt Rostow describes as "societies at a relatively early stage of what I would call the preconditions period." Their problem has been considered to be the building of "the infrastructure of modernization in education, transportation, power, administration, etc." In recognition of this situation, the development programs of African countries are heavily concentrated on infrastructure and, as we have noted, U.S. programs are deliberately and primarily directed to the same tasks.

I am becoming somewhat uneasy with this principle or assumption, however. At least I sometimes tell myself that it may be overemphasized. African countries are straining their resources to build infrastructure. But a greater strain is increasingly coming to be maintenance and operating costs of even the existing infrastructure. Dependence on foreign financing of recurrent budget costs for road maintenance, civil service and teachers' salaries, and the upkeep of buildings cannot be considered as very much of an answer. And, of course, the problem is really bigger, because a large portion of the infrastructure expansion itself will also have to be financed from local resources.

In part, the inadequacy of financing is an institutional problem which could be alleviated by more efficient taxation on a wider base, and by more effective savings mobilization. Fundamentally, however, the problem is lack of income. Even with these more effective measures, there simply does not seem to be enough income to provide, through taxes and savings, the local financing of the upkeep of the contemplated infrastructure.

I realize that I am now dealing with chickens and eggs, vicious circles, simultaneous equations, or something of the sort. Nevertheless, it does appear to me that the time may have come to question whether in fact, even in the preconditions period, the immediate problem may not be much more one of raising income than of building infrastructure. This may be especially true in Africa, where there is such urgency and concern for rapid economic progress immediately, when it is remembered that creation of social and economic infrastructure may well produce only limited returns in the short run.

You may quite rightly say that raising income is the whole point of development and is the result expected from the forces set in motion by providing infrastructure. What I am suggesting is that perhaps the focus should be first on the necessity of increasing income. Without this, infrastructure expansion will be inhibited. Focus on increasing income may lead to different emphases in programs for development than if we focus on infrastructure first.

In order to raise income, there must be more production within the country, and greater internal exchange of products. This problem may be summarized as one of enlarging the national market, a concept suggested by Walt Rostow in recent speeches. This is in keeping with Adam Smith's view that the degree of division of labor is limited by the extent of the market. I am becoming more convinced that we should focus on widening the domestic market, even at the expense, if necessary, of expansion of exports, investment in productive capacity, or building of infrastructure, which have been emphasized in the past.

What does enlarging the domestic market mean? It certainly must mean these things: an effective distribution system; a unifying of the whole country into a single market; and a linking of urban and rural areas through a two-way exchange of each other's products.

Two things stand out immediately. First, there might be more concentration on assistance directly in the field of distribution than in the past. Second, it may be that greater emphasis should be given to local production of simple consumer goods. Perhaps efforts should be made in the areas of local credit, commodity storage, marketing co-ops, wholesale and even retail institutions, areas which have traditionally been pretty well avoided in aid programs. The increased local production of consumer goods, likewise an area usually avoided in aid programs and country development plans, might not only serve to increase income directly but might also provide incentives, so frequently lacking, for increased agricultural production. This whole question of necessity for incentives is one I am afraid has been too long neglected. Increased manufacture of simple agricultural tools and certain consumer goods are sometimes suggested as import substitution measures designed to relieve balance-of-payments strain, but seldom as measures for expanding national markets and providing incentives to increased agricultural production. Different types of goods might be selected and a different emphasis might result if the purpose is to increase indigenous income and to expand other local markets.

If expansion of the national market were taken as the first priority, then the optimum type, as well as amount, of infrastructure

[2] Walt Rostow, Department of State, at the 17th annual conference of the Middle East Institute, Georgetown University, Washington, D.C., May 1963, "The Nationalization of Take-Off." See also speeches by Mr. Rostow: "Economic Development: Some Lessons of a Common Experience," August 1963 and "How To Make a National Market," October 1963 (press releases 431 and 498, Department of State).

would need to be reconsidered. For example, questions would arise as to the desirable extent of concentration in vocational as compared with traditional education, or the possibility of shorter run training at less than degree level, or reexamination of university curriculums as well as traditional university standards of construction. Feeder roads might take precedence over major highways. Storage facilities near to producing areas might lessen peak loads on the transportation system, simultaneously lessening need for the system's expansion. Perhaps emphasis on a major transportation network would shift to the need for communications over shorter distances.

Analytic emphasis would perhaps also have to change from national indices and macro concepts of national income, investment, and gross national product, to costs, returns, speed of payoff, and price relationships.

What I have said tonight has been designed to give you a better understanding of the nature and purpose of the U.S. aid program in Africa and to share with you some of the questions we have about it. It has been deliberately designed to raise questions rather than answer them. We aren't sure what the answers are and would like to stimulate thinking and discussion which might suggest answers, or at least help to define the real questions with more precision and to suggest ways of obtaining some answers. By raising these questions, I mean only to suggest that, while what is being done in the assistance field by aid donors, bilateral and multilateral, is accomplishing a great deal, all must continuously attempt to seek out ways of accomplishing the desired objectives more and more efficiently.

ASSISTANCE BY SMALL BUSINESS ADMINISTRATION IN ALASKA DISASTER

Mr. BARTLETT. Mr. President, in a speech he made on Sunday evening at Fairbanks, Alaska, Mr. Eugene P. Foley, Administrator of the Small Business Administration, gave an informative, encouraging report concerning what his agency is doing in connection with the Alaska disaster. I ask unanimous consent that the text of Mr. Foley's speech be printed at this point in the RECORD.

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

SBA's ROLE IN ALASKA

I am honored to be with you this evening, and happy to return to Alaska under different circumstances from my last visit.

I was here a few weeks ago, just after the earthquake had struck such a crippling blow at your business and industry, and your homes and institutions. Like other Federal officials designated by President Johnson, I came to learn personally of the damage that was done, and to ask your State officials how the Government could help with Alaska's needs.

And, like everyone else in the group that came from Washington, I was appalled at the nature and extent of the destruction we found. I won't attempt to describe what we saw and felt as we traveled about Alaska—it would be difficult and pointless, since many of you experienced the disaster and know it much better than I.

But I do want to make one observation that is based on both my past and present visits: Alaska has come a long way since those dark days of late March. The job ahead is tremendous, of course. But the plans you are making, the speed with which you have begun to rebuild, and the confidence you voice in the future, give promise that out of the ruins left by the quake will come an even greater State—an Alaska of newer and finer cities, and of more modern and more diversified industries.

I am certain that the initiative, the vitality, the spirit of willingness and dedication, that made possible the settlement of this frontier-land, and that gained you statehood, now will insure a better and brighter future for your State.

And I assure you that the Small Business Administration will do everything in its power, not only to assist with the restoration of Alaska's homes and business concerns, but also to contribute to the economic progress of your State. I hope we have made such a contribution in the past; I know we can make an even greater contribution in the future.

Let me outline briefly what we have done, and are doing, to assist with the needs of Alaska's disaster victims.

We have a permanent branch office in Anchorage through which the Agency's disaster loan and other services normally are made available to the people of your State.

However, to make disaster loan assistance available as quickly and readily as possible, we rushed 17 financial experts to the State, and used them to staff a number of emergency offices. Other financial specialists will arrive within the next few days. Our emergency offices include a separate disaster loan office in Anchorage, and other offices in Kodiak, Seward, Homer, Seldovia, and Valdez.

Through these offices, we already have received applications for about $11 million in disaster loans, and it appears that our approved loans eventually will total more than $50 million. This would be the greatest dollar amount of loans resulting from any disaster since the start of the SBA more than a decade ago.

I should point out several key features of SBA's disaster loans. They may be made to repair or replace homes, businesses, and nonprofit organizations such as churches and charitable institutions. There is no limit on the size of a loan, or on the size of a business to be assisted. The loans are made at an interest rate of 3 percent.

Normally, our disaster loans have a maximum maturity of 20 years, with repayments beginning not later than 5 months after disbursement.

But we recognized that the earthquake was a very great disaster—a vast personal loss to the people of Alaska, and a damaging blow to the economy of the State.

Therefore, we have departed from past SBA policy in a number of respects.

Although the maturity of our disaster loans may not exceed 20 years, the law does permit us to establish amortization on a 30-year basis, when the additional 10 years will make possible an orderly liquidation of loans. To help the people of your State, we are approving 30-year amortization periods wherever they feel these would be helpful and desirable.

We also have liberalized our requirements with regard to the refinancing of obligations on commercial property. If there is an existing lien on a commercial property, and the lien holder will not or cannot cooperate in a satisfactory financing arrangement, then SBA will consider making a sufficiently large disaster loan to pay off the existing lien.

Where there was a previously existing SBA loan on a commercial property, or a disaster loan is now obtained on the property, we will consider granting a moratorium on principal and interest up to 1 year, and on principal only up to an additional 4 years.

Let me give you a specific example of how the liberalization of our requirements will aid the owner of a commercial property damaged by the disaster.

Say that the property was valued at $40,000, with an existing first mortgage of $20,000. The property owner's loss thus was $60,000—he needs $40,000 to replace the building and $20,000 to pay off the lien holder.

Assume that the $20,000 lien was on a 10-year basis, and at 8 percent interest. The property owner's monthly mortgage payment would amount to about $243.

Now say that SBA makes a disaster loan of $60,000 to finance a new building and pay off the lien holder. Our loan would be at 3 percent interest, and could have a maturity of up to 30 years. On this basis, the monthly amortization payment would be about $253, or only $10 more than the property owner's former monthly payments on a much smaller amount.

If the property owner requested it, we would waive any payments on principal or interest the first year, and beginning with the second year, he would pay a little more than $258 a month. Or, if he elected to pay interest only for the next 4 years, that would be permissible, also. He would pay $150 interest a month each of those years, and starting with the sixth year would pay approximately $285 a month, representing payments on both principal and interest.

I think that example illustrates very clearly how our disaster loans can assist owners of commercial property.

We also are working closely with other Federal agencies, so that maximum assistance can be given to homeowners.

The Federal National Mortgage Association, the Veterans' Administration, and the SBA have agreed on joint action to assist owners of homes that were destroyed or irreparably damaged by the earthquake.

Joint action was important because, as a first step, we want to help dispose of any overhanging mortgage debt on the destroyed property that was not covered by earthquake insurance. This is necessary because, in many if not most instances, a homeowner would be unable to meet two obligations—the mortgage on the destroyed home, and the mortgage on the new one.

In essence, the arrangement among our agencies is this:

Where the Federal National Mortgage Association or the Veterans' Administration holds a mortgage on a destroyed home, it will accept payment of $1,000 and a deed on the property as complete payment on the mortgage.

The SBA, for its part, will make up to 30-year, 3-percent loans to finance new homes equivalent to those that had been destroyed. These loans will include the $1,000 to settle the mortgage debt.

Here is an illustration of how the program would work, and what it would mean to the homeowner:

Say that a homeowner, prior to the earthquake, had a 30-year mortgage, at an interest rate of 5¾ percent, and with an outstanding balance of $25,000.

The monthly payment for interest and principal on this loan would be $146. Assuming that a new home comparable to the destroyed one could be built for $35,000, including land, and that the homeowner would obtain from SBA a new $36,000, 30-year mortgage loan at a 3-percent interest rate, his monthly payment would be $152. The $36,000 new mortgage loan would finance the $35,000 new home, plus the $1,000 required to pay off the outstanding mortgage on the old home.

We are continuing to work with these other Federal agencies to develop maximum assistance for homeowners whose properties may have to be moved to other locations or which suffered damage but are repairable. Specific plans for this program should be ready very shortly.

The fishing industry is of course essential to Alaska's economy, and here again, Federal programs are being coordinated as a means of giving all possible help. The SBA and the Fish and Wildlife Service of the Department of the Interior are conducting a joint program of assistance.

Under the law which governs most of SBA's operations, a fisherman whose boat

was lost or damaged in the disaster is eligible for an SBA loan to charter a boat for the fishing season or until he can repair or replace his damaged boat. The SBA loan also may be used for travel expenses to the "lower 48" to select a replacement boat and return it to the Alaskan fishing grounds, and for operating capital during the fishing season.

Our Agency also may make loans to repair or replace commercial boats damaged or destroyed by the disaster. However, under the present arrangement between agencies, the Interior Department is making the loans for this purpose. If and when that Department can no longer make the loans, or if for any reason it cannot help with the needs of a particular fisherman, then the SBA will step in and provide assistance.

Those are some of the things we are doing, some of the ways we are working, to help Alaska and its people overcome the effects of disaster.

The SBA also has many other services—continuing, day-in, day-out programs—that have been available in the past, and that will be available in the future, to help boost Alaska's employment and income.

These programs include business loans and other assistance with the financial needs of small firms; help to small business concerns in obtaining a greater share of the Government's contracts and orders, and assistance to small businessmen in strengthening and broadening their management skills.

The SBA's business loan program is perhaps our best known service, since it helps with the universal need of small firms for greater access to financing.

Under this program, we make loans of up to $350,000 to help small firms expand and modernize; purchase machinery, materials, and equipment, or meet working capital requirements.

Here is Alaska, we have loaned about $22 million to more than 400 small business concerns for a wide variety of purposes. SBA loans have gone—

To an air service near Ketchikan, for purchase of another airplane and installation of terminal facilities.

To a company that supplies water to Bethel and needed additional equipment to fill the city's growing demands.

To a masonry company here in Fairbanks which wanted to expand its services.

To a trading post at Stony River, for construction of new accommodations for tourists.

To a chemical company in Anchorage that needed funds for more modern equipment, and for stocking a larger inventory.

These and other SBA loans vary by borrower and purpose. But the net effect of each is to stimulate business activity and build a stronger economic base.

I want to make clear that in our business lending program, we do not compete with commercial banks. That is a matter of both law and personal philosophy. We believe in and support wholeheartedly the policy of Congress, as stated in the act which created SBA, that SBA should cooperate with commercial banks in providing financing to small businessmen.

Nationwide, more than 65 percent of our business loans are made with bank participation. In Alaska, the percentage of participation is far higher—more than 94 percent. That is probably the highest rate of any State in the Union, and I thank and commend Alaska's bankers for their outstanding cooperation.

We are constantly striving to make our lending program more responsive to the needs of small business. In the last few months we have gone all out to streamline our operations, to reduce redtape to the minimum consistent with sound operations, and to rely to the greatest possible extent on the credit judgment of participating banks. And, after all, bankers are the most familiar with the financial conditions and needs of their local communities.

A second way in which SBA finances small business concerns, or is instrumental in financing them, is by licensing Small Business Investment Companies, or SBIC's as they are generally called.

This is a relatively new Government program, and represents an exciting addition to the traditional forms of finance our Nation has come to know and rely on.

The program is exciting for the men who run the SBIC's because they are, in a sense, pioneers who are exploring new territory.

The program is exciting for small business because it provides an ever-widening avenue to the venture capital that small firms need for expansion and growth.

And the program should be exciting to all Americans because it is enabling many small firms to compete on more equitable terms with their larger competitors, and in this way is furthering our free enterprise system.

The SBIC's are licensed and regulated by the SBA—and in some cases financed by our Agency—but are privately owned and privately operated corporations. They provide venture capital to small business through long-term loans or equity investments that permit them to share in the profits of the small firms.

The SBIC industry is still a comparative infant—the first company was licensed just a little more than 5 years ago. But it is proving a very sturdy infant. There are now well over 700 SBIC's throughout the country, with about $700 million to invest in small business. More than two-thirds of this capital has been provided by private sources or by the public through stock purchases. The SBA has made available the remainder through purchase of subordinated debentures and through operating loans.

The SBA has licensed two SBIC's in Alaska, and these have provided about a half-million dollars to small business through loans and investments.

Whether it is a retailer who wants to open another store in the heart of Fairbanks; an Anchorage manufacturer who wants to expand operations, or a motel owner near Juneau, SBIC financing may fit the bill if the venture is too risky for conventional bank financing. For the growing small manufacturer or other company that needs risk capital but isn't ready for a public stock offering, SBIC financing may hold the key.

In fact, I predict that many small businesses which receive SBIC financing during the coming years will in time take their place among the major industries of your State.

A third method through which SBA finances small business is our community development loan program. Suppose a local freezing plant or lumber company wants to expand its operations, or a canner from elsewhere wants to open a new plant in Alaska. If the people of the community organize a local development company to help finance the project, the SBA in turn may lend the development company as much as $350,000 for this purpose.

We have approved one loan of this type in Alaska, to the Aleutian Area Redevelopment Organization, Inc., of Unalaska. The SBA provided $155,000, the local development company $77,000. The funds will be used to purchase fishing vessels and machinery for a small firm.

There is a great potential in the development company loan program. But like Alaska's wealth of natural resources, the potential is still largely untapped. I would urge the leaders of your State and communities to consider carefully the possibility of uisng this SBA program as a means of stepping up Alaska's development.

The SBIC program and the local development program are attractive for many reasons, but especially becaues they encourage private investment in small business by local interests. While SBA loans may be involved in these programs, the money comes back to the Government with interest and so do additional revenues which result from increased employment, sales, profits and, of course, taxes.

Because these programs encourage the flow of private capital into small businesses, and because, like other SBA programs, they result in higher employment and increased tax revenues, they adhere to President Johnson's insistence that in all our activities we get a dollar's value for every dollar spent.

Another major SBA service is help to small firms in obtaining an increased share of the Government's contracts for goods and services.

Because of the volume of Government purchasing—some $30 to $35 billion a year for defense and other purposes—it is essential that we bring small business into these purchasing programs to the greatest possible extent. Unless we do so, the industrial structure of the country may be altered simply through the size of Government procurement.

The principal way in which we help small firms obtain a greater share of Government contracts is through a small business set-aside program. In this, we work closely with the Department of Defense and the other major buying agencies to earmark certain purchases for small business bidding.

This joint program already has resulted in award to small Alaska firms of more than 750 contracts totaling about $36,700,000.

From a long-range standpoint, I believe that SBA's help to small businessmen in the area of management may well be our most important job. Today, success in business depends on much more than just a strong desire to be an independent business man or woman. It depends, quite simply, on skill in management. The SBA is helping small businessmen become better managers in various ways.

For example, we have an extensive management publications program. This includes several different series of publications that provide small business owners and managers with current information on such subjects as sales promotion, quality control, financial management, and depreciation.

We also sponsor research into small business opportunities and problems. The small businesses of Alaska, like those in all other parts of the country, are sharing in the benefits of this research program.

Under a grant from SBA the University of Alaska has made a study of the tourist industry potential of your State.

This study points out the value of the tourist industry, and gives suggestions for attracting more visitors. It is an excellent report, and if you have not already seen it, I am sure you will be interested in reading it.

A second SBA-financed study, also prepared by the University of Alaska, deals with the potential for expanding distribution and warehousing in Fairbanks and Anchorage. I believe you will find this study of interest, also.

Some other ways in which we help with the management problems of small firms, or help small businessmen become better managers, are by counseling small business owners; by sponsoring workshops to acquaint prospective small businessmen with factors they should consider before entering business, and by joining with universities and other organizations in sponsoring administrative management courses and conferences for those already engaged in small business.

In closing, I would like to turn briefly to the future of small business.

In Alaska, the immediate consideration quite naturally must be to restore your small firms—to get all of them going at full speed again, performing vital jobs and services,

meeting the needs and wants of the people of your State.

But after the disaster has been overcome, after your small firms have been restored, what will the future offer them and small business throughout the Nation?

To me, there can be only one answer—continued growth, continued prosperity, continued success.

I say this because I feel that all segments of our society are coming to realize, as I am sure you do, that small business remains essential to our country today, and will be equally essential tomorrow. Consequently, there is widening agreement that we must do everything in our power to keep small business strong, and to protect and improve its position in the national economy.

There are also other good reasons for optimism.

Our economy is in excellent health today, and so are most of our small business concerns; our population is growing, and with it the requirements of our people; technological and scientific advances are creating greater opportunities for small firms, often in entirely new areas of endeavor; because of the tax cut advocated so successfully by President Kennedy and President Johnson, the continued broadening of the SBIC program, and ever closer cooperation between SBA and the banking community, in the months and years ahead the small businessman should find it easier than ever before to acquire funds for expansion and growth.

The picture indeed looks promising.

If we continue to be alert to the problems of small firms, and do what is necessary to assist them, I am confident we can look to small business in the future, as in the past, to contribute immeasurably to the economic, social, and political progress of our Nation.

JURY TRIALS IN CRIMINAL CONTEMPT CASES

Mr. CLARK. Mr. President, there has been much talk in the Senate about jury trials in criminal contempt cases. Endless oratory has been indulged in to attempt to get around the basic facts that first, since the beginning of the Republic, jury trials have never been permitted in criminal contempt cases in the Federal courts until the limited right given in the Civil Rights Act of 1957, a right which has never yet been exercised; second, no Southern State except in a few minor instances permits an effective jury trial in criminal contempt cases under State law.

But the Senate has never considered the contempt action which the American people, sitting as a jury, are conducting against the Senate of the United States for failing to measure up to our constitutional duties as a legislature. Can there be any doubt that, as the contumacious conduct of the Senate toward the rights of the American people continues windy day after windy day, a verdict of guilty is assured?

Heedless of its mail, allergic to public opinion polls, apparently unaware of the grave moral issue involved, a minority of this body, day after day, under archaic rules and procedures existing in no other legislative body in the civilized world, prevents a majority of this body which is ready to act from acting on the civil rights bill.

Senator HUMPHREY says this is not the fault of the southern Senators. He places the blame on the 81 Senators from other parts of the country who cannot summon more than three-fourths of their number to support cloture.

I suggest that the fault lies with all 100 Members of this body who have sat for year after year after year, in lethargy, while a small group of willful men have been permitted to destroy democratic procedures in the Senate of the United States.

In fact, I think it might be said that the Members of the Senate of the United States are engaged in a project of mass suicide. Like a herd of Gadarene swine, we are about to hurl ourselves into an abyss. The end result may well be destruction of that institution which we all love—the Senate of the United States.

I call on my colleagues before it is too late to impose cloture promptly on the civil rights bill, and then to set about the long, arduous, painstaking task of revising the rules, customs, manners, and procedures of this body so that we can meet our responsibilities to the American people and, indeed, to the world, in this seventh decade of the 20th century.

It is later, much later, than we think.

Mr. JAVITS. Mr. President, I have heard with the greatest interest the statements made by the Senators from Illinois, Wisconsin, and Pennsylvania; and I also noted with interest the statement made yesterday by the Senator from Minnesota [Mr. HUMPHREY], in which he did us a service by reminding us of the biblical injunction in Matthew 7, verse 3:

> And why beholdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye?

He reminded us that there are 81 Senators who could vote cloture. However, we do not live in a vacuum; and to exhort the Senate to move in this direction does not supply the necessary votes. It is an open secret that at present we do not have the necessary votes. It is also a fact that our friends from the South do not relent, and I do not believe exhortations will cause them to relent.

If Senators answer quorum calls in 15 minutes instead of 1 hour and a half, we shall not succeed in attempts to wear out southern Senators.

It is apparent that we have not made use of all our resources. The President says that if the Senate does not pass the civil rights bill before the political conventions, he will call Congress back into session. It is one thing for him to use his authority; it is another for the Senate to exercise its own authority.

Much of the present difficulty has developed because of the failure of the Senate to exercise the authority it has.

When the President was a Member of the Senate and was serving as majority leader, there was a time when the Senate remained in session around the clock for 9 days. Many persons believe we shall not demonstrate that we mean business until that happens again.

Furthermore, many in this field say they want this bill passed. The bill is supported by national organizations which have very large memberships in States whose Senators are listed as doubtful. The task they have is, not to call on me or the Senator from Minnesota [Mr. HUMPHREY] or my colleague [Mr. KEATING] or the Senator from Wisconsin [Mr. PROXMIRE], but to call on their own Senators.

Finally, the country is not sufficiently aroused. Senators may try to persuade each other; but the only language a Senator understands—and properly so—is what he hears when his constituency is aroused.

So, Mr. President, many jobs which need to be done have not yet been done; and we have no right to complain about the result until they are done.

I rise today only for the purpose of stating what must be done. Once the necessary jobs are done, I believe the result will be certain. Morally, constitutionally, and in terms of public order and tranquillity we must do this job; and our deadline is the onset of summer. Many Senators know that; and the country knows it. Now it must be expressed.

A MESSAGE TO, FOR, AND FROM THE AMERICAN PEOPLE

Mr. TALMADGE. Mr. President, one of the most able men ever to serve in the Senate was the late Senator Benjamin Harvey Hill, of Georgia. On March 27, 1878, he addressed the Senate of the United States.

Said he:

> But, sir, I have said I do not dread these corporations as instruments of power to destroy this country, because there are a thousand agencies which can regulate, restrain, and control them; but there is a corporation we may all well dread. That corporation is the Federal Government. From the aggressions of this corporation there can be no safety, if it be allowed to go beyond the well-defined limits of its power. I dread nothing so much as the exercise of ungranted and doubtful powers by this Government. It is my opinion the danger of dangers to the future of this country. Let us be sure we keep it always within its limits. If this great, ambitious, ever-growing corporation becomes oppressive, who shall check it? If it becomes wayward, who shall control it? If it becomes unjust who shall trust it? As sentinels on the country's watchtower, Senators, I beseech you watch and guard with sleepless dread that corporation which can make all property and rights, all States and people, and all liberty and hope its playthings in an hour, and its victims forever.

Mr. President, it is the bill, H.R. 7152, granting doubtful powers to the Government, which is the danger of dangers to the future of this country.

Only the Senate can check and control the creation of the instrument of power which a Senator from Georgia of a bygone day apprehended and prophesied.

Mr. HOLLAND. Mr. President, I have listened with a great deal of interest to the remarks by several Senators who are supporters of the pending civil rights bill, and who seem to have entirely missed the point, in assessing the present situation.

The point, Mr. President, is that this bill is an extreme one. It is an omnibus bill; and several of its titles should not be in it. Although our Nation is accustomed to extremists, it is unwilling to swallow this particular bill, because of its extremism.

Without dwelling longer on that point, Mr. President, I ask unanimous consent

to have printed in the RECORD, at the conclusion of my remarks, an article published today in the New York Times. The headline of the article is "HUMPHREY Scores Rights Bill Delay."

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

(See exhibit 1.)

Mr. HOLLAND. Because the time available to me in the morning hour is limited, I shall read several paragraphs from this long and interesting article, as follows:

WASHINGTON, May 11.—Senator HUBERT H. HUMPHREY said today that Senate inaction on the civil rights bill should not be charged to the southern filibuster but to his northern and western colleagues who tolerate it.

Next:

Mr. HUMPHREY acknowledged for the first time that he and Senator THOMAS H. KUCHEL, the Republican floor manager, were "a long way" from the votes needed to shut off the southern filibuster. Cloture of debate requires two-thirds of the Members present and voting—67, if all are present.

The next paragraph of the article which I shall quote reads as follows:

Nevertheless, he—

Referring to the Senator from Montana [Mr. MANSFIELD]—

plainly shared Mr. HUMPHREY'S frustration and disillusionment at the unwillingness of many northern and western Senators in both parties to consider cloture.

Civil rights forces in the Senate acknowledge that they suffered a setback last Wednesday when they defeated by the paper-thin margin of 46 to 45 an amendment to permit jury trials in all cases of criminal contempt arising from the bill.

Mr. President, without attempting to quote more from that able article, it should be very clear from the report of the correspondent of the New York Times that the point is there are so many extreme provisions in the bill which Senators who would favor a very sound civil rights bill are unwilling to support because they are so extreme, that they will not vote for cloture so long as those items remain in the bill.

Mr. President, the item is very enlightening. I appeal to Senators who insist upon this omnibus, catchall method of approaching the serious problem which we confront that they had better get to the point at which they will give some consideration to eliminating some of the extreme proposals, one of which, for example, is title VII, the so-called FEPC provision, which was not even in the original proposal of the late lamented President Kennedy.

EXHIBIT 1

[From the New York Times, May 12, 1964]

HUMPHREY SCORES RIGHTS BILL DELAY—BLAMES THE NORTH AND WEST FOR ADULT DELINQUENCY IN INACTION BY SENATE

(By E. W. Kenworthy)

WASHINGTON, May 11.—Senator HUBERT H. HUMPHREY said today that Senate inaction on the civil rights bill should not be charged to the southern filibuster but to his northern and western colleagues who tolerate it.

As the Senate began the 10th week and 52d day of debate on the House-passed bill, Senator HUMPHREY, who is floor manager of the measure, said "the whole procedure is disgusting."

"All that is being accomplished here is a display of adult delinquency," the majority whip told reporters.

However, the Minnesota Democrat said, it is not the 19 southerners who are chiefly responsible for delaying action on the bill, since "we knew they were opposed" and "their obstructionist tactics to be expected."

SEES POTENTIAL VOTES

Rather, he said, the blame attaches to the 81 Senators—or some of the 81—who do not live in the South.

Mr. HUMPHREY acknowledged for the first time that he and Senator THOMAS H. KUCHEL, the Republican floor manager, were "a long way" from the votes needed to shut off the southern filibuster. Cloture of debate requires two-thirds of the Members present and voting—67, if all are present.

But, he said, "the potential votes are here to stop this filibuster," if the Senators have the will to invoke cloture.

"Any intransigent minority," he declared, "can run the Senate if a majority stands around with jelly for a spine."

"So what we need from the American public," he went on, "is a demand on the 81 that the Senate start to act like a Senate, and that Senators start to earn their wages, and that Senators abide by the Constitution, which says that a majority shall constitute a quorum to do business."

"To deny the Senate the right to vote by permitting a filibuster, or engaging in one, is not doing business," he said.

Mr. HUMPHREY'S outburst came shortly after Senator RICHARD B. RUSSELL, of Georgia, leader of the southern forces, told reporters that he did not think there would be any votes this week on the jury trial amendments.

These must be disposed of before the Senate gets down to voting on amendments to the nondiscrimination provisions of the bill.

Tomorrow will mark the end of the third week of debate on the jury trial issue. A week ago, Senators MIKE MANSFIELD, of Montana, and EVERETT MCKINLEY DIRKSEN, of Illinois, the majority and minority leaders, thought they had an understanding with Mr. RUSSELL to wind up voting on the jury trial amendments by last Wednesday.

However, only two of the amendments were disposed of that day. There were no votes on Thursday and Friday because President Johnson invited several Senators on his Appalachia trip.

Senator MANSFIELD said this morning that the Senate would "stay in session if it takes all year" to pass the civil rights and other key bills.

Nevertheless, he plainly shared Mr. HUMPHREY'S frustration and disillusionment at the unwillingness of many northern and western Senators in both parties to consider cloture.

Civil rights forces in the Senate acknowledge that they suffered a setback last Wednesday when they defeated by the paper-thin margin of 46 to 45 an amendment to permit jury trials in all cases of criminal contempt arising from the bill.

Although this amendment was proposed by Republican Senator THRUSTON B. MORTON, of Kentucky, its real sponsor was Senator RUSSELL and it had the solid support of the southern phalanx.

ESTIMATES CONFIRMED

The vote on the Morton amendment was not a true test of sentiment on the bill itself because many Senators who favor the jury trial also support the bill. But it did confirm earlier estimates by leadership of the areas of greatest opposition to cloture in the North and West. In fact, after the vote, some Republicans who had been thought safe for cloture were put in the doubtful column.

In that vote, 19 Republicans failed to follow Mr. DIRKSEN'S leadership. Nine northern Democrats failed to follow Mr. MANSFIELD'S.

As of today, then, the following four northern Democrats are regarded as certain to vote against cloture: ROBERT C. BYRD, of West Virginia, ALAN BIBLE, and HOWARD W. CANNON, of Nevada, and CARL HAYDEN, of Arizona.

SIX REPUBLICANS LISTED

In addition, ALBERT GORE and HERBERT S. WALTERS, of Tennessee, who have not joined the southern opposition, are also regarded as certain against cloture.

Six Republicans—BARRY GOLDWATER, of Arizona, JOHN G. TOWER, of Texas, EDWIN L. MECHEM, of New Mexico, MILTON R. YOUNG, of North Dakota, MILWARD L. SIMPSON, of Wyoming, and WALLACE F. BENNETT, of Utah—are also counted as certain against cloture.

With the 18 southern Democrats in Mr. RUSSELL'S force, the sure votes now counted against cloture total 30—only 4 short of the necessary 34 if all Senators are voting.

LIST OF THE UNCERTAIN

The bill's managers are concerned, however, over nine Senators who are regarded as uncertain quantities. Thus, Republicans LEN B. JORDAN of Idaho and BOURKE B. HICKENLOOPER of Iowa are regarded as "very probably" against cloture.

And the following are put in the "doubtful" column: Republicans, CARL T. CURTIS of Nebraska, KARL E. MUNDT of South Dakota, JOHN J. WILLIAMS of Delaware, PETER H. DOMINICK of Colorado, ROMAN L. HRUSKA of Nebraska, and a Democrat, FRANK LAUSCHE of Ohio.

Republican leaders still hope to get the support for cloture of Senators CURTIS, MUNDT, WILLIAMS, and HRUSKA with time. But they have not much hope of Mr. DOMINICK. Senator LAUSCHE is regarded as unpredictable.

Even 3 weeks from now an attempt at cloture, the leaders believe, will be an uncertain risk.

Senator HUMPHREY said today that he could not imagine "that the same Senate that was willing to vote cloture on the communications satellite bill for American Telephone & Telegraph would not be willing to vote cloture to see that constitutional rights are enforced."

A VOTE IN 1962

This was a reference to the cloture vote in 1962, after 16 days of debate, that made possible the passage of the bill vesting in A.T. & T. the principal ownership and operation of a communications satellite program. A small group of Senators had filibustered against it.

The Republicans who voted for cloture then but are regarded as opposed or doubtful now are Senators BENNETT, YOUNG, HICKENLOOPER, JORDAN, CURTIS, HRUSKA, MUNDT, and WILLIAMS.

Only one of the Northern Democrats—Senator LAUSCHE—who voted for cloture then is regarded as doubtful now.

Senator HUMPHREY also recalled that in 1960 both party platforms "promised action on civil rights."

Although most of the Republican opposition to the bill centers on the fair employment section, the Republican platform pledged support for legislation to set up "a commission on equal job opportunity." It also opposed use of Federal funds "for the construction of segregated community facilities."

The Democratic platform also pledged support for a "fair employment practices commission."

Mr. KEATING. Mr. President, the complete answer to the argument advanced by the distinguished Senator from Florida is that the only desire of those who would like to see the debate terminated at some time is an opportunity to vote on the amendments. If

the bill is extreme, and if the amendments which have been submitted to water it down meet with the approval of a majority of the Senate, let us get on with a vote on those amendments.

In my judgment, the bill is a moderate bill. It has already been watered down several times. But if it needs further changes, in the view of a majority of Senators, the only way to make that determination is by voting on the bill. But to prohibit the Senate from voting is, in my judgment, inexcusable.

There is a restlessness which I sense among some of the Members of this body. Yesterday one Senator came to me and said, "I am about ready to vote for cloture." I am not sure how he will vote on the bill, but he does not feel that we should remain here indefinitely to talk and talk and talk or to listen to talk and the same arguments hashed and rehashed again and again.

I do not desire to quote the remarks of the distinguished Senator from New Hampshire, but the other day he very eloquently voiced a sentiment to the effect that, however he might feel about particular amendments, or indeed the bill itself, there certainly would come a time when he would feel that we should come to grips with the problem and vote.

The only respect in which I would differ at all with my distinguished colleague from New York is in his statement that the people have not been aroused. Many people are now aroused. My letters indicate that they cannot understand the situation. One of the important titles of the bill relates to the protection of the right to vote. Yet we, 98 men and 2 women, stand or sit in the Senate Chamber and we ourselves do not exercise the right to vote.

Senators as well as citizens who are not Senators, have a right to vote. In my judgment, that right is being frustrated by a minority. So I would make the proposal, Mr. President, that very shortly——

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

Mr. KEATING. Mr. President, I ask unanimous consent that I may have 1 additional minute.

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

Mr. KEATING. I propose that very shortly a cloture petition be filed. My judgment is that there will be more Senators favoring cloture than is sometimes estimated, and that such a petition would reveal the points at which greater efforts must be made to convince some of our colleagues. I would expect that perhaps on the first attempt cloture might not be successful. If it is not, we must try and try again until we come to grips with the problem. We cannot go on forever in the way we have been proceeding. I believe that an increasing number of Senators, of many points of view are beginning to feel that way about the problem.

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

Mr. KEATING. I yield, if I have time available.

Mr. JAVITS. Mr. President, I ask unanimous consent that my colleague from New York may have an additional half minute.

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

Mr. JAVITS. When I said that the public is not adequately aroused, I was talking about my judgment in respect to the public in the States of the Senators who are listed as doubtful. There is no question about the constituents of my colleague and my own and those of many other Senators. That is what I had in mind. There is a task for every Senator to perform. My colleague has certainly done his; I am trying to do mine. The people in other States have a part to play, too.

I thank my colleague.

ELIMINATION OF POVERTY—A COMMON GOAL

Mr. BOGGS. Mr. President, I believe it is a safe assumption that everyone in this country would like to see poverty eliminated. There is, and should be, universal agreement on this common goal.

On the other hand, there is not agreement, nor is it reasonable to expect there should or would be, on the question of what is the best course for the country to follow to achieve this goal.

Until now the forces of free enterprise, with Government a friendly referee, have successfully provided our country with a standard of living and abundance of goods unmatched in the world's history.

Because we have come so far, however, is no reason why we should stop short of a free society where all may enjoy the fruits of our country's wealth. Thankful for our gains, we should at the same time not be thoughtless of those among us who do not share our blessings.

There is danger of political partisanship obscuring both the problem and a program for meeting it. An editorial Monday, May 11, in the Wilmington (Del.) Morning News, entitled "The Great War on Poverty," points up this danger, and I ask unanimous consent that it be printed at this point in the RECORD.

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

[From the Wilmington Morning News, May 11, 1964]

THE GREAT WAR ON POVERTY

Inevitably, when an important problem becomes a major political issue, there will be divergent opinions, arguments, charges, countercharges, and attempts—on all sides—to gain political advantage.

This has happened in the so-called war on poverty. President Lyndon B. Johnson, whose baby the war is, has certainly made it into one of his chief campaign ploys. His public demonstrations in the areas at which the first offensive in the war is based have all the earmarks of the traditional election tours and rallies. And many of the sweeping claims made for his program have all the earmarks of campaign promises.

Similarly, the attacks on the President's plans and on some of his activities are of a political character. This is to be expected, too. Only in this kind of debate can satisfactory solutions of economic and political issues be reached.

But the basic fact remains: The war on poverty is both sound and overdue. Perhaps, it should be stated as a war on poverty, rather than the war. Mr. Johnson's plan is not necessarily the best and certainly not the only one. But a start must be made and, if Congress trims off some of the extravagant claims, extravagant promises, and extravagant proposals, it is something that the United States can afford and must undertake.

A nation with a gross national product of more than $600 billion, with a population of only 191 million, has little excuse to tolerate poverty, want, or human degradation resulting from economic conditions.

The economy produces more than $3,200 worth of goods and services annually for each man, woman, and child in the Nation. The average family income is about $7,000 a year. The average industrial wage is $2.51 per hour. Even after taxes, we still enjoy a personal income of about $2,200 per capita. It is a fantastic picture, unrivaled in the history of mankind; unmatched in the world today, unmatched by any economy, political system, or other combination of factors, whether Communist, socialist, capitalist, syndicalist, or what.

In this vast sea of production and income, we continue to have large pockets of poverty, some of it shocking. Most of it is curable. The big question is how the cure is to be effected. Some of the suggestions can be dismissed out of hand—as, for example, the assertion of a group of dreamers who would, in effect, have government hand out money to everyone who needs it.

In fact, except for the short-range, relief programs are no solution at all. In the long run, they merely fossilize the disease.

The permanent cure must do two things: First, provide the opportunity for rapid transition to self-help, that is, to useful and remunerative employment. Second, provide the incentive for people to take advantage of the opportunities offered.

Most people will, of course, take advantage of a favorable situation. It must be recognized, however, that there are differences among people, differences in capacity and in drives. Some, perhaps, can never be wrenched free of their dependent status.

The most desirable course in the war against poverty would be an initial recognition by both political camps that the solution can be found and that the Nation has a specific obligation to look for it. From that basis of agreement, differences of approach can be launched into their particular orbits, for all to see and examine, and for the Congress to work into a politico-economic pattern that will serve the best interests of the United States and all of its 191 million people.

AUTOMATION: THE IMPACT ON JOBS AND PEOPLE

Mr. BOGGS. Mr. President, automation remains a vague word in our Nation's vocabulary. On one hand it is blamed for loss of jobs; on the other it is praised for producing goods faster and better with less worker monotony.

The results of automation can be judged both good and bad, depending on how this technological change affects the individual.

In order to get the greatest good from automation at the same time that its harm is reduced as much as possible, we need to know more about it. We need accurate forecasts of its coming uses. We need programs to provide new opportunities for those whose jobs are under-

cut and swept away by the automation tide.

In the dual hope of getting an overall picture of automation and spreading the greatest amount of information about it at the same time, I proposed 2 years ago and again last year in S. 185, a White House Conference on Automation. If such a conference were vigorously carried out—with municipal, State, and regional meetings preceding the final sifting in Washington of the best ideas—the country would be generally informed about the problem at the same time that the country was informing Washington.

The May issue of the American Federationist, official monthly magazine of the American Federation of Labor and Congress of Industrial Organizations, carries an interesting article entitled "Automation: The Impact on Jobs and People." In it author Robert B. Cooney sketches the current background to the problem.

Also, in today's issue of the Washington Post is a news story by David Fouquet, entitled "Automation Held Threat to U.S. Value Code," which further summarizes the importance of dealing decisively with the impact of automation.

I ask unanimous consent that both these articles be printed at this point in the RECORD.

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

AUTOMATION: THE IMPACT ON JOBS AND PEOPLE

(By Robert B. Cooney)

The leading edge of radical technological change is now slicing its way through America's offices, factories, and stores, undercutting familiar ways of working and living. As the changes intensify, there may follow social and political repercussions unless imaginative programs are devised to help people adjust to new roles.

The computer—the symbol of the radical change—is inspiring a revolution of attitude and practice which will hurt first those least able to adjust; the less skilled, the less educated, the Negro and other minority groups, the people moving from rural to urban areas. These dispossessed will be joined in the years ahead by those who now feel secure in a skill, for if a job involves routine then a computer-guided machine can do it better and faster.

This is the pace of change: workers automated off their assembly line are now being retrained as draftsmen at the same time a company has marketed a low-priced tape-controlled, computer-fed automatic drafting machine. Before they have learned a second skill, it is already potentially obsolete.

A national computer congress held in Washington, D.C., in mid-April attracted some 5,000 computer professionals and unveiled the latest in computers. A prominent expert warned that computers and automation are moving in on skilled technicians and middle management. He said all "routine, uncreative" jobs can be programed through and performed by computers. Beyond this, exhibitors showed that computers can handle routine creative jobs like producing animated movies, designing bridges and buildings, and performing medical diagnoses once done by the family doctor.

The computer is the symbol. But the technological change underway involves many things: greater mechanization; new processes, materials, techniques, and markets; reorganized plants; changed work-force skills and so on. In short, increased productivity—more output per man-hour.

If these changes ripple rapidly enough through the Nation's work places, the moderately faster rate of productivity foreseen for the remainder of the 1960's could climb more sharply. The result would be higher unemployment unless production and sales at least keep pace.

Unemployment long has been called the Nation's top domestic problem. Over 4 million are jobless; the unemployment rate has held above 5 percent for over 6 years; all national policies so far applied have failed to make a real dent in unemployment.

And it is mainly unemployment which underlies and aggravates the Nation's troubles, be it civil rights demonstrations, political extremism, rising welfare costs or juvenile delinquency. Decent jobs at good pay are desperately needed if these problems are to be resolved. If the pace of automation quickens, these problems can worsen.

Rapid economic growth is the key to the Nation's problems, in the view of economists and national leaders. The economic growth rate must be high enough to create jobs for the 1.3 million new jobseekers entering the labor force each year, to dent unemployment and to provide job openings for those displaced by the new technology.

To scout ahead and identify the nature and scope of technological trends and so help those responsible for manpower policies plan for change, the Government has issued a pioneering report entitled, "Technological Trends in 36 Major American Industries." The study was prepared by the Labor Department for President Johnson's Advisory Committee on Labor Management Policy. In issuing the report, Secretary of Labor W. Willard Wirtz and Secretary of Commerce Luther Hodges—Cochairmen of the President's Committee—made this comment:

"The first industrial revolution was bought to a great extent with the sacrifice of human values. Our society today will not accept the proposition that the cost of progress must be paid in the broken lives of workers who are bypassed by technology."

Looking back, America has seen technology bring miracles of production in agriculture which are the envy of other nations—but which forced millions out of farming and left them ill prepared for city life. The Nation has seen technological advances which have made the American coal miner the world's most productive—and left many miners and their families and their region in poverty. The Nation has seen a pioneering textile industry turned into a decaying shell by migrating management. And it has seen meatpacking decentralize out of Chicago, once famous as "hog butcher to the world," leaving thousands jobless.

The changes ahead sketched briefly for each industry by the Labor Department report covered only those changes already introduced and on the threshold of widespread adoption. All are seen to have an important potential impact on jobs.

The technological changes ahead mean:

In soft coal, an increased use of continuous-mining machinery and such cost-slashing mine-to-market advances as unit trains and slurry pipelines;

In iron and steel, wider use of the oxygen injection process;

In air transport, wider use of jet cargo liners and compact passenger jets;

In trucking, engines twice as powerful as those now in use and the spread from west to east of "double bottoms"—two 40-foot trailers linked behind one tractor;

In oil and gas, wider use of computers for data processing and for production, storage, and pipelining of oil, with one-third of the oil industry already computerized;

In cement, electronic control of production, with one plant now using a computer to control almost the entire process;

In aerospace, firms using labor-saving, numerically controlled tools are expected to expand such tools from 400 in 1962 to 1,600 by 1970 and make wider use of tape-controlled drafting, welding, and inspection techniques.

The Labor Department report did not discuss except in passing those inventions and discoveries still in the drawing board stage nor did it deal with innovations still prohibitive in cost.

But such expected breakthroughs ahead would mean:

In retail trade, automatic check-out counters for supermarkets to total and bag groceries mechanically;

In coal, long wall mining by remote control which would boost output greatly and wipe out more jobs, proportionately than did continuous mining in the 1950's;

In aluminum, new processes which aim at skipping a 75-year-old reduction process and which would, when perfected, bring capital savings of up to 50 percent.

These examples make it clear that not only computers and automation but a variety of other changes will be contributing to increased productivity.

Experts point out that neither rising productivity nor the sizable increase in the work-force each year need swell unemployment if the economy grows fast enough. These experts estimate an economic growth rate of about 4.5 percent a year is necessary in the 1960's just to hold unemployment where it is now, given the net gain of 13 million to the labor force and assuming productivity continues to rise at its postwar rate of about 3 percent a year. The 4.5 percent growth rate viewed as necessary now is significantly greater than the 3 percent per year achieved during the 1950's.

But the growth rate must exceed even 4.5 percent to cut into unemployment. Even though the annual growth rate moved up to 3.8 percent in 1962, it is recalled, unemployment grew, too.

Experts in the field of computer development and application and those who work with such systems generally expect the rate of productivity in the nonfarm sector to move upward from the 1960–63 annual rate of 3.2 percent. Most of the best-informed people in the field foresee "a moderately faster rate" for most of the next decade.

An authoritative survey of informed people in the computer field has produced these findings:

Impact on jobs. Automated equipment is seen to have a very pronounced capacity to cut labor needs, even though it may be purchased to reduce waste and increase accuracy. From what is now known, it is possible to conceive of automating a wide range of human activities. How automation affects productivity will turn on the rate at which its uses can be extended and improved and the rate at which it is accepted and its cost made feasible.

Applying automation. Barriers to automation are rapidly being reduced. The shortage of personnel trained to understand the capabilities of automation is disappearing. More and more trained people from universities seek jobs in consulting and operations research work where the main job is to systematically survey operations to see where savings can be achieved with new techniques and equipment. A news story described one effect: A firm systematizing data on its processes for a computer found this so boosted efficiency it did not yet need one.

Computer centers and less costly equipment also are making the new technology available to smaller businesses, thus tapping a new market. Small firms also are benefiting from the flexibility made possible through tape control devices, standardization and other devices; the big firm making large quantities of a standard product no longer is the sole market.

Research: Spending for research and development has been shooting upward—from $5 billion annually in 1953–54 to $10 billion

a year in 1957–58 to $16 billion annually in 1962–63. Though much of this is for the military, out of it has come such advances as tape-controlled machine tools, molecular electronics, etc. The research of the 1950's is now bearing fruit.

Investment: A McGraw-Hill survey shows a sharp upswing in the proportion of investment allocated to buying automated equipment—11 percent in 1955, 12 percent in 1959, 19 percent in 1963. The rate should be speeded by the 1962 investment tax credit.

These developments set the stage for radical changes in the economy. The best-informed people in the field, assuming the steady spread of automation, speculate that productivity could rise at a still more rapid rate in the 1970's and make the need even more urgent for bold programs.

But the overall productivity rate is similar to the case of the man who drowned trying to walk across a stream with an average depth of 3 feet. As experts warn, the overall rate conceals critical changes within industries. They note that nonfarm productivity rose by 21 percent from 1950 to 1960. But, in soft coal, productivity shot up by 51.6 percent in the same decade while output slipped only 5.6 percent. The result: mining jobs plummeted by 440,000 or 36 percent.

Thus the point is made by experts that even on assumptions that total national output will go up by 50 percent from 1960 to 1970 and unemployment will be lowered to 3 percent, automation will lead the way to job cuts in many industries.

Following is the outlook for 1970 of current trends in a few selected industries, quoted from the Labor Department report:

STEEL

Outlook: "Advances in all departments of iron and steelmaking, including the introduction of new processes such as basic oxygen in steelmaking, indicate a steady increase in output per man-hour.

"Although a rising level of steel output is projected for the next 10 years, improvements in speed and efficiency from new methods and processes not yet widespread in the industry indicate that little if any increase is to be expected in the employment of production workers. Some rise may take place in the number of clerical, professional, and technical personnel."

ELECTRONICS

Outlook: "Impending rapid development and use of microelectronic circuits and mechanization of production processes may have extensive impact on labor requirements and the structure of the industry. Research and development on a large scale may yield new products for industrial automation, communication and space and defense applications.

"Employment is expected to increase about 39 percent—from about 778,000 in 1961 to over 1 million in 1970."

CONSTRUCTION

Outlook: "Major advances include larger, more powerful equipment, improvements in materials handling, prefabrication of building components, and changes in architectural design that will probably reduce labor requirements per unit.

"Employment is expected to increase substantially consequent upon an anticipated increase in new construction between 1960 and 1970, reflecting new family formation, suburbanization and Government construction activities. Because construction activity fluctuates closely with general business conditions, construction employment may not reach the projected volume if a high level of economic activity is not realized."

TELEPHONES

Outlook: "New developments—including preassembled equipment, electronic switching and computers—are likely to have significant impact on installation, construction, maintenance, and clerical workers. Total employment may continue to fall, although volume and variety of communication service are increasing."

In terms of the broad impact of automation on skills and people, experts see it this way. Automation does not require much higher skills from workers, who often can be trained to operate such equipment. But as such equipment becomes more sophisticated, it will thin out the ranks of even the more skilled employees. As automation devours routine blue-collar jobs, these workers will be thrown into the intensified competition for generally lower paying jobs in the white-collar and service fields. As automation eats its way up the skill ladder, the job changing it causes will be a matter of survival of the best educated and best skilled.

In the absence of bold programs, the broader consequences are all but written on the wall. In addition to the problems which can put in numerical terms, there is this dimension: During the 1960's, some 1.4 million farm jobs will be wiped out and 7.5 million high school dropouts—2.3 million before the eighth grade—will be seeking work. These are the people most ill-equipped and most vulnerable in an age of automation. And the Negro jobless rate, for example, is already double that of the white worker. In addition, many now seemingly secure in their skills will be wrenched out of their chosen work and forced into different work and probably lower living standards.

To ease the impact of technological change, labor and management have devised a variety of methods of adjustment.

Collective bargaining agreements usually call for advance notice of a layoff of shutdown, but often this is no longer than a week. Automation is inspiring provisions requiring several months' notice.

Other approaches include the avoidance of layoffs through attrition, early retirement, work spreading, retraining, transfer, and relocation.

Cushioning actual layoffs are such devices as severance pay, vesting of pension rights, aid in retraining and placement elsewhere, supplemental jobless benefits.

To help toward new employment, approaches now being applied include compilation of worker profiles, systematic industry surveys, more effective education and training programs, elimination of racial discrimination.

Considered among the most ambitious private programs aimed at cushioning the effect of technological changes are the labor-management arrangements in west coast longshoring, the Armour plan and Kaiser Steel.

Experts welcome such private programs. But they warn of the limitations, especially since only a fraction of the work force can be so protected. The worker without a union, for example, is virtually helpless.

The urgent need, they stress, is for vigorous private and public employment policies to help equip workers with the education, skill and mobility needed to meet the fast-changing patterns of work and opportunity.

The new technology can help end monotonous, deadening and dangerous work; it can help end want. It can also destroy. It will take man's best efforts to tame and control technology for the benefit of all. But there must be rapid economic growth to provide jobs and a favorable setting.

A maker of automated equipment, alarmed at the job-destroying potential of his product, once relied on Dickens' description of the French Revolution to point up the paradox of the automation revolution: "It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness * * * it was the spring of hope, it was the winter of despair." It is a time, he said, for boldness and innovation.

AUTOMATION HELD THREAT TO U.S. VALUE CODE

(By David Fouquet)

What may prove to be the most radical evaluation of capitalism since Marx's challenge 100 years ago has recently been made by a group of respected social critics in this country.

Unlike Marx, however, they feel that capitalism has been successful—so successful that it may be bringing about its own destruction.

Their proposals indirectly attack the present value of the so-called Protestant ethic, with its advocacy of industriousness, individualism, hard work, and their rewards.

Among the proposals are requests that the Government pay an adequate income to all Americans whether or not they work. This suggestion was made a few weeks ago by the Ad Hoc Committee on the Triple Revolution.

Among the committeemen are: Gerald Piel, publisher of the Scientific American; Michael Harrington, author of "The New America"; Linus Pauling, Nobel Prize winner; Ralph H. Helstein, president of the United Packinghouse, Food & Allied Workers; W. H. Perry, vice president of the Fund for the Republic, and Gunnar Myrdal, Swedish economist.

The triple revolution the group referred to was the revolution in computer automation, the weaponry revolution, and the human rights revolution.

They said automation has rendered the industrial productive system "no longer viable * * * the traditional link between jobs and income is being broken."

Then at the Spring Joint Computer Conference attended by some 5,000 computer industry representatives in Washington recently, the leaders of the computer revolution were told by one speaker that "the present cyberculture revolution is comparable in magnitude only to the agriculture revolution," thousands of years ago.

In a study of what automation means to America in a recent issue of Automation magazine, many contributors rose to the defense of automation.

Editor-in-Chief Roger E. Bolz comments: "There are no dangers from machines unless the fog of misunderstanding created ends in little but ineffective or depressive activity. * * * Economic and social change will take place, but hardly drastic."

A study by the magazine of 3,440 plants showed that about 11 percent had progressed to the more advanced stages of automation, such as remote control and computer control.

Of those with that degree of automation, 10.4 percent indicated a reduction in personnel, 41.5 percent reported no change and nearly half said more workers were required. A total of 84.1 percent said increased skills were required.

Robert W. Burgess, Director of the Bureau of the Census, stated that despite improved machinery, more production workers are required. He noted that years ago many telephone operators were put out of work by the dial telephone, but that the telephone industry had nearly doubled its employment between 1940 and 1950 and upped it 10 percent more in the next decade.

Yale Brozen of the University of Chicago added that "adaptation to automation would be easier if the wage structure were less rigid. It could take place, then, by the acceptance of lower wage jobs by some individuals as well as by attaining higher skill levels."

Senator BARRY GOLDWATER, Republican, of Arizona, commented that "to talk of controlling the advance of technology is as practical as trying to hold back the dawn." He said threats to job security in the past have spurred workers to better and higher paying positions from repetitive mechanical jobs.

However, estimates of recent job losses to automation range from 4,000 to 40,000 a week.

John I. Snyder, Jr., president and chairman of U.S. Industries, Inc., manufacturer of automated machinery, believes the higher figure is more accurate.

He said, "the whole idea of automation is to substitute the machine for the human."

Alice Mary Hilton, a writer and consultant on automation, said, at the computer conference, "We can go into an era worse than the decline of Rome or higher than the Athenians ever dreamed of.

"We should reexamine the ethos that condemns millions who are simply the first contingent of citizens living under cyberculture conditions, without preparation for the new age. * * * To learn to live in leisure and abundance is the task of this generation." Otherwise, she said, "we are dooming untold millions to useless lives without hope or purpose."

Rome, she added, destroyed itself with its unemployed citizens idly seeking bread and circuses.

Her appeal was echoed by Robert H. Davis of the Systems Development Corp. of Alexandria, and Donald N. Michael of the Institute for Policy Research in Washington.

In his paper, Davis said: "If a man must work to feel worthy and needed and we persist in eliminating him, then the results must inevitably be a profound and possibly disastrous change in the fabric of our culture * * * although the task will take decades, we must begin to change our Protestant ethic."

He advocated teaching the constructive use of leisure in the schools through courses which are today labelled "frills." He called for an examination of how the unemployed are to be provided for.

Michael was even gloomier. He said that the leaders of our society became successful through the standard procedures and are dedicated to the preservation of the present values.

Also, he noted, the persons displaced by machines have shown no inclination or interest in the cultural aspects of life. He also warned of the potential of a major social crisis when Negroes now fighting for equal job opportunity achieve that goal but are trained for jobs that no longer exist.

COLLEGE PRESIDENT CALLS FOR GI BILL NOW

Mr. YARBOROUGH. Mr. President, the cold war GI bill, S. 5, has been on the Senate Calendar since it was favorably reported by the Committee on Labor and Public Welfare on July 2, 1963. The biggest slowdown in the Senate has been on the GI bill rather than on civil rights, and the 5 million cold war veterans know it. During the hearings on this bill, it was made most obvious that it had the unqualified support of most educators; from presidents of institutions, to deans, to the professors, clear to the ground level of any educational system—the students. The heartening thing about the public response to this bill is that it is still given unprecedented acclaim and approval by all those concerned with the bill. Although the hearings on this bill have been completed, the public support has not waned, as daily a steady number of letters maintain a refreshing confidence that more and more Americans wish to be recorded as participating supporters of this bill. During recent extensive travels in Texas, more people expressed to me an affirmative interest in the passage of the cold war GI bill than any other legislation pending in the Congress.

Many Senators say to me that in the past 30 or 60 days, as they visited college campuses, more students have spoken about this bill than about any other piece of legislation pending in Congress.

Perhaps the most encouraging, from the standpoint of prior knowledge and experience, are those letters from prominent educators who have seen the favorable results of the prior GI bills and wish that these innumerable benefits would continue to be reflected in the incomparable progress of our country. As an example of these responses.

Recently I received a letter from Mr. Fred Helsabeck, former dean of Lynchburg College in Virginia and present president of Culver-Stockton College in Missouri, who in these two positions had the opportunity to work with the veterans studying in the late 1940's and the Korean veterans who had the opportunity to further their education under the GI bills. In lending his support for the pending cold war GI bill, Mr. Helsabeck borrows from his association with these veterans and bears witness to the benefits which they contributed not only to themselves, but to our college campuses and Nation as well. In his letter, Mr. Helsabeck states:

> The motivation of these students was exceptional, and their professional growth and civic contributions have been extensive and quick in realization * * *. The colleges benefit from these students since they bring a maturity and determination to their work which inevitably affects the total campus.

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

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that I may proceed for 1 additional minute.

The PRESIDING OFFICER. The Chair points out that the period of 1 hour permitted under the order of morning business has expired.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the Senator may have 1 additional minute.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that I may have 1 additional minute.

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

Mr. YARBOROUGH. Mr. President, it should be noted that these are those men who have asked what they could do for their country, and in answer gave 2, 3, or 4 years of their young lives to serve in its defense. Now as veterans of the military service they are not asking for a reward, but again are asking what they can do for their country in utilizing their potential. Experience has shown these veterans have an unlimited desire to grow as this great Nation grows. When these veterans are willing to contribute their talents to our college campuses, their ambitions to the professional world, and their development as responsible citizens to our country—when these veterans continue to ask what they can do for their country it seems mandatory that every effort should be made to prevent their faltering, by making educational opportunities obtainable to them to enable them to render maximum service.

This makes it essential, Mr. President, whether motivated out of fairness or necessity, to pass this cold war GI bill.

I ask unanimous consent that the letter of Mr. Helsabeck, president of Culver-Stockton College, be printed in full at this point in the RECORD.

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

> CULVER-STOCKTON COLLEGE,
> *Canton, Mo., January 31, 1964.*
>
> Senator RALPH W. YARBOROUGH,
> *U.S. Senate,*
> *Washington, D.C.*
>
> DEAR SENATOR YARBOROUGH: I appreciate very much the service which you are preparing to render to the young people of our country through the area of higher education and to our country at large in your presentation of the importance of extending educational benefits for persons who haved served in the Armed Forces of the country since 1955.
>
> It was my privilege to serve as dean of Lynchburg College in Virginia, during the period of the late 1940's when hundreds of veterans studied in our college, and to work and to be associated with this and my present college during the time when the Korean veterans had a comparable opportunity for education. I am convinced that the privileges which were accorded these young people resulted in innumerable benefits, both to the persons involved and to our country as a whole. The motivation of these students was exceptional, and their professional growth and civic contributions have been extensive and quick in realization.
>
> Our service veterans have been retarded in their opportunities for educational and professional advances and I think it quite appropriate to assist these young people in achieving quickly the educational status which will enable them to serve their fellow men. Although recent veterans have not been faced with difficulties comparable to those of earlier years as they have faced their vocational plans and procedures.
>
> The colleges benefit from these students since they bring a maturity and determination to their work which inevitably affects the total campus.
>
> Sincerely,
>
> FRED HELSABECK,
> *President.*

Mr. RIBICOFF. Mr. President, I ask unanimous consent, under the rule, that there be allowed 3 minutes to the Senator from North Carolina [Mr. ERVIN] and to the Senator from Colorado [Mr. DOMINICK], and 3 minutes to myself.

Mr. HOLLAND. Mr. President, I hope the Senator will add 3 minutes for me.

Mr. RIBICOFF. And I ask unanimous consent that the Senator from Florida may be yielded 3 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CHRISTIANITY AND CIVIL DISOBEDIENCE

Mr. ERVIN. Mr. President, on May 11, 1964, I received a letter from the Reverend Mr. Leon T. Moore, secretary of the General Conference of the Methodist Church, enclosing a copy of a report from the Committee on Christian Social Concerns adopted by the General Conference of the Methodist Church

at Pittsburgh, Pa., on May 4, 1964, and requesting that such report be entered in the CONGRESSIONAL RECORD.

I hereby request unanimous consent that a copy of such report be entered at this point in the CONGRESSIONAL RECORD.

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

CHURCH AND RACE

The following report from the Committee on Christian Social Concerns was adopted by the General Conference of the Methodist Church in session at Pittsburgh, Pa., May 4, 1964:

"We affirm the legality and right of those minorities who are oppressed anywhere in the world, to protest, to assemble in public, and to agitate 'for redress from grievances,' provided this is done in an orderly way. (The Council of Bishops, Detroit, Mich., November 13, 1963.) A public march or other demonstration as a dramatic petition for attention and justice is in line with the principles and practices of a free society. When such orderly protests are undertaken, the goal should be clearly identifiable.

"When resort to orderly, responsible, nonviolent public demonstrations by those engaged in the struggle for racial justice provokes violent retaliation on the part of police or on-lookers, the blame for the violence should be placed on the violent, and not on the peaceable demonstrators. On the other hand, any demonstration that turns itself to violence takes to itself the same blame. Even peaceable demonstrations supporting entirely just causes must be restrained and limited by the recognition that no decent society can exist apart from the rule of just law and decent order. Thus limited, however, orderly and responsible demonstrations, can serve to bring a better order into being.

"There are certain circumstances when arbitrary authority is sought to be imposed under laws which are neither just nor valid as law. Even under such imposition the salutary principle of the rule of law requires that in all but the most extreme circumstances the individual confronting such authority must resort to legal processes for the redress of his grievances. However, Christians have long recognized that after exhausting every reasonable legal means for redress of grievances, the individual is faced with the moral and legal dilemma of whether or not his peculiar circumstances require obedience to 'God rather than to men.' There are instances in the current struggle for racial justice when responsible Christians cannot avoid such a decision. Wherever legal recourse for the redress of grievances exists, the responsible Christian will obtain the best available legal and religious counsel for his dilemma. In rare instances, where legal recourse is unavailable or inadequate for redress of grievances from laws or their application that, on their face, are unjust or immoral, the Christian conscience will obey God rather than man."

Mr. ERVIN. Mr. President, I will make a few comments on this report.

This report enables one to understand what the angel Gabriel meant when he spoke this line to the Lord in the play entitled "Green Pastures":

Everything what's nailed down is coming loose.

The Methodist Church has always been a bulwark of government by law and Christianity. For this reason, I am deeply distressed by what this report says. I cannot believe that it reflects the minds and hearts of the thousands of Methodists I have known and loved ever since my earliest years.

When it is stripped of its surplus words, the report declares that professing Christians have a God-given right to disobey laws they deem unjust. This declaration cannot be reconciled with government by law. It is, indeed, the stuff of which anarchy is made.

I do not believe, moreover, that this declaration can be reconciled with Christianity. I do not claim to be a theologian. I am merely a sinner who looks to the King James version of the Bible for religious guidance.

I find these plain words in I Peter, chapter 2, verses 13–15:

Submit yourselves to every ordinance of man for the Lord's sake * * * for so is the will of God.

The report asserts in substance that some groups have already exhausted "every reasonable legal means for redress of grievances," and consequently are now entitled to engage in what the report calls civil disobedience. It is impatience rather than reason which makes this assertion in a land where laws are made by legislative bodies chosen by the people and where the right to petition these bodies "for a redress of grievances" belongs to all men.

MONTH OF MAY SIGNIFICANT FOR POLISH PEOPLE

Mr. RIBICOFF. Mr. President, the month of May is filled with significance for friends of the Polish people and for Polish people everywhere.

The month begins with the celebration of Polish Constitution Day, May 3, marking the anniversary of the Constitution of 1791. That Constitution heralded the return of democracy and freedom to the Polish people—a democracy and a freedom which are no longer present in full measure in Poland, but which represent the goals toward which every true friend of Poland desires to move.

Today, the 12th of May, marks the 600th anniversary of the founding of one of the great centers of learning in the world, the Jagiellonian University of Krakow. For 600 years, the University of Krakow has lighted the world with its intellectual achievements. The university gave us Copernicus, father of modern astronomy; Paulus Vladimiri, promulgator of the first doctrine of the rights of man in 1415; the first globe; the first map of the Western Hemisphere. We in the United States have recognized the greatness of Krakow. Even now, the university is continuing to progress through the building of a children's hospital and research center made possible through our assistance.

Today is also the 20th anniversary of the beginning of the Battle of Monte Cassino, where Polish troops so valiantly fought and captured the mountain from the Germans. Less than 2 years later, those same Polish troops returned to Italy to help rebuild the Abbey of Monte Cassino. Under their leadership, that famous abbey, founded by St. Benedict in A.D. 525, was restored.

And it was during May 1944 that the Polish American Congress, an organization representing over 7 million Americans of Polish descent, came into existence in Buffalo, N.Y. The Polish American Congress has effectively represented the interests of Polish-Americans through its support of scholarships, its participation in cultural activities and the publication of its newspaper, the Delegates News-Letter, and the Bulletin, a magazine of informative articles on Poland, foreign policy, and related subjects.

The Polish people have much to be proud of this month. Theirs is a long and distinguished history. They have fought in defense of their heritage against the forces of absolutism—whether those forces come from the West, as did the Nazis, or from the Soviets of the East.

Today the spirit of the Polish people continues to inspire the world.

I join with all the friends of the Polish people in saluting them during this historic month.

ADVANCE NOTICE OF QUORUM CALLS

Mr. DOMINICK. Mr. President, yesterday, a quorum call was made shortly after 2 o'clock. At that time, the Senator from New Mexico [Mr. ANDERSON], my colleague, the Senator from Colorado [Mr. ALLOTT], the Senator from Utah [Mr. BENNETT], and I, were all in the Interior and Insular Affairs Committee room discussing with the Secretary of the Interior a most important and difficult subject dealing with water in the Colorado River.

We heard no bells. There were no lights. No one bothered, apparently, to notify those who were present that a quorum call was in progress.

I make this statement for the reason that on many occasions it is impossible to answer a quorum call because of press of other business, or being in other places; but on this occasion we were next door to the Capitol and could easily have come over to answer the quorum call without disrupting the committee meeting.

The only other comment I wish to make is that apparently quorum calls could be programed far enough ahead so that it might be possible for Senators who are going to suggest the absence of a quorum to let Senators know somewhat in advance when they will be called, so that if something should go wrong with the electric equipment, or Senators were not notified for one reason or another, they would still have advance notice and might be able to answer the quorum call.

I appreciate the courtesy of the distinguished Senator from Connecticut [Mr. RIBICOFF] in yielding to me.

CIVIL RIGHTS ACT OF 1963

Mr. HOLLAND. Mr. President, everyone knows that for many years the State of New York has required integration in its public schools.

Notwithstanding that fact, it is becoming increasingly apparent that despite that law, segregation in the public schools of New York is becoming greater and greater.

An article was published in the New York Times this morning, entitled "New School Plan Scored as Aiding Race Imbalance." I ask unanimous consent to have the article printed in the RECORD at this point in my remarks.

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

NEW SCHOOL PLAN SCORED AS AIDING RACE IMBALANCE—STUDY BY CITY RIGHTS PANEL SAYS 28 PROJECTS WILL BE 90-PERCENT NEGRO-PUERTO RICAN—FRINGE PROGRAM IS HIT—BOARD'S POLICY FOR SEEKING SITES TO TAKE IN TWO ZONES IS TERMED A FAILURE

(By Leonard Buder)

The board of education's building program is creating segregated schools faster than the board can end racial imbalance under its integration plans, a study by the City Commission on Human Rights charges.

The millions of dollars being spent on the new buildings represents an "additional investment in segregation that will make the problem even more difficult to solve in the future," the report declared.

The study was made by Dr. Max Wolff, a consultant to the commission, who is director of research for the Migration Division of Puerto Rico.

Dr. Wolff's study, which has not been publicly announced, charges that 28 of the 98 elementary and junior high schools in the 1965–66 building program will have enrollments in which Negroes and Puerto Ricans will constitute at least 90 percent of the student body.

Twelve other schools, the study declares, will have Negro and Puerto Rican enrollments of 70 to 89 percent.

CURRENT PROJECTS CITED

The study also said that 24 schools under construction now would be at least 90 percent Negro and Puerto Rican.

The projected ethnic composition is based on the assumption that existing zoning practices will continue.

A number of civil rights organizations have asked the board of education to halt construction until the new schools can be fitted into an integration program.

Among the organizations that have made such a demand are the National Association for the Advancement of Colored People, the Congress of Racial Equality, the New York Urban League, and the Citywide Committee for Integrated Schools.

BOARD REJECTS REQUEST

However, Dr. Calvin E. Gross, the superintendent of schools, and James B. Donovan, the president of the board, said last week that the new buildings were needed and that a halt in construction would not be in the best interests of the system.

Dr. Wolff, in his report, suggested that the funds being used to build schools in Negro and Puerto Rican areas could be used instead for schools to serve the same areas and still be racially balanced.

Dr. Wolff said "the policy of the board of education, embodied in many resolutions, has been to seek fringe sites for new construction."

"This policy," he asserted, "has failed in practice, and the current budget proposals indicate that no successful effort has been made to solve the problem posed by this failure."

In 1954, when the board expressed a commitment to integrate, the system had 52 schools in which at least 90 percent of the pupils were Negroes and Puerto Ricans. By last fall, Dr. Wolff declared, the number had risen to 165.

ASKS NEW SOLUTION

"Clearly, a new solution must be sought to prevent such massive investment in further segregation of schools," Dr. Wolff said. He suggested that one approach might be to establish educational centers or parks. These centers would consist of a number of schools—elementary, junior, and high—in a campus setting and would draw pupils from a wide area.

City school officials have had this concept under study for about a year. One member of the board, Joseph G. Barkan, has suggested the possibility of an educational park at Flushing Meadows after the World's Fair closes in 1965.

School officials also have said that although the number of predominantly Negro and Puerto Rican schools had increased, the number of schools in which Negroes and Puerto Ricans were a small minority had dropped—from 342 to 225 in the last 7 years. This, they say, represents improved integration.

On January 29, as part of its integration plan, the board tentatively proposed that 20 Negro and Puerto Rican elementary schools be paired with 20 white or integrated schools. It also proposed changes in the zones of 10 junior high schools.

Since then, however, school officials have had second thoughts about the desirability or the soundness of many of the specific changes and have held the plans in abeyance.

Members of the school board and Dr. Gross will receive today a special State advisory committee, a report that could determine the course of school integration here. The committee was asked to look into the city problem by Dr. James E. Allen, Jr., the State education commissioner.

Mr. HOLLAND. Mr. President, I shall just quote three paragraphs from the article which I believe to be most enlightening:

The board of education's building program is creating segregated schools faster than the board can end racial imbalance under its integration plans, a study by the city commission on human rights charges.

Mr. President, they are trying to operate in defiance of human traits and human preferences under which white people have lived together preferably, and under which Negro citizens have preferred to live together in the same community.

The next paragraph states:

Dr. Wolff's study, which has not been publicly announced, charges that 28 of the 98 elementary and junior high schools in the 1965–66 building program will have enrollments in which Negroes and Puerto Ricans will constitute at least 90 percent of the student body.

Twelve other schools, the study declares, will have Negro and Puerto Rican enrollments of 70 to 89 percent.

The study also said that 24 schools under construction now would be at least 90 percent Negro and Puerto Rican.

The last paragraph which I shall quote, which is also enlightening, shows the lack of progress made:

In 1954, when the board expressed a commitment to integration, the system had 52 schools in which at least 90 percent of the pupils were Negroes and Puerto Ricans; by last fall, Dr. Wolff declared, the number had risen to 165.

Mr. President, from 52 de facto segregated schools in 1954, the number in New York City has now risen to 165.

The analysis concludes with this statement:

Clearly, a new solution must be sought to prevent such massive investment in further segregation of schools.

This not only shows that real integration by law accomplishes nothing, but also shows that title IV of the pending bill is about as futile an approach to the program as it is possible to have.

I hope that Senators will open their eyes before it is too late.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that I may have 2 additional minutes to ask the Senator from Florida a question.

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

Mr. SPARKMAN. The Senator from Florida has made a very telling point. He says that the present situation shows how futile the proposed legislation is, because it is not solving the problem. Would not that problem be perpetuated by the proposed legislation which provides that transportation by bus shall not be required?

Mr. HOLLAND. The Senator is correct. I am glad he has called my attention to that fact. There is a provision in the bill that movement of pupils from one district to another, to do away with racial imbalance, is prohibited. Title IV in the proposed legislation would perpetuate and enlarge the situation existing in our great cities, as testified to in the New York Times article, which describes the situation in the city of New York.

Mr. SPARKMAN. Does the Senator understand that the provision for not requiring transportation by bus was written into the bill primarily because of the protests which had arisen from New York citizens?

Mr. HOLLAND. I so understand. I recall that 20,000 white parents, mothers and fathers, marched in a group to the city hall a few weeks ago, to express their complete opposition to the movement of their children miles away to some other school, with the consequent breaking down of the American tradition of community public schools.

Mr. SPARKMAN. I thank the Senator.

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may have 2 additional minutes to ask the Senator from Florida to respond to a question.

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

Mr. TALMADGE. Did the Senator read, as I did, an interview in one of the New York newspapers with Attorney General Robert Kennedy, in which he stated that the civil rights bill would have no effect whatever in Northern States?

Mr. HOLLAND. I did read that article; and I wondered whether the learned Attorney General had his tongue in cheek at that time. Probably he meant it was not intended to be enforced in Northern States.

Mr. TALMADGE. I believe I have the text of the interview somewhere in my desk. It was published in one of the New York newspapers. Attorney General Robert Kennedy pointed out in the interview that it would have no effect in

Northern States whatever, but it would have immediate practical effect in Southern States.

Mr. HOLLAND. I understood from that statement of the Attorney General that the Northern States already had in their State laws everything that is being proposed in this bill, and more, too; which is shown by the article I have just placed in the RECORD, as being a completely futile effort to deal with the subject of school segregation.

I thank the Senator from Georgia.

Mr. TALMADGE. I thank the Senator from Florida.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that I may proceed for 3 additional minutes in the morning hour.

Mr. COTTON. Mr. President, I did not hear the request made by the Senator from Louisiana [Mr. LONG].

Mr. LONG of Louisiana. I ask unanimous consent to proceed for 3 additional minutes in the morning hour.

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

Mr. LONG of Louisiana. Mr. President, some of the statements I heard this morning in the morning hour would, in some respects, tend to hold the Senate up to opprobrium and contempt before the Nation.

In my judgment, there is at stake one of the great, fundamental issues which will face the Nation for many years to come. What is now taking place in the Senate is one of the greatest debates in history. It may very well be that some Senators do not wish to hear any argument with which they do not agree. I recall that the late Senator Malone of Nevada used to say:

> The definition of a filibuster is a long speech with which you do not agree. If you agree with it, it is profound debate.

Mr. President, some of the greatest men of our country have stood on the floor of the Senate and defended and fought for the fundamental rights of Americans. That is one of the reasons why we still have those rights today. Sometimes it requires courage. Sometimes it requires the hide of a rhinoceros to stand by those rights, when our opponents declare it is useless to stand up on the floor of the Senate and irritate Senators by discussing rights which Americans hold dear, and which our forefathers spilled their blood to obtain. These rights are fundamental to all Americans. That is why we have the right to free debate in the Senate. That is what marks the Senate above all other parliamentary bodies on earth. A Senator may say that it is horrible, that it is wrong, that it should not be that way. But, that is why so many men and women wish to serve their country in the Senate. This is the body where a man with a righteous cause can rise and speak for as long as his legs and his voice will hold out.

It is about time that the Senate realizes, notwithstanding its own detractors, that the right to free debate—the right to stand up and say what one stands for and believes in and to buttress his cause by marshalling his arguments, and gritting his teeth and producing such logic and such proof as are available to him—is one of the great things which separates the Senate from other parliamentary bodies which we hold to be inferior to it.

The right of trial by jury is being debated in the Senate at this time. There is pending an amendment to an amendment. Each is subject to a motion to table. Neither should be tabled, because legitimate debate is being carried on in the Senate on the fundamental freedoms of American citizens, against a novel and untried procedure by which some would deny a person the right of trial by jury of his peers when accused of crime.

There are many other features in the bill. There are provisions in it which deal with a person's right to associate with whomever he wishes to associate. Other provisions deal with his right to employ persons of his choice, and to promote persons of his choice. These and many other fundamental rights of the American people should be debated at length in the Senate.

It has been properly said that this question could have been settled a hundred years ago, and we would not have had a half million boys shed their blood for lack of statesmanship.

If it requires a few more weeks or even another month or two, the question should be settled in the best tradition of the Senate.

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

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that I may have 2 additional minutes.

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

Mr. TALMADGE. Does not the Senator agree that the greatest civil right in human history is the right of trial by jury?

Mr. LONG of Louisiana. Yes. It is the right to have one's case heard and one's rights defended. Those are fundamental rights that are protected. There is also the right of a Senator to defend the rights of 3 million or 5 million or 150,000 constituents of his State. Those are some of the civil rights that should be defended, even though the defense of such rights may not be popular with a Senator who may wish to rush in to do what his constituents may think they want him to do.

Mr. COTTON. Mr. President, I ask unanimous consent that I may be yielded 3 minutes.

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

Mr. COTTON. The Senator from New Hampshire is thoroughly interested in preserving the right of free debate. The Senator from New Hampshire on occasions has voted against invoking cloture because he believes that, just as the other body, because of its size, must limit debate, so the Senate must counterbalance that situation by having full and free—I do not say unlimited—debate in order that it shall remain a careful, deliberate body.

The Senator from New Hampshire, though he has voted for other civil rights measures has certain objections to this bill. He is not one of its implacable opponents.

The Senator from New Hampshire finds the situation presented to some Senators to be almost impossible.

Some of us are extremely anxious for the opportunity to vote on amendments to the bill.

There is no indication that Senators will have an early opportunity to vote on an amendment or amendments on the subject of jury trials or any other subject.

The Senator from New Hampshire is particularly interested in title VII, and makes no bones about saying that he cannot vote for the bill if title VII remains in it, unless it is drastically amended. We are up against this problem. Sooner or later, if we invoke cloture on an amendment, every Senator who chooses to exercise his privilege has an hour to speak on that amendment. Then a Senator may offer an amendment to the amendment, or a substitute for the amendment, or a new amendment, and we once more start on that round.

Therefore, cloture is a questionable means of giving us a chance to vote on amendments, but it is the only means we have.

Sooner or later we come up against the situation of cloture on the entire bill, including all amendments. Then each Senator has an hour to speak, if he chooses to take advantage of that privilege, and to talk on the amendment or amendments that he feels are vital to him, in determining his attitude on the bill.

However, if at the time another amendment is pending, he cannot call up his amendment. No one hears what he has to say. Just before the final vote, amendments can be called up and voted down without any debate or consideration.

Therefore, it occurs to the Senator from New Hampshire that sometime in the future, instead of spending all our time trying to decide how to amend the rules, on whether cloture shall require a two-thirds or a majority or a constitutional two-thirds, we might well find some way under the rules to apply a different and more rapid procedure for invoking cloture on amendments than on the final passage.

The Senator from New Hampshire was correctly quoted by the distinguished Senator from New York [Mr. KEATING]. The Senator from New Hampshire feels that we should have an opportunity to vote on the bill, and at the proper time is willing to vote for cloture. By "proper time" the Senator from New Hampshire means at a time when we have had a chance to vote on what we believe, at least what the Senators believes, because he has no right to speak for anyone else, to be amendments vitally necessary to make this bill a safe bill, and not a bill which is a menace and a threat to individual liberties in this country.

The Senator from New Hampshire can say only that he hopes those who are in utter opposition to the bill will be lenient and give the Senate a chance to consider amendments reasonably and to vote on them—perhaps not all of them, because there are so many pending, but on certain fundamental ones. When that is done, we can consider the bill. If it is

not done, sooner or later we must vote on the bill anyway. However, it is not good legislation, and it is an abuse of the legislative process, particularly on a bill in which we are attempting the delicate but necessary task of turning the face of the Federal Government against discrimination in this country, but to do it carefully with skillful surgery, in order not to destroy precious individual rights. That kind of process should be a careful process, and we should not sacrifice the regular legislative process. We should have an opportunity to vote on the amendments, and then we can consider the bill.

Mr. KEATING. Mr. President, I ask unanimous consent that I be yielded 3 minutes.

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

AMERICAN INDIAN CAPITAL CONFERENCE ON POVERTY

Mr. KEATING. Mr. President, this week, the District of Columbia is host to a precedent-breaking conference of American Indians. This convocation, sponsored by the Council on Indian Affairs, is the first conference of its kind ever to be held. It is an extension of the council meetings held every year to consider Indian problems. Five hundred delegates representing 100 tribes from all over the United States, are attending the conference. Workshops have been held for 4 days at the Washington Cathedral. Education, health, employment, housing, and community mobilization are the chief topics of discussion, with particular attention being directed to the place of the American Indian in the program to abolish poverty. Programs of Indian arts and culture have been given in the evenings.

Yesterday, Mr. President, many of us had an opportunity to meet Indians from our own States at an afternoon reception here in the Senate. It was apparent that national concern exists about the plight of the Seneca Indians in Salamanca, N.Y., whose land will be flooded when the Kinzua Dam opens next October. They have not yet received their compensation money and have found it impossible to plan their move. This has become a cause celebre to Indians east and west. I was glad to learn that the distinguished chairman of the Senate subcommittee, Senator CHURCH, was in Salamanca yesterday for an on-the-spot investigation of the situation. I am sure that he will see for himself how very much this means to all Americans. Only a restoration of the funds passed by the House will convince the Indians that they will get a square deal from all of us. The fact that the 1794 treaty was broken was bad enough. Now we must set the record straight, and in good faith, make the necessary reparation.

PRESENTATION OF YOUNG AMERICAN AWARD TO GARY CALNEK

Mr. KEATING. Mr. President, there is a distressing tendency these days to point out, in lurid detail, the unfortunate missteps of the youth of our Nation as they struggle to find their place in the sun. Far too little is said about those young citizens who, with courage and steadfastness, set a shining example for young and old alike. Last week the President and the Attorney General presented Young American Medals to four outstanding girls and boys who will soon inherit the mantle of national leadership.

So it is with special pride that I call attention today to a young man from the Bronx, N.Y., Gary Calnek, who has turned his own community spirit and social awareness into real and material accomplishment. Gary, as organizer and then permanent chairman of the 48th Precinct Team Council, is credited with leading his group in such valuable community activities as parades, teenage performances and parties, fundraising efforts and educational and cultural tours.

To those of us who complain of crowded schedules and weighty responsibilities, I want to detail just a few of Gary's community activities. He is active in the National Conference of Christians and Jews; has assisted the League of Women Voters and the National Association for the Advancement of Colored People in an educational program for Negro and Puerto Rican citizens who are attempting to vote; graduated fifth in his high school class of 251 and now attends City College of New York; and is the recipient of many awards, including the 1962 Brotherhood Award of the National Conference of Christians and Jews, the Youth Honor Scholarship of the New York Journal American, the B'nai B'rith Service Award, Kiwanis Leadership, the Service Community Award, and the Samuel Gompers High School Parents Association Award.

Gary is a worthy recipient of the Young American Award, and his parents, Mr. and Mrs. Bertram Calnek, deserve a special commendation for their care and guidance which have given us this fine young citizen and leader.

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

Mr. KEATING. I am glad to yield.

Mr. JAVITS. I should like to join my colleague from New York in congratulating the young man and his family, who make us extremely proud of being New Yorkers and of being Americans. I am delighted that my colleague has introduced such a complete record with respect to this wonderful young man.

Mr. KEATING. I thank the Senator.

PROGRESS OF CIVIL RIGHTS BILL

Mr. HUMPHREY. Mr. President, I ask unanimous consent that I may be recognized for 3 minutes.

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

Mr. HUMPHREY. I commend the distinguished Senator from New Hampshire [Mr. COTTON] for his remarks today in reference to what I consider to be a fair procedure concerning the pending bill. As I understand the Senator from New Hampshire, he believes there are fundamental, basic amendments that ought to be considered, ought to be debated, ought not to be tabled, but ought to be called up in orderly process, so that Senators can be present to hear the arguments concerning them and then make their decisions.

The Senator from New Hampshire is correct. The plea that has been made is one that should be heeded by every Member of this body. Otherwise, we do not legislate; we procrastinate; we do not really inform ourselves; but we merely go through the day with our preconceived notions and come out at the end of the day with no change whatsoever.

I thank Senators who have spoken today in reference to procedures which the Senate should follow. Each of us has his own point of view. Cloture is not gag rule. Cloture limits debate on the particular item to which the so-called cloture motion is attached. It does not deny the right of Senators to be heard; it merely takes into consideration the right of other Senators to be heard, and the right of the Senate to act as a legislative body, rather than to avoid action through extended and continuous debate.

The distinguished senior Senator from Illinois [Mr. DOUGLAS] stated earlier that there is concern as to whether the advocates of the bill mean business. Indeed, we do. The Senator from Illinois is one of those advocates. It has often been difficult to know how to proceed with this business most effectively. I believe in proceeding with forbearance. I believe in proceeding with determination. I believe in proceeding with good manners. I believe in proceeding with respect for the right of other Senators to express their point of view.

However, there is no right of any American to do exactly as he wishes, without regard to the rights or interests of others. In America, we do not have license; we have privileges, rights, and obligations. There is a great deal of difference between rights and privileges and license to run roughshod over other peoples' rights. The duty of a parliamentary body is to legislate, to give expression to subjects of public concern, and to reach a decision through thoughtful process and deliberation. We are presumed to be men and women of reason, and not merely of obstinacy.

Concern has been expressed as to the President's views: Is the President aroused? We do not need to doubt that he is aroused over this subject. Only recently, the President went into the deep South and spoke with conviction and courage on the subject of human rights, of justice under the law, and of equal rights and privileges under the law. He spoke as a defender of the Constitution. All the proposed legislation is designed to do is to defend the Constitution and to assure the constitutional rights of the people.

The President wants action on the bill. The President admonishes the Senate to take action on the bill. The President said in his state of the Union address that the Senate should vote this bill either up or down.

As one who has been a Member of this body for many years, I recognize, of course, that time is involved in these problems, but not time unlimited. As

the Senator from Pennsylvania [Mr. CLARK] said earlier, it is later than we think. I remind Senators, with all respect, that the Senate has other business to conduct for the country. It is our duty as Senators to conduct that business.

Mr. President, it has been suggested that the Senate begin to hold sessions around the clock. I hope Senators will be forbearing with me about this matter, as one who has some responsibility for this legisation. I have no personal qualms about going around the clock. But as one Senator said to me as we came through the door this morning, around-the-clock sessions are exercises in physical endurance and physical pain, and take a terrible toll of Senators.

Not every Senator is a young man; not all Senators are in good health. It is a serious responsibility to make the decision to have the Senate sit around the clock, knowing very well what may happen to some individual Senator.

But I do not rule out that possibility. I try to be a man of compassion and, I hope, of justice. But it must be recognized that the Senate must remain in session until it completes its business, because it is important that it be completed. So, while I have hesitated to have the Senate begin such an ordeal, I cannot say now that it will not be done. But even as I say these words, I say them with a heavy heart, because I think that proceeding in that way demeans the Senate and may very well cause serious damage to the health of individual Senators.

My plea is, Let us act as responsible Senators; let us act as Senators who are sent here to represent the people of the United States, not merely the people of our own States. We are Senators of the United States. We have a duty to uphold the Constitution of the United States. There can be no doubt that that Constitution prohibits, for example, the assignment of students to schools on the basis of race. That has been decided by the Supreme Court in a unanimous decision.

There can be no doubt that the denial of the right to vote is a denial not only of a constitutional right but of a natural right. Natural rights are far above what I consider to be constitutional rights.

I pray that the Senate can proceed. That is my plea. I am sorry that I am critical at times. I am critical of myself. I am not happy with the way the Senate is conducting its business. But the time has arrived for the Senate to examine itself and for each Senator, in the quiet of his own conscience, to ask himself if this is the way to conduct the Nation's business. As representatives of the great U.S. Senate, I do not believe we are doing the right thing. I suggest that Senators permit the Senate to proceed with the normal legislative process and to vote on amendments, and, if need be, to amend the bill, if the majority wishes to do so. I can express my vote only once on each amendment. I have but one vote and one conscience.

I ask that each Senator be given the privilege to exercise his one vote and his conscience. This is the way we develop legislation. To do otherwise would be a denial of our responsibilities as legislators.

Mr. COTTON. Mr. President, will the Senator from Minnesota yield briefly to me?

Mr. HUMPHREY. If I have time in which to yield.

Mr. COTTON. Will the Senator from Minnesota yield, to permit me first to propound a parliamentary inquiry, and then to direct an inquiry to him?

Mr. HUMPHREY. Mr. President, I ask unanimous consent that I may have 2 additional minutes, so as to be able to yield.

The PRESIDING OFFICER (Mr. NELSON in the chair). Is there objection? Without objection, it is so ordered.

Mr. COTTON. My parliamentary inquiry is as follows: Is it in order to submit a motion to impose cloture on a certain amendment and on all amendments thereto; or must the motion to impose cloture be confined to the pending amendment?

The PRESIDING OFFICER. If a motion to impose cloture is filed on an amendment, it includes all amendments to that amendment.

Mr. COTTON. I am not so concerned about a motion to impose cloture on the pending amendment, I am more concerned with those to title VII.

Mr. HUMPHREY. I understand.

Mr. COTTON. But a motion to impose cloture on an amendment on jury trial would affect all amendments on that subject or all amendments to that amendment.

I should like to ask the distinguished acting majority leader why he does not make a motion to invoke cloture, so that we can make intelligent progress, because every Senator would then have 1 hour—and that should be enough to enable any Senator to discuss an amendment to any bill.

Mr. HUMPHREY. I thank the Senator from New Hampshire for his perceptive inquiry. I was one of those who had advocated the making of a motion to impose cloture on the jury trial amendments, after the Senate had had several weeks of debate on them. But there was a feeling that there was a certain gentlemen's agreement or understanding, and that the Senate could then come to a vote, in more or less the way we came to vote on the question of taking up the bill. I had hoped that would be the case, and we had hoped we would be able to do that—on the basis of that general understanding—last Wednesday. But, as the Senator knows, that fell by the wayside. On Wednesday the Senate voted on the Morton amendment to the Talmadge amendments; but the Senate did not vote on the Dirksen-Mansfield substitute for the Talmadge amendments.

Then it was hoped the Senate would vote on the Dirksen-Mansfield substitute for the Talmadge amendments on Thursday or Friday or Saturday; but that was ruled out, because it was indicated in quite precise terms that the vote would not be taken then.

We had hoped there might be a vote this Wednesday. While there had been no ironclad agreements, there was general discussion in this immediate vicinity, as many Senators know. Senators also know that last Wednesday night we were in the Republican cloakroom, and discussed the possibility that after certain primary elections—one was yesterday, and one is today—we would be able to proceed to vote on the Dirksen-Mansfield substitute and on amendments to it, this Wednesday. Now we hear that it is not possible.

So I say, in conclusion, that the suggestion of the Senator from New Hampshire is well advised; and, as one who has some responsibility in connection with this matter, I shall take his advice, and again I shall ask the Senator's cooperation; and I shall take this advice to the majority leader and to the minority leader, since they are the cosponsors of this amendment, and to other Senators, and shall ask that that be done.

Mr. MANSFIELD. Mr. President, the Senate has been conducting what has come to be known euphemistically as an exercise in futility, for 2 months. We have seen how one Senator or a small group of Senators can direct and control and can arrogate unto himself or themselves the power to control the Senate and the power to thwart the will of the majority.

So far as I am concerned, I do not care how any Senator votes on an amendment; but give us an opportunity to vote either for or against the amendments. So far as I am concerned, it is up to each Senator to vote on the bill as he sees fit—if this small group will give the Senate an opportunity to vote on the bill as it may be amended.

We are witnessing a travesty on the legislative process. The majority is being told what it can do and what it cannot do. I hope what has been happening during the past 2 months will make itself felt in the mind of each Senator, because the times call out for a change in the rules under which the Senate operates. The times call out for a change, not only in rule XXII, but also in the procedure which allows one Senator to object to a unanimous-consent request, and thus to bring certain parts of this institution to a standstill.

These are things we are going to have to face up to. We talk about minority rule and majority rule, but we do not differentiate between the two, when it comes to the operations of the Senate.

The reason, I say to the distinguished Senator from New Hampshire, why we did not try to have cloture ordered, insofar as the Dirksen amendment was concerned, was—in all honesty—that we just did not have the votes; and we do not now, in my opinion, have the votes.

But some Members of this body are going to have to assume a degree of responsibility which has not been assumed up to this moment. Again let me say I do not care how any Senator votes on any amendment. I do not care how the bill is amended, if it is amended. I do not care how Senators vote on the bill itself, if they get a chance to vote on it.

But we should face up to our responsibility. We can dodge it and evade it and

avoid it and delay it, but we can do that for only so long.

This issue has been faced up to by the House of Representatives, by the courts, and by the President; but here, in the greatest deliberative body in the world, Senators are afraid to face up to the issue.

Mr. STENNIS. Mr. President——

Mr. MANSFIELD. Let me say to Senators on both sides of the aisle that there is no political profit in this for anyone. But the issue is here; and, as Senators of the United States, we have a reponsibility to vote one way or the other; and we should be given that opportunity.

Mr. STENNIS. Mr. President, will the Senator from Montana yield?

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed for 3 minutes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York? The Chair hears none, and the Senator from New York is recognized for 3 minutes.

Mr. JAVITS. Mr. President, every Senator will of course have a chance to speak on this matter; but I am grateful for the courtesy of Senators in permitting me to speak at this moment.

I have heard the majority leader and the deputy majority leader with the greatest respect and agreement; but I should like to call one point to their attention: The very measure of our impotence is that we address ourselves to the small minority which is filibustering against the bill, and we ask them to give us a chance to vote.

Our position ought to be that we intend to exercise the authority to vote given us by the Constitution and the rules of the Senate, even as inadequate as they are. We must turn loose every organ of opinion which will make us capable of acting as a majority. Even my friend the Senator from New Hampshire [Mr. COTTON], who is classed as a moderate on the question—if we wish to put Senators into classes—has made clear that he wishes an opportunity to vote on the amendments. He will take that chance—if necessary, I gather the implication is, by voting for cloture perhaps on an amendment, or perhaps on the entire bill.

The time is drawing near when Senators must declare themselves. I would strongly counsel the majority leadership to take action—we can do it, too, but not as effectively as if the majority took that responsibility in hand—to let Senators try to vote for cloture. The time has probably passed when it can be done on an amendment. The time has gone by now, even beyond that point. But let us try it. Let us put Senators on record on the cloture issue.

Mr. President, as an advocate of civil rights during all my public life, I will say that no vote that the Senate ever had on a bill on the question of civil rights is more meaningful and important to people who are interested than a vote on cloture on the pending bill.

The bill is not an extreme bill; it is a minimal bill. The timetable, as I have said time and time again, of the national interest and public order and tranquillity calls for action by the beginning of the coming summer that is the critical time. I have the greatest respect for the majority leader. I know he is on exactly the same side as I am. He is for the bill. But the time is very close when Senators must declare themselves on the question of cloture. If we are to do it, let us really have it out and deal with the entire bill, when Senators will then be able to vote on amendments and every other question involved. It will be as difficult under these circumstances to have the whole bill acted upon, which we must get done, as to act on any amendment.

Mr. STENNIS. Mr. President, the Senator from Minnesota has made——

The PRESIDING OFFICER. Does the Senator from Mississippi ask unanimous consent to speak for 3 minutes?

Mr. STENNIS. Mr. President, I have not addressed the Chair during the morning hour. I do not see why I should be required to ask unanimous consent to speak for 3 minutes during the morning hour.

The PRESIDING OFFICER. The morning hour has expired.

Mr. STENNIS. Mr. President, I ask unanimous consent that I may proceed for 3 minutes.

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

Mr. STENNIS. I thank the Chair.

The Senator from Minnesota made reference to a conference on Thursday night following the votes in the Republican cloakroom, at which the question was generally discussed. The Senator from Minnesota does not mean to leave the impression that there was any kind of promise made at that conference of any nature that there would be a vote this week or at any other time. I am sure of that. Will the Senator from Minnesota reply to that statement?

Mr. HUMPHREY. The Senator from Minnesota said that there were no ironclad agreements. The Senator from Minnesota said there was discussion to the effect that, since there was a primary on Monday and other primaries on Tuesday, the Senate might be able to reach a vote on Wednesday. I think that is a factual statement.

Mr. STENNIS. Was there any kind of implied promise or understanding by those who are primarily opposed to the bill?

Mr. HUMPHREY. There was no promise. There was no ironclad understanding. But the way the Senate operates, I believe there was the feeling that the Senate would start to vote on Wednesday.

Mr. STENNIS. Was it not expressly said that there would be a meeting of the group leading the opposition to the bill, at which meeting the question would be discussed and the Senator from Minnesota would be informed?

Mr. HUMPHREY. The Senator is correct.

The Senator from Minnesota said earlier that there has been no understanding, no agreement, but there had been discussion to the effect that the Senate would start to vote last Wednesday, and it was hoped that it could vote on the Mansfield-Dirksen amendment. The majority leader made it crystal clear that while some Senators thought that after a certain period of debate there should be cloture, the majority leader and others—and I was one of them—on that occasion felt that we did not have the necessary votes.

Mr. STENNIS. The time of the Senator from Mississippi is limited. The Senator from Minnesota has made a strong appeal to the Senate for a vote and for no further waste of time. I believe that is the way the Senator from Minnesota expressed it.

Was the Senator from Minnesota surprised to observe the 451-to-45 vote last Thursday afternoon?

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

Mr. STENNIS. I yield.

Mr. HUMPHREY. I was. I thought we would lose the vote. I was very pleased that we won.

Mr. STENNIS. When the debate started, did the Senator from Minnesota know—may I have the attention of the Senator from Minnesota? I do not personally object to the gentleman who has approached him in any way, but we submit to a good deal here in the way of having staff members run to bring papers and to confer with the leaders.

Mr. HUMPHREY. It is reassuring.

Mr. STENNIS. I shall start over. When the debate on the bill first started, did not the Senator from Minnesota state that there should be no amendment to the bill?

Mr. HUMPHREY. The Senator from Minnesota was of the opinion that the bill as it came from the House was a good bill. The Senator from Minnesota said that to amend the bill would complicate its passage in the House, as has been documented fully by the Senator from Illinois [Mr. DOUGLAS]. The Senator from Minnesota still feels that the bill that came from the House is a bill for which Senators could vote, and that it would be sound, constructive legislation.

But the Senator from Minnesota has been in the Senate long enough to know that when a bill gets into a process such as the one we observe, where it has been examined and argued and reargued and reargued ad infinitum, there are times when it is necessary to have amendments and to make adjustments. I believe I am a practical man. I am not unreasonable. I am prepared to see those amendments come forth. I desire that the will of the Senate be expressed on the amendments, regardless of what the Senator from Minnesota thinks of them.

Mr. STENNIS. Does not the Senator from Minnesota believe that the opponents of the bill have gained some votes on the proposed jury trial amendment since the opening of the debate until the vote was taken the other day?

Mr. HUMPHREY. The Senator from Minnesota would have to answer in all candor that the Supreme Court, which has been so roundly condemned by many of the opponents of the civil rights bill, did more for the opponents of the civil rights bill and for the jury trial amendment than all the speakers in the Senate put together.

Mr. STENNIS. The debate, the consumption of time, and, if the Senator

wishes to add the Supreme Court, all gave impetus toward a considerable vote in favor of the jury trial amendment.

Mr. HUMPHREY. Mr. President, will the Senator yield to permit me to put the situation into proper perspective?

Mr. STENNIS. I yield.

Mr. HUMPHREY. The Supreme Court, plus some of the debate, brought the jury trial amendment to the consideration of the Senate.

Mr. STENNIS. Does not the Senator believe that Senators who honestly oppose the bill, under those circumstances, should debate the question further when the vote on the amendment resulted in a tie, and that Senators who favor the amendment perhaps could pick up additional votes? Does not the Senator believe that that is good and sound strategy and a sound approach to proposed legislation?

Mr. HUMPHREY. Mr. President, will the Senator permit me to respond?

Mr. STENNIS. I yield.

Mr. HUMPHREY. Senators have spent more time discussing the jury trial amendment than the attorneys did before the Supreme Court, which ruled on the question. There has been considerable discussion of the amendment. Not a single Senator has failed to make up his mind on the jury trial amendment.

The Senator from Georgia [Mr. TALMADGE], who is an able and distinguished lawyer, made a good case for his amendment. We have not tried to beat down every argument on the jury trial amendments. We have tried to come to some reasonable, middle ground position between the encompassing amendment of the Senator from Georgia and the present situation. I think we have arrived at such a position.

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

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Senator from Mississippi may have 3 additional minutes.

Mr. STENNIS. One additional minute is sufficient.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STENNIS. If the Senator, who is an experienced legislator, had lost on a major question, such as the jury trial amendment, by one vote or by a tie vote, would he not make another try and attempt to pick up another vote or two in order to prevail in such a vital question?

Mr. HUMPHREY. I say most respectfully to the Senator that, first, the Morton amendment was not exactly what I would call a fundamental amendment. It limited the application of jury trial procedure to the bill. It was a technical amendment. Frankly—and I believe my colleagues know that what I am about to say is the truth—I expected that Senators who opposed the Morton amendment would lose, and I said so.

Mr. STENNIS. Mr. President, will the Senator permit me to interrupt at that point? He has made that position clear. Would not the Senator, on an amendment which he favored, but on which he had lost by a tie vote or by one vote, desire to debate the question further?

Mr. HUMPHREY. Of course. No one is saying to the Senator that the amendment should not be debated further. The vote took place last Wednesday.

Mr. STENNIS. That is exactly what Senators are doing.

Mr. HUMPHREY. There have been 2 weeks of debate on the jury trial amendment. Since the vote last Wednesday—this being Tuesday—I expected that sometime this week the Senate would be able to vote on the question of a jury trial amendment. There have been 3 weeks of consideration of jury trial amendments.

Mr. STENNIS. Is it not true that on the pending question only one speech has been made, and that was by the Senator from Florida [Mr. SMATHERS].

Mr. HUMPHREY. If there has been only one speech on the pending question, it is no fault of the Senator from Minnesota.

Mr. STENNIS. There has not been sufficient time to discuss the pending amendment, since it was offered last night.

Mr. HUMPHREY. The pending question.

Mr. STENNIS. Yes. Only one speech has been made on the pending question.

Mr. HUMPHREY. In all due respect, the Senator from Florida [Mr. SMATHERS] last evening presented an amendment and stated that the reason he was doing so was that he did not wish to have a rule of the Senate which would deny to any Senator the right to speak more than twice on any one legislative day on an item to be invoked. I consider the procedure proper. It is only fair to say, however, that the basic issue before the Senate is the jury trial amendment—the Mansfield-Dirksen amendment—and the amendment that was proposed by the Senator from Florida, which I believe was called up by the Senator from Louisiana [Mr. LONG].

Mr. STENNIS. My time is about up. I say to the Senator from Minnesota that the Senator from Mississippi is completely satisfied that if the Senator found himself in like circumstances and had lost an amendment by one vote or by a tie vote, he would not run out on it.

Mr. HUMPHREY. I would not run out on it, but I should say that there is not much of a case when 6 days are required to explain a small jury trial amendment such as has been referred to.

Mr. STENNIS. It must have been pretty much of a case, or there would not have been 45 votes for it.

Mr. DOUGLAS and Mr. LONG of Louisiana addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DOUGLAS. Mr. President, I ask unanimous consent that I may be permitted to speak for 3 minutes in the morning hour.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOUGLAS. I am very glad that sentiment in favor of limitation of debate seems to be increasing in the Senate, and I am also very glad that sentiment for changing rule XXII is also increasing and seems to be gaining support even from those who in the past have not always supported the change.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I hope the Senator is not referring to me when he refers to rule XXII, because I think I have made the only statement on it this morning. I have been in favor of a change from two-thirds to three-fifths.

Mr. DOUGLAS. I thank the Senator from Montana.

I hope very much that a cloture motion will be presented shortly, but I also hope it will not be directed to the jury trial amendment, but rather, to the bill itself. The jury trial amendment is merely a "foothill" to the discussion on civil rights. It is a relatively minor issue. The main titles are on voting rights, the right to desegregate education, the right to nondiscrimination in public accommodations, the right to nondiscrimination in employment, and also the question of segregation in federally assisted and local and State facilities. If cloture were sought only on the jury trial amendment or amendments, the Senate would be open to the possibility immediately of interminable discussion on the other sections of the bill and the various amendments which may be offered to them. We would be entangled immediately in trying time after time to invoke cloture on separate and detached segments of the bill.

The cloture motion should instead be directed to the bill itself and all amendments thereto.

Under such a rule, if carried, each Senator would be allotted 1 hour, or a maximum of 100 hours for the Senate as a whole, or approximately 10 legislative days. The 22 Senators from the Old Confederacy, who would all probably vote against limitation of debate, would each have 1 hour. They could talk for 22 hours and present many amendments if they chose. An equal amount of time could be taken by proponents, and there could be a very fair and full discussion of them and a vote. The procedure would be similar to the unanimous-consent agreements which are commonly worked out on most important measures.

If and when such a cloture resolution is adopted, I hope the leaders of the minority and the majority will then pledge, that there will be no motion to table an amendment. I hope very much that such assurance will be granted, as was not done on the Telstar bill. I hope this assurance will be granted on this bill, because we believe that each Senator ought to have the right to offer amendments and to debate them on their merits. That can and should be done within the terms of a general cloture resolution.

Mr. ALLOTT. Mr. President, I ask unanimous consent that I may proceed for 3 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ALLOTT. Mr. President, I hold in my hand a sheaf of amendments. I

have not counted them. The sheaf is over 1 inch thick. I am sure many of them are dilatory in nature. Many of them go to the very substance of the issue we are discussing here.

In the minds of the people of the country today, the Senate is achieving a position which is anything but enviable. For more than 8 weeks we have discussed this subject. It is a little past the comprehension of an ordinary citizen to understand why, after 8 weeks of discussion, the Senate cannot come to a resolution upon the question of voting. I am not critical of the position which the opponents take. It is not mine, but I respect their right to maintain their position and to fight for it. But if Senators are to present amendments one by one over the period of the next 1 or 2 or 3 months, we shall create in the minds of the people a picture of the U.S. Senate which many Senators will live to regret.

I hope the Senate will not have to embark upon the dilatory process of considering each one of the amendments for a week's debate. If it does, it seems to me we shall have to avail ourselves, or attempt to avail ourselves, of the rule; and that would be upon the question of the bill itself. If the cloture motion should prevail, each Senator would be entitled to 1 hour, and amendments would be voted on after that time, and the bill itself would then be voted on.

I hope this can be done, because I believe every Member of the Senate knows how he will vote on each individual amendment. The decision for individual Members of the Senate will be whether or not rule XXII shall be used to protract the debate endlessly, or whether it shall be used or may be used so that the Senate will ultimately resolve the questions before it. We can no longer afford to present a picture of an ineffectual body unable to bring itself to conclude debate and vote on the issue.

Mr. RUSSELL. Mr. President, I ask unanimous consent to have 3 minutes in the morning hour.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. RUSSELL. Mr. President, I do not desire to discuss the merits of the question at this time. This is an unusual situation because this is an unusual bill. This is the first time in my experience that the Senate has considered such a far-reaching bill, covering 11 titles, and encompassing in a single package every proposal in this field that has been brought forward in all our history. If separate bills had been brought up under the normal procedures and presented one by one, there probably would not have been any more progress than there has been on this omnibus measure.

I wish to refer to the conference held last Wednesday, so that there may not be even an inference of bad faith. During a conversation I was having on the floor with the Senator from Mississippi, I was asked—I believe by the majority leader—to step into the Republican cloakroom, where a conference was in progress. I asked the Senator from Mississippi to come with me to the Republican cloakroom. Among those present at this meeting were the Senator from Montana [Mr. MANSFIELD], the Senator from Illinois [Mr. DIRKSEN], the Senator from Minnesota [Mr. HUMPHREY], and the Senator from Washington [Mr. MAGNUSON]. I believe the Senator from Iowa [Mr. HICKENLOOPER] also was present. I recall that the Senator from New York was present during a part of that discussion, if not all of it——

Mr. YOUNG of North Dakota. And the Senator from South Dakota [Mr. MUNDT].

Mr. RUSSELL. Yes; and the Senator from South Dakota. A number of Senators were present. I was asked what I thought about the prospects for a vote. The only clear, definite, and specific statement I made was that there could not be a vote last week because so many Senators were out of the city. I then was asked about a vote on Monday; before I had an opportunity to say anything, I believe the Senator from Illinois—since we are bringing out the details—stated that a number of Senators would be out of the city on Monday and therefore that would not be a good day to schedule a vote. I then stated that I would be glad to confer with them further, after those with whom I am associated had an opportunity to meet and discuss the matter as to when the Senate might vote on the so-called Dirksen-Mansfield amendment. The discussion ended there. The majority and the minority leaders said they would make a statement on the floor of the Senate. The only thing I said to them was, "Do not say that any commitment has been made because I have made no commitment." The leaders then made their statements that may be found in last Wednesday's RECORD.

I have made this statement today so there can be no questioning of my good faith. I want it to be made perfectly clear that I made no commitment whatever to the leadership in the conference of last Friday as to a vote on the Dirksen proposal or any other subject.

If I make a commitment, Mr. President, I will live up to it, if it takes the hair along with the hide.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that I may proceed for 1 additional minute

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

Mr. HUMPHREY. Mr. President——

Mr. McGEE. Mr. President, I ask unanimous consent for an insertion in the RECORD under the morning hour business.

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

AMERICAN CATTLE INDUSTRY $2 BILLION INCOME DROP

Mr. McGEE. Mr. President, for a long time now the American cattleman has faced steadily declining prices. Many of us who are deeply concerned about this decline believe that there is a distinct possibility we shall see large-scale abandonment of western cattle operations unless the situation improves soon.

Recently, I was privileged to appear before the U.S. Tariff Commission to state my concern over the price of beef cattle, to suggest some reasons why our cattlemen now face conditions of unequal competition, and to suggest possible remedies for the situation.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of my remarks before the Tariff Commission.

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

STATEMENT OF SENATOR GALE MCGEE BEFORE THE U.S. TARIFF COMMISSION, APRIL 28, 1964

Mr. Chairman and members of the Commission, in the last 2 years the American cattle industry has seen its income drop by more than $2 billion. It should be obvious to the most casual observer that the industry, which has not enjoyed anything approaching vibrant economic health for almost a decade, cannot long continue this loss pattern. If relief is not found, there will be wholesale liquidations among cattlemen and an economic blight which will be spread throughout a vast portion of our agricultural economy, especially that concentrated in the 29 States which produce the majority of the Nation's meat animals.

The stake Wyoming has in a healthy and growing livestock industry can be seen by the fact that 79 percent of our agricultural economy is derived from livestock and livestock products. And, in turn, our agricultural economy provides nearly one-fourth of the basic income of our State. In 1961 livestock and livestock products produced a total gross income of $118,920,000 in Wyoming. Of this amount $86,007,000 came from cattle and calves. I might add that a total of 9,744 ranches and farms combined to produce this amount of livestock. It is natural that Wyoming citizens, from all walks of life, are seriously concerned with the steady deterioration of the cattle market.

As the cattle market has declined, the size of our beef imports have increased by sizable proportions. In 1957, for example, only 3.9 percent of our domestic consumption of beef and veal was imported. The figures show beef imports ran at least 12 percent of domestic consumption in 1963. As imports have increased, the price of beef to the producer has fallen more than $4 per hundredweight. It is impossible to escape the conclusion that these imports have helped to depress the cattle market.

However, I would emphasize that I do not believe that imports constitute the entire problem faced by the cattlemen. Certainly the competition from low-priced poultry and pork and the large increase in our domestic beef production are contributing factors to the beef producer's dilemma. The Senate Commerce Committee, of which I am a member, has been conducting a series of hearings on another factor in beef prices; namely, the effect of the concentration of meat and other food merchandizing in the hands of a comparatively few food chainstores. I mention these other factors—outside the scope of the Commission's study—to emphasize my point that imports are not the only cause of distress in the cattle industry.

But if we are to find a remedy for the plight of the cattleman, we must combat all of his ills. Imports are a major contributor to his sickness.

At this period of time we are in a state of transition. Our Nation is growing in both population and economic strength. The nations of Europe have reached new levels of development that have brought the higher quality of diet to all classes of people. The trends run heavily toward large increases in consumption of meat. I anticipate that within a relatively few years there will be a market for even larger quantities of red meat than are being produced now throughout the world. This will mean that other

nations that have been exporting to the United States may send their produce elsewhere and that there will be an even greater increase in domestic production.

But that day is not here now. And until it arrives we must have protection for the American cattlemen so that our cattle industry will be in a viable condition to meet the new demands placed upon it. An industry made moribund by excessive competition cannot carry the demands of a new and larger generation of Americans. The cattlemen have found new and ingenious ways to stay in business in the face of a rapid decline in prices over the past few years, but their ingenuity is not limitless. The assistance they need is needed now.

I realize that some assistance has been granted in the form of voluntary import restrictions entered into with Australia and New Zealand. Any relief is welcome, but while these agreements represent a step in the right direction, they are not enough. I think it sufficient to point out that by 1966 meat imports under the voluntary agreements will have surpassed the 1963 level of 577 million pounds.

It is my belief that only through a further reduction in imports, brought about by a lower quota, will the cattleman be given an opportunity to compete on terms of equality with this one phase of the challenge to his economic livelihood.

The cattleman is not asking for a subsidy or for the elimination of competition. What he asks, and what he deserves, is a chance to meet on terms of equality in the marketplace with his competitors, both foreign and domestic.

Even the most superficial examination of the operating conditions of beef producers in American and those of the two largest beef-exporting countries—Australia and New Zealand—indicate that we are not in any sort of competitive situation with the producers "down under."

In the first place almost all imported beef comes into this country in the form of boneless chilled or frozen beef. This beef comes from cattle that are fed only on range pasture and are not given an extensive "finishing" in the feed lot as is the case in this country. It has been the policy of the Australian Government to encouraged the expansion of its beef industry by encouraging the development of areas now in brush into suitable pasturage. Australia has huge resources of land that can be made into excellent pastures after the brush is removed, predators and natural range competitors eliminated and perhaps small amounts of fertilizers, trace elements and improved range grass added. As an incentive to the development, the Government offers long-term leases—up to 50 years—at very low rates to the cattlemen. The Government also helps to build and maintain stock-water reservoirs and to drill wells along stock routes. Indirect assistance comes in the Australian policy of allowing stockmen to write off as operating expenses the costs of top dressings for the pastures, planting, ringbarking trees and control of rabbits and marsupials. In this country the equivalent expenses are classed as capital improvements and result in a greatly reduced income tax benefit.

Taking all these things into consideration, it has been estimated that the average Australian cattle producer spends about 11 cents per head per year for the cost of the land on which he produces his animal. The equivalent cost for an American producer—in this case the land costs in producing a 400-pound calf—is $27. The difference is more than $26. And most American cattlemen figure that the land costs are about one-third of all production costs.

With this differential in operating expenses, the American cattleman, no matter how hard the works or how ingenious he is at cutting costs, cannot compete with the producer from Australia. And I have considered here only the costs of producing an animal on the range. At this point the Australian sends his cattle to market, while the American sends his to the feedlot for additional finishing.

Some people have suggested that since the imported beef usually winds up as hamburger, processed meats, and similar products, it does not directly compete with American beef which, because of the already mentioned "finishing," is better suited to the more expensive steaks, roasts, and finished cuts of fresh beef. There are several fallacies in this argument. In the first place a beef animal, no matter how well finished, is not all steaks and roasts. Between 25 and 30 percent of each animals winds up as hamburger or processed meats. Sixty percent of the hamburger eaten in this country is derived from fed beef. Secondly, competition in unfinished beef encourages the stockman and the feedlot operator to hang on to animals that he otherwise would sell as utility grades hoping for an improvement in the price. This means an older cow kept through another breeding season, and many animals fed to heavier weights than ordinarily would be the case. This has the effect of further increasing the supply of beef and compounding an already serious surplus.

Another factor in direct competition with imported meats is found in the necessity of the cattleman to replenish his breeding herd. On the average at least 15 to 20 percent of the stockman's cow herd is sold every year as animals grow too old or must be replaced for other reasons. Not only are these animals in direct competition with imported beef, but they must be replaced in the cow herd with animals that otherwise would have been sold as a higher priced feeder animal.

It has been demonstrated that relief from the current competitive situation is necessary if the American cattle industry is to remain viable and ready to meet the demands of the future. I repeat my conviction that the imposition of a quota on imported meat is a necessary and constructive step in that direction.

CONFERENCE OF MINNESOTA COLLEGES ON FEDERAL RESEARCH AND DEVELOPMENT

Mr. HUMPHREY. Mr. President, I ask unanimous consent that a statement which I prepared for the Conference of Minnesota Colleges on Federal Research and Development Projects, at the St. Thomas College of Minnesota may be printed in the RECORD.

It is most important that the base of Federal research and development be expanded to include a greater number of universities and colleges. The smaller liberal arts college has a splendid contribution to make in the area of higher education and the Federal Government should not rule out automatically such smaller institutions as recipients of Federal research and development projects and research.

The Conference of Minnesota Colleges will examine this basic question with some care. I am proud of Minnesota's institutions of higher learning and I am confident of their ability to be full-fledged participants in the mammoth Federal program of research and development.

I renew my unanimous consent request.

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

STATEMENT TO CONFERENCE OF MINNESOTA COLLEGES ON FEDERAL R. & D. PROJECTS, ST. THOMAS COLLEGE, MAY 8, 1964

It is not very frequently that I get the opportunity to address a few remarks to a captive audience representing almost all of higher education in our State. There is probably no other group which has such a great influence on the future of our State and this is indeed a pleasure. I hope I may have been of some assistance in providing basic information which may be helpful to you as you seek to bring the best possible educational opportunity to the young people of Minnesota.

The Federal Government is participating to an increasing degree in this endeavor. My colleagues and I seek to insure that we, in Minnesota, take maximum advantage of opportunities which can be of joint benefit to the participating institutions and to the Government agency sponsoring the research or development contract or grant. I think our Minnesota colleges and universities have the capacity to be of greater assistance to these agencies in the future. I also believe this can be of benefit to our institutions and our students.

There is a danger in our Federal R. & D. program. Too great a concentration of such activities in a few centers can result in their neglect of their primary function of educating our youth. Too little creates an environment not conducive to the best educational climate. A proper balance between research activity and teaching is essential to both faculty improvement and student growth.

I think we have seen a tendency to concentrate our Federal R. & D. activities in too few institutions. Less than 10 percent of our 2,000 institutions get over 90 percent of all such funds. In 1962 just over 100 universities had grants and contracts in excess of $1 million each. Of these, 24 were in the Midwest.

These Federal programs may not be designed as an "aid-to-education" program, but there is surely no good reason for refusing to consider their effect on our educational system when we make our legislative and administrative decisions. To loop upon such expenditures as merely the purchase of services without considering the ultimate effect would be shortsighted indeed. It is futile to spend large amounts to discover scientific knowledge and develop technical equipment and new techniques if we fail to develop the necessary human resources which are essential to its use. We must follow a policy which will not result in the rich getting richer and the poor poorer; in top faculty becoming more and more concentrated in a few large centers. If we are going to accomplish our task, we must establish more "centers of excellence." Many of our smaller schools can become such centers in given areas even though we recognize they cannot excel in all. To assist in the achievement of our joint goals, it is essential that Federal guidelines and administrative procedure be simple and not overloaded with bureaucratic redtape. While certain guidelines are essential, we cannot expect that all efforts will meet with success. By its very nature research is exploring the unknown, and if we could ascertain the results in advance with certainty, the effort would not be needed.

At the same time, we must apply maximum effort to making opportunities and procedures understandable that we may facilitate participation. This is our purpose in bringing you together. I hope our attempt will be successful, for I am convinced there are many of our institutions and faculty members with outstanding competence, who, when provided with even modest support

for research and development activities, will meet the challenge and produce results of tangible and practical value while providing a much better education for their students in the process.

As your late colleague, President Sattgast, wrote in a recent letter to me, "even a small college plays an important role in its relationship to the development of a community and to the State." Our joint purpose here is to expand and improve upon that role. It is always a privilege to be associated with you in such an endeavor.

PRESIDENT JOHNSON AND THE ALLIANCE FOR PROGRESS

Mr. HUMPHREY. Mr. President, yesterday, President Johnson reaffirmed the commitment of this Government and this country to the Alliance for Progress as originally conceived by President Kennedy. He reiterated our commitment to the Alliance for Progress as the basis of U.S. policy in this hemisphere.

At a time of growing concern in the hemisphere about U.S. policy in Latin America, the President emphasized the commitment of this Government to defend and promote democratic government as well as to achieve a peaceful social revolution. I know that those who truly adhere to President Kennedy's grand strategy for Latin America will be especially pleased by three themes given special emphasis by President Johnson:

First, he states the permanence of our commitment to the Alliance for Progress:

Our programs and policies are not founded on the shifting sands of momentary concern or the passing opinions of present officials. They are the inescapable issue of the events of our past and the hazards of our present. They are rooted in devotion to our democratic birthright and dedication to our spiritual beliefs.

They are, in short, the only objectives possible to men seeking to retain freedom and protect moral values while pursuing progress in a world on the march.

Second, the President emphasizes that material advancement without political liberty and democratic government is an illusory goal:

Our charter charges each American country to seek and to strengthen representative democracy. Without that democracy, and the freedom it nourishes, material progress is an aimless enterprise; destroying the dignity of spirit it is meant to liberate. We will continue to join with you to encourage democracy until we build a hemisphere of free nations from Tierra del Fuego to the Arctic Circle.

Third, finally, he stresses the need for rapid social change if the needs of the poor are to be met.

But the Charter of the Alliance is not confined to political democracy. It commends a peaceful, democratic social revolution across the hemisphere. It calls upon us to throw open the gates of opportunity to the landless and despised, the poor and the oppressed. It asks that unjust privilege be ended, and unfair power be curbed.

In summary, this speech reveals once again that we have a President with a heart whose concern extends to the poor throughout the hemisphere. The President delivered a splendid and stirring message. For him, the war on poverty is of hemispheric proportions and must be waged along the jungles of Brazil, in the mountains of the Andes, as well as in the valleys of Appalachia. It indicates, too, a growing awareness on the President's part of the need to provide bold political leadership for the Alliance, to give it a political content without which it would only degenerate into a lifeless banking operation. This address will stand as a landmark in inter-American diplomacy and statesmanship.

I congratulate the President on the appointment of Mr. Walt W. Rostow to CIAP. Mr. Rostow, like his distinguished predecessor who contributed so much to the launching of the Alliance program, Mr. Teodoro Moscoso, brings to this job great prestige combined with a profound knowledge of economic development. I believe he can, with the strong backing of President Johnson, contribute much to making CIAP a truly effective multilateral decisionmaking organ for the Alliance for Progress.

Mr. President, I request unanimous consent to have printed in the RECORD the text of President Johnson's address as published in the New York Times for May 12, and an article in the same paper, written by Tad Szulc, entitled, "Latin's United States Seeks Full Democracy."

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

[From the New York Times, May 12, 1964]

TEXT OF PRESIDENT'S COMMENTS TO LATIN AMERICAN AMBASSADORS

(WASHINGTON, May 11.—Following is the text of President Johnson's remarks at the White House today to ambassadors from Latin America.)

I have just completed an informal review of Alliance for Progress problems with all the ambassadors and the distinguished head of CIAP, Carlo Sanz de Santamaria. This kind of exchange strengthens our common aim and our combined ability to advance the Alliance. I learned much that will be helpful in the days ahead. I look forward to more such meetings.

On November 18, President Kennedy spoke once again to the hemisphere. He quoted Robert Frost, saying "Nothing is true except as a man or men adhere to it—to live it, to spend themselves on it, to die for it." Within a week, his life, consecrated to our cause, had been tragically ended.

It is for us, the living, to insure that the hopes he raised are now regarded, that his passing marked not the death of a dream but a renewal of resolution.

To that purpose I said last November, "Let us make the Alliance for Progress his living memorial."

Today's agreements are part of our pledge. The United States will provide almost $40 million—the countries of Latin America $60 million—for projects in 14 countries.

PURPOSES ARE DIVERSE

They will help eliminate malaria in Brazil and train farmers in Bolivia. They will establish three rural electric cooperatives serving 10,000 homes and farms in the countryside of Colombia. This will bring credit and assistance to 21,000 small farms in the land reform and colonization areas of Peru. They will touch the lives and ease the struggles of 23 million people across the hemisphere.

These are only the latest steps in 6 months of extraordinary effort. Since December the United States has extended more than $430 million in assistance.

In that 6-month period, we have, together, completed more than 52,000 homes and 7,000 classrooms. We have produced more than a million and a half schoolbooks and made more than 25,000 loans to farmers.

We have put into operation health programs to care for 4 million people, and food-for-peace programs to feed more than 10 million of our fellow Americans.

We have built more than 500 miles of roads, trained more than 10,000 teachers and 1,000 public administrators, and established 200 credit unions. Three hundred water systems will benefit 10 million people.

PACE WILL DOUBLE

In the months to come, we intend to more than double the pace of this action. For this is the time for action.

And our help is only a small proportion of the resources for growth and the reforms for justice contributed by the countries of Latin America.

These are the tangible tokens of the constancy of our cause since the signing of the Charter of Punta del Estes. What we believed in then, we believe in now. What we agreed to then, we agree to now. What we sought then, we seek now.

This is as it must be. Our programs and policies are not founded on the shifting sands of momentary concern or the passing opinions of present officials. They are the inescapable issue of the events of our past and the hazards of our present. They are rooted in devotion to our democratic birthright and dedication to our spiritual beliefs.

They are, in short, the only objectives possible to men seeking to retain freedom and protect moral values while pursuing progress in a world on the march.

Real problems require realistic solutions. Helping to reshape an entire hemisphere requires practical priorities and concrete deeds. But no action, no judgment, no statement will advance our Alliance unless it is guided by firm and resolute regard to principle. Those principles must not yield either to immediate expedient or to present danger.

RENEWAL OF DEDICATION

We renew today, as we do in the acts of every day, our dedication to the principles of development, of diversity, and of democracy.

Franklin Roosevelt, a man whom I served and loved, a man whose precepts I follow said: "Through democratic processes we can strive to achieve for the Americas the highest possible living standards for all our people."

We will continue to pursue the goal until every campesino and every worker is freed from the crushing weight of poverty.

I have asked the Congress for the funds necessary to meet our obligations under the Alliance for Progress. I will fight for those funds with every resource of my Government.

Furthermore, in accordance with the unanimous vote of the Panama meeting of the Inter-American Bank, I intend to ask for $250 million for this year to replenish the Bank's funds for special operations. That Bank, supported first by President Eisenhower, has become a beacon of hope to the oppressed of our lands.

The principle of diversity stems from President Roosevelt's policy of the good neighbor. Within the loose and ample frame of the inter-American system, there is room for each nation to order its institutions and organize its economy, so long as it respects the rights of its neighbors.

In the councils of the Alliance we must guide each other toward the most rewarding course of progress. We do not confuse that duty and responsibility with any desire or right to impose those views on unwilling neighbors.

GUIDED BY BOLIVAR'S WORDS

In devotion to democracy, we are guided by the command of Bolivar that "We must fearlessly lay the foundations of South American liberty: to hesitate is destruction."

Our charter charges each American country to seek and to strengthen representative democracy. Without that democracy, and the freedom it nourishes, material progress is an aimless enterprise; destroying the dignity of spirit it is meant to liberate. We will continue to join with you to encourage democracy until we build a hemisphere of free nations from Tierra del Fuego to the Arctic Circle.

But the Charter of the Alliance is not confined to political democracy. It commands a peaceful, democratic social revolution across the hemisphere. It calls upon us to throw open the gates of opportunity to the landless and despised, the poor and the oppressed. It asks that unjust privilege be ended, and unfair power be curbed.

The United States signed that charter. We are fulfilling that commitment. We have begun an all-out war on poverty. For a just country cannot permit a class of forsaken in the midst of the fortunate.

We are also marching forward in our struggle to eliminate racial injustice, to permit every man, of every race and color and belief, to share fully in our national life.

In the same way we will join with those forces across the hemisphere who seek to advance their own democratic revolution. As we are finding in the United States, it is not easy to change the customs of centuries. Some seek to halt reform and change. Others seek to impose terror and tyranny. But Bolivar's wisdom is our warning—"To hesitate is destruction."

LEADERSHIP ESSENTIAL

I know my country's policies and my country's help are important to the Alliance for Progress. But in 1961 a new hemisphere began to be born. In that hemisphere, success or failure does not hinge on testing each shifting wind or each new word which comes from our neighbors. It depends on the courage and leadership we can bring to our own people in our own land.

The Alliance for Progress is a complex task. It has many dimensions and many directions. But it rests on the hopes of people much like those I have seen in my recent trips through the poverty areas of the United States.

Across this hemisphere there are millions of despairing men and women. They come to birth, they toil, and they die, never knowing a day without hunger. They never feel the joy of rewarded achievement, or the pride that comes from providing for those you love.

They struggle for their self-respect—for their dignity as one of the children of God—against those who exploit them in a world which is closed to their hopes. Faces bent and backs bowed they see ahead of them only that same darkness in which they walk.

We worked for these men and women not because we have to. We work because morality commands it, justice requires it, and our own dignity as men depends on it. We work not because we fear the unjust wrath of our enemy, but because we fear the just wrath of God.

The path ahead is long and the way is hard. We must, in the words of the prophet, "mount up on the wings of eagles, run and not grow weary."

We have reached a turning point.

The foundations have been laid. The time calls for more action, not more words. In the next year there will be twice as much action, twice as much accomplished, as in any previous year. I can now say with confidence that our Alliance for Progress will succeed. And the success of our effort—of your countries and mine—will indicate the vision of those who set us on this path.

[From the New York Times, May 12, 1964]

JOHNSON ASSURES LATINS UNITED STATES SEEKS FULL DEMOCRACY: STRESSES IN TALK TO ENVOYS THAT FREEDOM IS A GOAL OF ALLIANCE FOR PROGRESS—VOWS TO CONTINUE AID

(By Tad Szulc)

WASHINGTON, May 11.—President Johnson assured Latin America today of continued U.S. support "until we build a hemisphere of free nations from Tierra del Fuego to the Arctic Circle."

In a speech at the White House to Latin American Ambassadors and Alliance for Progress leaders, the President emphasized that the Alliance's program called not only for economic development and political democracy, but also for a peaceful democratic social revolution.

Earlier, Ambassadors and Chargés d'Affaires from 13 Latin-American republics joined the President in signing ceremonies for new loan agreements and commitment letters totaling nearly $40 million.

Mr. Johnson also informed the Ambassadors that he would appoint Walt W. Rostow, Chairman of the State Department's Policy Planning Council, to serve as U.S. representative on the Inter-American Committee for the Alliance for Progress. This is the newly established steering committee for the program.

CLARIFIES LATIN POLICY

The President's speech clarified the political aspects of the Johnson administration's approach to the Alliance for Progress. This presumably served to help allay doubts and criticism that have arisen in Latin America in the last 6 months.

Much of that criticism was related to an impression that the United States no longer gave political democracy in Latin America as much importance as President Kennedy gave it.

But Mr. Johnson emphatically told the diplomats and U.S. congressional leaders in the East Room of the White House that the Alliance's chairman * * * the dignity of spirit it is meant to liberate."

For President Johnson, the several hours that he spent this afternoon with the Latin-American diplomats was an opportunity to demonstrate his interest in the hemisphere and his determination to have the United States live up to the Alliance pledges.

He spent an hour with the Ambassadors in the Cabine room discussing Alliance problems. In an extemporaneous introduction to the formal speech that followed the meeting, he said that the Ambassadors offered him candid observations on the march of the Alliance that "will be quite helpful in the days ahead."

He announced that he had instructed Secretary of State Dean Rusk to arrange for further such meetings. The Ambassadors appeared pleased.

Mr. Johnson said that the Ambassadors had pointed out to him the weak points in the Alliance, including the problems of bureaucracy. He remarked that problems of bureaucracy existed in all governments.

Alternating pledges of U.S. dedication with personal touches, the President told the Ambassadors that in having them in the Cabinet room he had a better Cabinet than usual.

He asked them to stay on for tea after the signing ceremony for the new aid commitments.

"We are all brothers here," he said, "and it is not often that the family gets together so I want to ask you to come and have tea with us."

The event was unscheduled—the diplomats had expected only a formal meeting and a formal speech. The atmosphere seemed warm and cordial.

In the speech, the President said that in the 6 months "of extraordinary effort" since he took office, the United States had extended more than $430 million in new assistance to Latin America. This includes funds actually disbursed and those committed.

TWICE AS MUCH ACTION

"In the next year," he said, "there will be twice as much action, twice as much accomplished, as in any previous year."

"We have reached a turning point," he went on. "The foundations have been laid."

He said that "I can now say with confidence that our Alliance for Progress will succeed."

Officials said later that the President was not implying that the administration would seek next year to double the funds for the Alliance, but that he expected that progress could be accelerated because the foundations had been laid in the last 3 years. Mr. Johnson warned, however, "that the path ahead is long and the way is hard."

The President was interrupted by applause when he said the United States would pursue the goal of development, diversity and democracy in Latin America "until every campesino and every worker is freed from the crushing weight of poverty."

In stating the guidelines of U.S. policy in Latin America, Mr. Johnson asserted that nothing would advance the Alliance "unless it is guided by firm and resolute regard to principles."

"Those principles must not yield either to immediate expedient or to present danger," he said.

An influential Latin American ambassador who had been privately critical of the Johnson administration's approach to the hemisphere, commented after the speech, "These were the words we were waiting to hear from your President for 6 months."

"With today's speech, the United States has returned to the political leadership of the Alliance that Kennedy initiated," he said. President Kennedy enunciated the Alliance program of U.S. aid for economic and social reform in Latin America.

The aid agreements signed today were routine documents, normally signed by U.S. ambassadors or lesser officials. But the agreements that were ready for signature were brought together for the White House ceremony.

The President said that in the last 6 months the United States had contributed $930 million in new money to the Alliance.

Mr. Rostow will replace Teodoro Moscoso as the U.S. representative on the Inter-American Committee for the Alliance for Progress. Mr. Moscoso resigned last week.

Mr. Rostow is highly regarded in Latin America, particularly because of his theory of "take-off" in economic development set forth in his book, "The Stages of Economic Growth." An economist, he directed a policy study in 1962 of the Alliance and has since pioneered several new approaches to Latin American development, notably one on the development of new consumer markets. He will continue to hold his State Department post.

BIPARTISAN NEWSLETTERS NOS. 46 THROUGH 51

Mr. HUMPHREY. Mr. President, the bipartisan floor leaders of the civil rights bill make a practice of inserting each week's newsletters in the RECORD on Saturday.

Since the Senate was not in session last Saturday, I ask unanimous consent to have Nos. 46 through 51 of the bi-

partisan civil rights newsletters printed in the RECORD.

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

BIPARTISAN CIVIL RIGHTS NEWSLETTER No. 46, MAY 4, 1964

(The 30th day of debate on H.R. 7152; 47th day of debate on civil rights)

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant, daily, if necessary.)

1. Quorum scoreboard: One for twenty-one for Saturday.

2. Monday schedule: The Senate will run from 10 a.m. until at least 9 in the evening. The bill's opponents will have the floor again. The floor captains for Monday:

Democrats: DODD (10 to 1), MORSE (1 to 4), MAGNUSON (4 to 7), MUSKIE (7 to close).

Republicans: ALLOTT (all day), BENNETT (all day).

3. Signs of the times: "The North Carolina Synod of the Lutheran Church of America has called on its members to welcome all worshipers of the denomination without regard to race."

Washington Post, May 2, 1964, page 7: "A resolution barring racial prejudice was approved by voice vote at the synod's 160th convention."

4. The voice of experience: Opponents of the civil rights bill are fond of saying that the bill's proponents, coming from the North, have no experience with "the problem" and therefore are unqualified to deal with civil rights. For this reason it should be interesting to look at the testimony of a southern mayor who not only knows about "the problem" but, unlike so many public officials, has done a great deal to bring equality to Negroes in his city. These are some excerpts from the testimony of Ivan Allen, Jr., mayor of Atlanta before the Senate Commerce Committee:

"The Congress of the United States is now confronted with a grave decision. Shall you pass a public accommodation bill that forces this issue? Or, shall you create another round of disputes over segregation by refusing to pass such legislation?

"Surely the Congress realizes that after having failed to take any definite action on this subject in the last 10 years, to fail to pass this bill would amount to an endorsement of private business setting up an entirely new status of discrimination throughout the Nation. Cities like Atlanta might slip backward.

"Hotels and restaurants that have already taken this issue upon themselves and opened their doors might find it convenient to go back to the old status. Failure of Congress to take definite action at this time is by inference an endorsement of the right of private business to practice racial discrimination and in my opinion, would start the same old round of squabbles and demonstrations that we have had in the past.

"Gentlemen, if I had your problem, armed with the local experience I have had, I would pass a public accommodations bill. * * *

"But the point I want to emphasize again is that now is the time for legislative action. We cannot dodge the issue. We cannot look back over our shoulders or turn the clock back to the 1860's. We must take action now to assure a greater future for our citizens and our country." (Hearings on S. 1732, pt. 2, pp. 866–867.)

BIPARTISAN CIVIL RIGHTS NEWSLETTER No. 47, MAY 5, 1964

(The 31st day of debate on H.R. 7152; 48th day of debate on civil rights)

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant, daily, if necessary.)

1. Quorum scoreboard: Three for twenty.

2. Tuesday's schedule: The Senate will run from 10 a.m. until early in the evening. The bill's opponent's will have the floor again. Floor captains for Tuesday:

Democrats: WILLIAMS of New Jersey (10 to 1), PASTORE (1 to 4), KENNEDY (4 to 7), MOSS (7 to close).

Republicans: PROUTY (all day), SALTONSTALL (all day).

3. Legal rights and the southern way of life: The following editorial from the Washington Post illustrates two important truths about the opposition to the civil rights bill. The first point is that the same Senators who are so loud in their defense of "private property rights" when it comes to this bill have been strangely silent when Government power was invoked to eliminate discrimination against Mexicans imported to work on southern farms.

The second point is less obvious but just as important: discrimination against Mexicans had been part of community life for generations, yet when the Federal Government threatened to use its power to amend this way of life, there was an end to the discrimination. There is a lesson here for those people who say that "you can't put an end to discrimination by law." This enlightening editorial is from the September 18, 1963, issue of the Washington Post:

"A SOUTHERN PRECEDENT

"Of all the southern objection to the civil rights bill, one of the weakest is that the public accommodations provisions involve a wholly novel Federal infringement on property rights. It is pertinent to point out that southern legislators themselves have supported a public law that embodies the very philosophy that underlies the public accommodation section of the civil rights bill.

"This little noticed precedent exists in Public Law 78, which governs the importation of Mexican labor for harvest work. Article 8 of the law contains a strong prohibition against discrimination, and empowers the Secretary of Labor to prohibit use of braceros in any community where Mexicans are subjected to discriminatory practices.

"The Labor Department has used this power to act on a number of complaints. In Stamford, Tex., barbershops and beauty shops were charged with denying service to persons of Mexican ancestry. The complaint was resolved when the mayor agreed to take steps to remedy the problem. In Levelland, Tex., a movie theater refused to admit Mexicans, but the owner changed his policy when he was informed of the sanctions that could be applied under article 8. In Salton, Tex., similar intervention by the Department of Labor led to the admission of Mexicans to a hitherto white only city swimming pool.

"Yet the record does not disclose any outpouring of southern Democratic indignation over alleged infringements of property rights under Public Law 78. On the contrary, southern legislators have been among the strongest proponents of this measure to provide low-cost labor in rural areas. Are we to conclude that it is perfectly proper to use Federal power to protect the civil rights of foreign nationals—but that it is somehow un-American to protect the rights of citizens of the United States?"

BIPARTISAN CIVIL RIGHTS NEWSLETTER No. 48, MAY 6, 1964

(The 32d day of debate on H.R. 7152, 49th day of debate on civil rights)

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant, daily, if necessary.)

1. Quorum scoreboard: 3 for 20 again.

2. Wednesday's schedule: The Senate will run from 10 a.m. until early evening. There will be rollcall voting on the Talmadge jury trial amendment (see 3, below). Floor captains for Wednesday:

Democrats: MUSKIE (10–1), NELSON (1–4), BURDICK (4–7), WILLIAMS of New Jersey (7 to close).

Republican: CASE (all day), SALTONSTALL (all day).

3. Parliamentary situation: The pending business is the Morton amendment (560) to the Talmadge jury trial amendment (No. 513). No. 513 would require trial by jury in all criminal contempt proceedings in Federal courts; it is not limited to civil rights. The Morton amendment would apply this requirement to all criminal contempt proceedings arising from the current civil rights bill. (The Morton amendment is similar to the other Talmadge amendment, No. 512, which was not called up by its author.) The bipartisan civil rights leadership is opposed to the Morton amendment.

After the Morton amendment is disposed of, any other perfecting amendments to the Talmadge amendment would be in order. One such amendment has been introduced by Senator COOPER (No. 558), although it is not clear that he intends to call it up. This amendment provides that the right to jury trial in criminal contempt cases would not necessarily be granted to public officials, except that the court could do so at its discretion. The Department of Justice has serious doubt about the constitutionality and practicality of the Cooper amendment.

When all perfecting amendments have been disposed of, the Mansfield-Dirksen substitute amendment will be considered. This substitute provides jury trials in criminal contempt cases arising under H.R. 7152 if the punishment imposed by a judge exceeds $300 or 30 days. This is similar to the Civil Rights Act of 1957 except that the earlier law has limits of $300 and 45 days. The civil rights leadership and the administration support the Mansfield-Dirksen substitute.

In short, the Morton amendment comes first. Any other amendments to the Talmadge amendment will be considered next. Then the Mansfield-Dirksen substitute will be voted on. If the Mansfield-Dirksen substitute is adopted, it will be the new Talmadge amendment, regardless of the outcome of votes on previous perfecting amendments.

BIPARTISAN CIVIL RIGHTS NEWSLETTER No. 49, MAY 7, 1964

(The 33d day of debate on H.R. 7152; 50th day of debate on civil rights)

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. This newsletter

will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant, daily, if necessary.)

1. Quorum scoreboard: Four for nineteen.

2. Thursday's schedule: The Senate will convene at 10 a.m. and will stay in session until early evening. Live quorums should be expected. Floor captains for Thursday:

Democrats: McCARTHY (10 to 1), McINTYRE (1 to 4), McGOVERN (4 to 7), DOUGLAS (7 to close).

Republicans: COOPER (all day), MORTON (all day).

3. The parliamentary situation: On Wednesday the Morton and Cooper amendments to the Talmadge jury trial amendment were defeated. The pending business is now the Mansfield-Dirksen substitute. The present expectation is that this measure will be voted on by late next Monday or early Tuesday.

4. Setting the record straight: A supporter of the civil rights bill recently delivered a short speech entitled "The Myths Behind Civil Rights Bill Opposition." The first part of this speech does such a good job of refuting a common theme of anticivil rights propaganda that we think it should be repeated here. The following excerpts are from the CONGRESSIONAL RECORD, May 5, 1964, pages 10056–10057:

"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 to 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 explanantion 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."

BIPARTISAN CIVIL RIGHTS NEWSLETTER No. 50, MAY 8, 1964

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senators HUBERT H. HUMPHREY and THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. It will help to keep Senators and their staffs fully informed on the civil rights bill and will be distributed whenever circumstances warrant, daily, if necessary.)

1. Quorum scoreboard: Three for twenty.

2. Friday's schedule: The Senate will convene at 10 a.m. and will stay in session until early evening. Live quorums should be expected.

Floor captains for Friday:

Democrats: PELL (10 to 1), Moss (1 to 4), LONG of Missouri (4 to 7), MORSE (7 to close).

Republicans: SCOTT (all day), PEARSON (all day).

3. The parliamentary situation: With the Morton and Cooper amendments disposed of, the pending business is now the Mansfield-Dirksen substitute. However, any other perfecting amendments to the Talmadge amendment could be offered and called up prior to the vote on the Mansfield-Dirksen substitute. The present expectation is that the Mansfield-Dirksen substitute will be voted on late Monday or Tuesday.

4. "All discord, harmony not understood, * * *"

Opponent, page 7773: "The problem of racial and religious discrimination * * * is a problem in morality. * * * I do not believe discrimination is morally right. In my opinion it is morally wrong."

Another opponent, page 9636: "I am disappointed to note that many ministers and churchmen are more or less blindly advocating the passage of the bill, on supposedly moral grounds. * * * The clergy should stick to their own knitting."

Alexander Pope, "The Dunciad": "Religion, blushing, veils her sacred fires, and unawares morality expires."

5. Quote without comment: From the AP ticker, May 7:

"A delegation of Southern Presbyterian ministers called on the 2 managers of the bill to present a letter signed by 435 ministers and educators and laymen in support of the bill.

"One of the signers was the Reverend William D. Russell, Decatur, Ga., a nephew of Senator RICHARD B. RUSSELL, Democrat, of Georgia, leader of the Senators fighting the measure."

6. Hasty consideration? The RECORD, page 10209, contains a summary of the number of civil rights bills introduced in the House in the 88th Congress as of December 6, 1963, by month and party allegiance. Results: 172 bills introduced by 86 Members, Democrats and Republicans; 101 witnesses heard, 43 prepared statements accepted, and 2,649 pages of printed hearings in House Judiciary Committee.

BIPARTISAN CIVIL RIGHTS NEWSLETTER No. 51, MAY 11, 1964

(The 35th day of debate on H.R. 7152; 52d day of debate on civil rights)

(The bipartisan Senate leadership supporting the civil rights bill, H.R. 7152, headed by Senator HUBERT H. HUMPHREY and Senator THOMAS KUCHEL, will distribute this newsletter to the offices of the Senators who support the legislation. This newsletter will help to keep Senators and their staffs fully informed on the civil rights bill. It will be distributed whenever circumstances warrant, daily, if necessary.)

1. Notice to readers: The newsletter suspended publication for 1 day on the occasion of the Senate's first silent Saturday since Easter weekend.

2. Quorum scoreboard: On Friday, May 8, civil rights Senators made two quorum calls in 20 minutes.

3. Monday's schedule: The Senate will convene at 10 a.m. Length of session will depend upon agreements developed today. Live quorums should be expected. Floor captains for Monday:

Democrats: CLARK (10 to 1), DOUGLAS (1 to 4), MAGNUSON (4 to 7), BAYH (7 to close).

Republicans: Not announced at press time.

4. The parliamentary situation: The pending business is the Mansfield-Dirksen substitute provision for jury trial in criminal contempt proceedings. However, any other perfecting amendments to the Talmadge amendment could be offered and called up prior to the vote on the Mansfield-Dirksen substitute. Two such amendments had been offered by the weekend. The present expectation is that the Mansfield-Dirksen substitute will be voted on late today or Tuesday.

5. We hear you, Duane—welcome to the club.

Opponent, page 10391: "Mr. President, I have been requested by a constituent named Duane Eckelberg, whose address is Manassas, Va., to have the CONGRESSIONAL RECORD show that he favors the passage of H.R. 7152."

6. A short course in jury trial "guarantees" in contempt cases.

"The trial of all Crimes, except in Cases of Impeachment, shall be by Jury * * *" (art. III, sec. 2, clause 3).

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial * * *" (sixth amendment).

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *" (seventh amendment).

"It is urged that those charged with criminal contempt have a constitutional right to a jury trial. This claim has been made and rejected here again and again * * * It has always been the law of the land, both State and Federal, that the courts—except where specifically precluded by statute—have the power to proceed summarily in contempt matters." (*U.S.* v. *Barnett*, 1963).

"The issue we are dealing with is whether a jury shall be empowered to refuse to allow vindication of the authority of the court and of the judgment it has entered after a trial on the merits. * * * The broad Talmadge amendment—applicable to contempt trials of every kind in the Federal courts—by interposing another tribunal—the jury—between a court and enforcement of its orders weakens the enforcement of Federal law throughout the country. Such a proposal strikes at the integrity of the Federal courts and the respect which the country has for their decrees. What is a court which has not the power to compel obedience to its orders? It is for this reason that in practically all the States—including all the States of the South—the courts are empowered to punish for contempt without convening juries. The States don't leave their courts powerless. Why should the Federal courts be without

sufficient authority?" (Department of Justice memo.)

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes in the morning hour.

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

Mr. LONG of Louisiana. Mr. President, I would not wish the statement of the Senator from Minnesota to indicate that the amendment which bears the name of the Senator from Florida, and was called up by me was not offered in good faith. This is a meritorious amendment and I recommend it to the Senate.

Last night, I stated to the acting majority leader that I was calling up this amendment because I wanted to protect my rights, and that the amendment which would be offered could be considered on its merits.

I have discovered that it was the intention of the Parliamentarian to rule—if called upon to rule—that the brief, 90-second statement which I made would be considered a speech and counted against me on the Mansfield-Dirksen amendment.

To protect my rights to the floor, I called up a meritorious amendment at that time. The amendment pending is a meritorious amendment which could be considered on its merits, and I had understood that the Senate would accord it consideration in due course.

Mr. HARTKE. Mr. President, I ask unanimous consent that I may proceed for 3 additional minutes.

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

SURVEY SHOWS HALF OF STUDENTS NEED COLLEGE AID

Mr. HARTKE. Mr. President, among those who gave testimony at the hearings of the Education Subcommittee on S. 2490, my bill for loans, scholarships, and work-study programs to assist college students, was one witness, Mrs. Josephine Ferguson, of Valparaiso University, Valparaiso, Ind. Mrs. Ferguson is director of student services in this Lutheran school, with 3,100 students, and is a member of the Commission on Financial Aid of the American College Personnel Association.

One of the questions with which the committee and the Congress must deal, in considering such a bill as this, is the question of need. On this point, Mrs. Ferguson was enlightening through her report of a study she personally made of the needs of Valparaiso students in 1962. Her survey showed that only 26 percent of the families had sufficient resources to support the student's education without financial help. Only 23 percent of the students were receiving scholarship and similar aid, so that Mrs. Ferguson drew the following conclusion:

> We [therefore] knew that approximately one-half of our students had used some extraordinary measures and were, first, earning more than the expected $300 summer savings; second, receiving outside loans; third, trimming campus costs of food, lodging, and other variable items; or fourth, making other sacrifices. We determined further that at that time, with a budget of approximately $2,000 as opposed to our present $2,500, an income of $12,000 was needed to support a student without aid.

Mr. President, I bring this testimony before the Senate as one small further indication of the great need for a comprehensive package of aid to students such as my bill provides. It should be remembered that this is the case with students already attending school who were able to raise the required tuition and fees to make a start. The need is even greater among that great group, estimated between 100,000 and 200,000 each year, who are capable of college work but who never enroll because their family finances will not permit.

I sincerely hope that when this bill comes before the Senate that positive action will be taken to remedy such a deprivation, both for the individuals and for the good of a society which needs more and more trained people.

Mr. HUMPHREY. Mr. President, will the Senator from Indiana yield?

Mr. HARTKE. I am glad to yield to the Senator from Minnesota.

Mr. HUMPHREY. Mr. President, in order that there may be no misunderstanding as to what was said on the floor of the Senate Wednesday night, May 6, on the part of the distinguished majority leader and the distinguished minority leader, I ask unanimous consent that that portion of the RECORD on page 10212, starting with the Presiding Officer and going down to the statement made by the Senator from Illinois [Mr. DIRKSEN], be printed in the RECORD, at that point in the RECORD where the Senator from Minnesota was in discussion with the Senator from Mississippi [Mr. STENNIS] in reference to any possibilities of a vote being taken upon the Mansfield-Dirksen amendment this week.

Mr. STENNIS. Mr. President, will the Senator from Minnesota yield?

Mr. HUMPHREY. I yield.

Mr. STENNIS. Perhaps it should come at the point where the Senator from Minnesota responded to my question as to what had happened.

Mr. HUMPHREY. The Senator is correct. I fully accept that.

I have shown this to the Senator from Mississippi [Mr. STENNIS], Mr. President, so that there may be an accurate record.

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

> Mr. President, is my understanding correct that the pending business is the Mansfield-Dirksen amendment?
>
> The PRESIDING OFFICER. The Senator is correct.
>
> Mr. MANSFIELD. And that before any other business can be taken up, that amendment will have to be disposed of, unless in the meantime perfecting amendments are offered to the Talmadge amendment?
>
> The PRESIDING OFFICER. The Senator is correct.
>
> Mr. MANSFIELD. I have discussed this matter with the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN], and the floor managers in charge of the bill, my distinguished colleague from Minnesota [Mr. HUMPHREY], and the distinguished Senator from California [Mr. KUCHEL].
>
> It appears that the best we can look forward to in the way of a possible vote—and this implies no commitments and no understandings—is the possibility of a vote either late Monday or at a fairly early hour on Tuesday. We do not know whether or not this estimate has too much validity, but it is our best combined judgment at this time.
>
> Our purpose in making this announcement is to put the Senate on notice as to what the situation may well be insofar as a vote on the Dirksen-Mansfield amendment is concerned.
>
> I thank the Senator from Minnesota for yielding.
>
> Mr. DIRKSEN. Mr. President, will the Senator yield?
>
> Mr. HUMPHREY. I yield.
>
> Mr. DIRKSEN. Mr. President, we know that from time to time Senators make commitments in advance. It is the desire of the leadership to accommodate them always insofar as possible. That is the reason for the statement by the majority leader. We shall know better perhaps on Monday, at which time a further announcement will be made.
>
> So, I think we shall let the matter stand.

Mr. HICKENLOOPER. Mr. President, I should like to inquire, what is the procedure, if any, under which the Senate is operating at this time? I am considerably confused. The six bells which have just rung have indicated the end of the morning hour, but it did not come until 2½ hours after the beginning of the morning hour. The Senate has been operating under some kind of—I was about to say illegitimate—procedure, and I should like to see the situation straightened out.

If there is to be a quorum call soon, I should like to be present to answer it, but if we are going to have itinerant speeches for 3 minutes and extend them to 5 or 10 minutes, and so on, I believe we should know what the rules of the game are this afternoon.

The PRESIDING OFFICER. The procedure adopted 2 weeks ago was to limit the morning business to 1 hour. It was then agreed by unanimous consent that the leadership could recognize Senators to permit them to speak for 3 minutes in the regular morning hour.

The Senate is operating under unanimous consent.

Mr. HICKENLOOPER. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa will state it.

Mr. HICKENLOOPER. Was the extension beyond the morning hour an extension of the morning hour, or a prerogative granted the leadership? Under what rules is the Senate proceeding? When will the morning hour end today?

The PRESIDING OFFICER. The morning hour is limited to 1 hour. It expired at 11:22, and the Senate is now operating under unanimous consent. Any time any Senator wishes to speak, he may speak by unanimous consent. Morning business will be concluded when there are no further requests to speak.

Mr. HICKENLOOPER. That was the point which confused me. I should like to understand the situation. Six bells indicates the conclusion of the morning hour. They did not ring, according to my observation, until 12:30, which is

some 2½ hours after the morning hour started. I am not objecting to this procedure. I merely wish to know what the rules of the game are. I do not wish to be caught between second and third base.

Mr. HUMPHREY. Mr. President, will the Senator from Iowa yield to me?

Mr. HICKENLOOPER. I am glad to yield. I am concerned about this procedure, and I should like to get it straightened out.

Mr. HUMPHREY. So would I. I can well understand the Senator's concern. I have always been somewhat concerned and confused about the fact that under normal procedures there is a morning hour in the afternoon, which continues for 2 hours, which has always been a matter of some confusion to me. However, we have become accustomed to this procedure. The morning hour now continues for 1 hour, with 3 minutes allotted to any Senator who wishes to speak.

Mr. HICKENLOOPER. Which extends to 2 hours and a half.

Something like the Thursday club not meeting on its regular day, Monday, because Wednesday follows Tuesday.

Mr. HUMPHREY. The Senator is correct. He has solved the whole problem.

Mr. HICKENLOOPER. I merely wish to know what is happening.

Mr. HUMPHREY. I hope the Senator will not ask us that.

Mr. HICKENLOOPER. I am not raising any objection.

The PRESIDING OFFICER. Is there further morning business?

Mr. HICKENLOOPER. I do not wish to usurp the prerogative of the Senator from Minnesota. Perhaps he may wish to suggest the absence of a quorum. If not, I shall suggest it.

Mr. HUMPHREY. Mr. President, what is the pending business?

The PRESIDING OFFICER. Morning business is closed.

CIVIL RIGHTS ACT OF 1963

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, H.R. 7152.

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.

The PRESIDING OFFICER. The question is on agreeing to the amendments No. 577, offered by the Senator from Louisiana [Mr. LONG], to the amendments offered by the Senator from Georgia [Mr. TALMADGE] and other Senators.

Mr. HUMPHREY. 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. 215 Leg.]

Aiken	Hart	Monroney
Allott	Hartke	Morton
Anderson	Hickenlooper	Moss
Bartlett	Holland	Mundt
Bayh	Humphrey	Nelson
Beall	Inouye	Neuberger
Bennett	Jackson	Pastore
Boggs	Javits	Pearson
Cannon	Johnston	Pell
Carlson	Jordan, N.C.	Prouty
Case	Jordan, Idaho	Proxmire
Church	Keating	Ribicoff
Clark	Kuchel	Saltonstall
Cooper	Lausche	Scott
Cotton	Long, Mo.	Smith
Curtis	Magnuson	Sparkman
Dirksen	Mansfield	Stennis
Dodd	McCarthy	Symington
Dominick	McGee	Walters
Douglas	McGovern	Williams, N.J.
Ellender	McIntyre	Williams, Del.
Ervin	Mechem	Young, N. Dak.
Fong	Metcalf	Young, Ohio
Gruening	Miller	

The PRESIDING OFFICER. A quorum is present.

Mr. STENNIS obtained the floor.

ORDER OF BUSINESS

Mr. MONRONEY. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. Yes, Mr. President; I ask unanimous consent that I may yield to the Senator from Oklahoma, without losing my right to the floor, and without having the speech I shall make hereafter counted as more than one speech by me on the pending matter.

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

ADDRESS BY CHIEF JUSTICE WARREN AT DEDICATION OF CENTRAL TOWER OF THE WASHINGTON CATHEDRAL

Mr. MONRONEY. Mr. President, national leaders in Government, church, and in the musical and dramatic arts participated last week at Washington Cathedral when a great central tower—the Gloria in Excelsis Tower—was dedicated. For more than 50 years this cathedral on Mount St. Alban has been building—stone by stone; and the 301-foot tower, under construction for the last 2 years, becomes the highest structure in our Nation's Capital.

From 7 a.m. through an evening concert on the transept steps, residents and visitors to the Capital thronged to the cathedral. Members of the Ancient Society of College Youths, founded in 1637, came from England, to pass over the ropes of the bells in the great tower to boys of St. Albans School who had been trained to carry on the Old World tradition of "change ringing."

Scottish bagpipers and drummers and the flags of all 50 States led a procession for the dedication ceremony on the Pilgrim steps just after noon, when the speaker was the Honorable Earl Warren, Chief Justice of the United States. He was introduced by Attorney General Robert Kennedy. I was so impressed by the words of the Chief Justice on that day that I ask unanimous consent to have them included in the CONGRESSIONAL RECORD at this point in my remarks.

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

ADDRESS DELIVERED BY EARL WARREN, CHIEF JUSTICE OF THE UNITED STATES AT THE ASSEMBLY FOR THE DEDICATION OF THE GLORIA IN EXCELSIS TOWER WASHINGTON CATHEDRAL MAY 7, 1964

As we stand on Mount St. Alban, 400 feet above the Potomac, there rises above us, still 300 feet higher, the Gloria in Excelsis Tower of the Washington Cathedral. The crest of the tower marks the highest point of this fair city. I was interested to learn that the master carver who supervised the carvings for the tower emigrated to this country from Italy as a young man and came to Washington to do stone carving on the Supreme Court Building. The belfry houses 53 bells in a carillon and a ring of 10 hand-pulled bells for change-ringing to proclaim occasions both solemn and festive. Before this distinguished assembly and the world, the bells today proclaim the joyous tidings of the completion of this "quietly soaring tower that is a sermon in stone."

A story of old comes to mind which seems to have particular significance for the event we are celebrating. It concerns a wayfarer who was passing a structure under construction. He stopped in the manner of a "sidewalk superintendent"—that ubiquitous personality without whom no building could possibly be erected—to ask of three craftsmen who were working on the building what they were doing.

The first one, without looking up, answered, "I am making a living." The second one said in response to the inquiry, "I am following my trade." But the third, rising to his full height, looked the stranger straight in the eye, and said, "Sir, I am building a temple." I am confident that all who have participated in the erection of this tower derive the same feeling of satisfaction from their inspired labors as did that third craftsman.

I feel highly privileged to share in the dedication of this lovely structure, in part because of its beauty. This is the crowning section of an edifice yet to be completed but which already rivals its French and English medieval prototypes. The sense of sound construction and carefully studied detail and the strength and power of the whole are manifest throughout.

I feel thus privileged, too, because of our treasured historical associations with the cathedral, whose foundation stone from Bethlehem was laid by President Theodore Roosevelt 57 years ago. For this is a national cathedral, which calls itself a "House of Prayer for All People." This great square tower stands for the public faith of a whole people. The cathedral has no parish but looks to its friends of all denominations for nurture and sustainment. In its several chapels, four different denominational groups now worship regularly under their own rites; and many others have done so in the past. It is heartening to note that our Catholic and Jewish friends and those of other denominations and faiths are here with us today to share in this consecration.

And I feel privileged—and humbled—to be a part of this ceremony because this structure stands above our Federal city as a striking symbol of the aspirations of each of us, regardless of individual creed, as he reaches, like the tower itself, beyond our worldly confines and looks to the heavens above. How fitting that this dedication, which marks the fulfillment of a dream of clergy and laymen alike, comes on this Ascension Day.

Some might inquire whether this Gothic architectural fabric is in harmony with the times and properly reflective of the modernism of the space era. But it is not as if

we had to choose between the old style and the new. We can afford the best of each. There is much here to suggest stability and maturity and the durability of the beliefs which the cathedral represents. I have no doubt that for countless years to come it will educate, inspire, and ennoble those who come to see it and to worship here. This central tower will for generations as yet unborn, as it does for us today, express the timeless yearning of the human spirit. "Man must ever go beyond," as Dean Sayre said in a recent sermon referring to the tower, "and in that restless quest the spires are lifted as landmarks along the way. In this sense," he said, "our tower is the child of this century too. It is the token of our longing, the sign, not of assertion, but of perpetual seeking. It grows up out of the unfulfillment of the glittering promise of our age; its roots far down in the subsoil of justice, affronted still by unfair status; its pinnacles reaching for that peace which our society knows how to preserve only by the stalemate of terror. Ever man must fend off the emptiness of his life by acknowledging his poverty and craving from heaven a glimpse of providence and the new gift of life."

The subsoil of justice—I was taken with this felicitous phrase; for though our Founding Fathers maintained and we have preserved a separation of church and state, we are a religious people. The underlying concepts of our system of justice, the subsoil as the dean termed it, are ethical or religious, if you please. They derive from our convictions about the dignity of man. As the Court with which I have the honor to be associated has said, "The history of man is inseparable from the history of religion. And, since the beginning of that history many people have devoutly believed that 'More things are wrought by prayer than this world dreams of'." Our national life reflects a religious people who, as President Madison put it, "are earnestly praying, as * * * in duty bound, that the Supreme Lawgiver of the universe * * * guide them into every measure which may be worthy of His blessing * * *." But religion is, under our Constitution, incapable of State establishment; this is for the protection not only of the State, but of faith itself, in all its forms. The interaction of religion and the State is, therefore, made informal and free, not barren and nonexistent as some suppose. It is as fruitful and unfettered as we have the strength to make it.

As we are gathered on the prominence of Mount St. Alban for this jubilant occasion, the words of the greatest of the Hebrew prophets of the Old Testament come to mind. It was Isaiah—whose likeness is carved on the tower above—who said, "And it shall come to pass in the last days, that the mountain of the Lord's house shall be established in the top of the mountains, and shall be exalted above the hills; and all nations shall flow unto it."

What more suitable description of this inspired building project—exalted above the hills of our Capital City. How apt, too, for this place in a capital which is the temporary home of emissaries from other lands are the words, "all nations shall flow unto it." For this cathedral is open to those of all nations just as it is open to all people of this Nation.

"All nations shall flow unto it." That prophetic phrase is fitting not only for this national, and even international, place of worship, but is perhaps even more descriptive of the Capital City itself—today in Washington there are over 100 embassies and some legations, as compared with the time President Roosevelt laid the Cathedral's cornerstone, when there were only 9 embassies here and 29 legations.

In many ways this was a detached and insular capital of a country whose international contacts were relatively meager. Its outlook was on the whole internal rather than external. But it has now become a focal point in the world, attracting official and unofficial visitors from the remotest regions and whose very existence has become intertwined with the destiny of others.

A fundamental change in viewpoint has, of course, come to our country and its Capital City, a change brought about by two devastating world conflicts, and the accelerated pace of science and technology. It was less than 10 years after the cornerstone ceremony when the swift tide of events prompted Woodrow Wilson, who lies buried within this Cathedral, to observe in his second inaugural address that: "We are provincials no longer. The tragical events of the 30 months of vital turmoil through which we have just passed have made us citizens of the world. There can be no turning back. Our own fortunes as a Nation are involved, whether we would have it so or not. And yet we are not the less American on that account. We shall be the more American," he said, "if we but remain true to the principles in which we have been bred. They are not the principles of a province or a single continent. We have known and boasted all along that they were the principles of a liberated mankind."

Great responsibilities have become ours and the future of unborn generations depends upon our mature discharge of these responsibilities. I have no doubt that we shall discharge them worthily, but we can do so only with divine guidance. What could more appropriately express our seeking and reaching out for such providential aid than this tower extending heavenward?

To me there is still other significance and meaning to these spires. Sometimes our sense of values becomes distorted by affluence, and we are inclined by our preoccupation with things of the world to forget that the most meaningful part of life is spiritual. Such a spiritual awareness motivated the greatest accomplishments of those who founded this Nation. Are we lacking today in similar awareness? Perhaps not entirely; but as we stand here today and contemplate these spires we can derive additional inspiration for the spiritual commitment without which our lives can be drab and our labors barren.

A few moments ago I recalled the words of Isaiah which seemed so well to describe this tower. I invite you to remember as well the hopeful passage from the same prophet which follows close upon the other to the effect that the people "shall beat their swords into plowshares and their spears into pruninghooks; nation shall not lift up sword against nation, neither shall they learn war any more."

As one thinks of the areas of strife in the world today; what Dean Sayre has termed "the stalemate of terror;" and even now as one hears the words of those amongst us who seek their own preferment by sowing seeds of hatred, does one falter in his faith in the prophet's ancient words? On the contrary, I submit that this is a time for a firming of our convictions. It is a time for renewal of resolve that the aspirations which this lofty tower symbolizes shall be realized in our individual lives and shall be fulfilled in our national destiny. May our strength never wane; may our purpose never waver, as each in his own fashion rededicates his faith in "the Lord's house exalted above the hills." Gloria in Excelsis Deo!

THE OREGON PRIMARY

Mrs. NEUBERGER. Mr. President, will the Senator from Mississippi yield briefly to me?

Mr. STENNIS. Yes, Mr. President; I ask unanimous consent that I may yield now to the Senator from Oregon, without losing my right to the floor, and without having the speech I shall hereafter make counted as more than one speech by me on the pending matter.

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

Mrs. NEUBERGER. Mr. President, on May 15, the voters of Oregon will go to the polls, to select delegates to the national political conventions, and to express a preference for presidential nominees. If States are to conduct these preferential primaries, it is important that they be meaningful; and I am proud to call attention to the Oregon law which does require that all prospective nominees be included on the ballot.

This morning's Washington Post states:

The virtues of the Oregon primary stand out in striking contrast to those of other preference polls.

Mr. President, I ask unanimous consent that the editorial entitled "Oregon Primary" be included in the RECORD.

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

[From the Washington Post, May 12, 1964]

OREGON PRIMARY

Much interest centers in the Oregon primary to be held on Friday of this week because it permits voters to make a clear-cut choice among all the presidential candidates. Oregon is one of the three States which make their presidential preference polls binding upon the delegates to the national party conventions. Most of the so-called preference polls conducted in other States are merely advisory. The people of Oregon also have an opportunity to elect convention delegates who are pledged to the candidate of their choice.

Oregon has the great distinction of being the only State in which all of the leading Republican aspirants for the Presidency appear on the preference poll ballot. It is also the only State in which the name of President Johnson will appear on the Democratic ballot. The result will be an accurate measure of the popular strength of the GOP possibilities within the State. Because of the lack of a contest the Democratic primary may not accurately reflect the President's popularity, but the farce of stand-in candidates will be avoided.

The virtues of the Oregon primary stand out in striking contrast to those of other preference polls. In the Nebraska primary today (May 12) only Senator GOLDWATER'S name is on the Republican ballot, although write-in efforts are being made in behalf of Ambassador Lodge and some others. West Virginians will also go to the polls today, and the Republicans there will find only the name of Governor Rockefeller on the ballot. In the recent Massachusetts and Pennsylvania preference primaries all the votes cast were write-ins—a very unsatisfactory method of ascertaining the will of voters.

In Indiana the Republican contest was between Senator GOLDWATER and Harold E. Stassen. Ohio elected a slate of delegates pledged to Gov. James A. Rhodes as a favorite-son candidate, the effect being to deny the Republicans of that State any opportunity of making a choice among the real candidates. So it goes through most of the Nation. Only 16 of the 50 States have contests which can be called Presidential primaries, and most of these are sorry devices so far as ascertaining the wishes of the rank and file is concerned.

Oregon's primary is a lighthouse of clarity in an ocean of confusion because its law is designed to let the members of each party make their choice among the real candidates

as distinguished from stand-ins, favorite sons and discarded perennials. How long will the conscientious people of other States, watching the fair, practical, and democratic Oregon primaries, be satisfied with the pallid substitutes which continue to frustrate their wishes in regard to presidential candidates?

SMOKING AND THE AMERICAN MEDICAL ASSOCIATION

Mrs. NEUBERGER. Mr. President, I have been a frequent critic of the American Medical Association in relation to its attitude on the Surgeon General's report regarding smoking and its danger to health.

I snapped to attention when I read of the pamphlet called "Smoking: Facts You Should Know," put out by the AMA. But perusal of the booklet itself is disappointing. It cites such things as, "Numerous deaths occur each year"—"from burns and suffocation due to falling asleep while smoking," and "to the cost of cigarettes, add the cost of repairing marred furniture, burned sofas, and rugs, and holes in clothing."

In this morning's Washington Post an editorial, entitled "Smoke Signal," comments further:

> What is puzzling is why it has taken the AMA so long to edge even to the front ranks of those watching this particular controversy.

Mr. President, I ask unanimous consent that the editorial entitled "Smoke Signal" be printed in the RECORD.

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

[From the Washington Post, May 12, 1964]

SMOKE SIGNAL

With the publication of a six-page pamphlet entitled "Smoking: Facts You Should Know," the American Medical Association has at long last taken a tottering step toward telling the public something about smoking.

An illustrated, foldout brochure, the pamphlet says that smoking "affects the heart and blood vessels," "contributes to chronic bronchitis, emphysema, and to other obstructive lung diseases," and "reduces the oxygen-carrying ability of the blood." But the AMA, recipient of a recent $10 million grant from the tobacco industry for further research of smoking's effects on health, stops far short of a complete condemnation.

The text contains carefully qualified statements. At one point it says that "the controversy continues" and advises: "An individual can try to reach a solution to his own smoking problem by studying the evidence."

What is puzzling is why it has taken the AMA so long to edge even to the front ranks of those watching this particular controversy. The pamphlet comes more than 10 years after the public first learned of a possible link between smoking and lung cancer and nearly 5 months after the Surgeon General's report labeled smoking a health hazard and a major cause of lung cancer.

An illustration at the close of the pamphlet shows a hand crushing out a cigarette. Unfortunately, on a matter of such vital concern to the health of 90 million American smokers, it is still an individual, not the AMA, that is guiding that hand.

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 protest constitutional rights in public facilities and public education, to extend the Commisson on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Mr. STENNIS. Mr. President, there has been very considerable discussion today about how the Senate shall proceed, when it shall proceed, and when further votes are to be taken. I do not believe there is a better demonstration of the timeliness, as well as the value, of debate on a major bill; this is one of the most far-reaching bills ever to come before the Senate. There has been a very definite demonstration of the value of debate and exposure in regard to the provisions of a bill. In that connection, I refer particularly to the vote on the amendment which was voted on by the Senate last Wednesday, when the Senate voted on the amendment of the Senator from Kentucky [Mr. MORTON] to the amendments of the Senator from Georgia [Mr. TALMADGE]. That amendment would have applied across the board, to all the titles of the bill except one, insofar as the right of trial by jury is concerned.

As is well known, the first vote on that amendment resulted in 45 yeas and 45 nays. The final vote—taken after one additional Senator entered the chamber—was 45 yeas and 46 nays. So the first vote resulted in defeat of the amendment by the closest possible margin—a tie vote; and the second vote resulted in the defeat of the amendment by the next to the closest possible margin—by one vote. I think all will agree that on the day when the debate on the bill opened, or within a week of that time, that amendment would not have received anywhere near that many votes. That development shows the concern of Senators and the concern of the people of the country; and even the Senator from Minnesota admitted, with his honesty and frankness, that if, in dealing with a major matter of that sort, his amendment had come to that close to prevailing, he would try to proceed further, and would request additional debate and more consideration and more understanding of the subject, in the hope that perhaps, after all, the amendment would be adopted.

I also wish to point out that insofar as the bill is concerned—and I make this statement in connection with the appeal that the Senate hurry—this is the bill which the Senate declined to have considered by one of its regular committees and its staff, to enable them to make their report on the bill. In fact, the Senate declined even to permit the bill to be studied by a special committee or by any other group the Senate might choose. So there has not been a real opportunity to have the bill studied in that way and to have the Senate receive such a report on the bill, after study of it by Senators familiar with the situation and familiar with the subject.

Therefore, it now comes with ill grace for some Senators to be in so much of a hurry, all of a sudden, and to demand that votes be taken immediately.

This is also the same bill—I continue to have in mind the proposal that the Senate proceed in a hurry to vote—which was the subject of an editorial published in the Washington Evening Star, a proponent of the bill, a newspaper which supports the bill. The editorial was entitled "A Repair Job Needed"; and it was published in the Washington Star of February 11, 1964. In the editorial, the Washington Star had the following to say:

> The House now has passed what has aptly been described as the most far-reaching civil rights bill ever put before Congress. This is no exaggeration. As enacted by the House, the bill is very much in need of an overhaul.

Mr. President, those are not my words; they are not the words of someone who opposes the bill. Instead, those are the words of a newspaper which backs the bill and wants it passed. The Washington Star nevertheless believes "the bill is very much in need of an overhaul."

I read further from the editorial published in the Washington Star.

> In the Senate, where the steamroller tactics so effectively used in the House cannot be employed, the entire bill will receive the careful consideration it deserves.

I did not say "steamroller tactics" were used "so effectively" in the House; that is what the editorial writer of the Washington Evening Star—a friend of the bill—said, in addressing himself to the need for full consideration of the bill.

I read further from the editorial published in the Washington Star:

> Our third objection goes to title VII, generally known as the fair employment practices section. This section hits hard at both management and union practices which keep Negroes from obtaining top jobs commensurate with their abilities.
>
> We wholeheartedly agree that legislation to accomplish this is needed. The pending proposal, however, is a draftsman's horror.

Mr. President, that was not an opponent of the bill speaking; that was a proponent or friend of the bill. It was a man who said that he desired a bill to be passed, but he said that the proposal pending in the Senate was a draftsman's horror.

Furthermore, the same editorial stated—

> That the bill was railroaded through the House is beyond dispute.

Certainly those are warning signs from a responsible agency of the press in the city of Washington that the Senate could not ignore; and I do not believe it will. The editorial shows the gravity of the questions which the Senate is considering. The bill was thrown at the Senate without an analysis and without a report. The attitude in the beginning was on a take-it-or-leave-it basis. There were to be no amendments. That attitude was proclaimed very clearly by a great many of the proponents. Even the President of the United States, without coming out flatly against all amendments, has counseled, as the Senator from Mississippi understood his remarks

in the press, along the lines that the bill is satisfactory as it is, and should be passed as it is.

In order that no one may be confused, we are arguing for the full-scale right to a jury trial in all cases that amount to a criminal prosecution. Our amendment does not touch top side nor bottom.

The general principle is that a judge has unlimited power to require anyone before him in a case in his court to obey the judge's commands or suffer the penalty of going to jail and remaining there until he does obey them. Our amendment would not limit in any way the power and responsibility of the judge of a court to require obedience to his orders in a courtroom and around the courtroom or even after a decree is rendered if there is any direct disobedience.

The amendment relates solely to conduct on the part of defendants in addition to a disobedience that might amount to what would be a criminal act or a charge under criminal law. In those cases—and in those cases only—the defendant would be entitled to a jury trial under the Talmadge amendment.

Mr. President, I repeat, for emphasis, that the amendment which we espouse, propose, and support is the same amendment, the perfecting form of which was offered by the Senator from Kentucky [Mr. MORTON], and voted upon last Thursday, receiving 45 votes and with 45 votes against it. It merely proposes the right of trial by jury in cases which involve what is called criminal contempt.

It does not hold out unreservedly for the right of a jury trial.

Mr. TALMADGE. Mr. President, will the able Senator yield?

Mr. STENNIS. I am glad to yield to the Senator from Georgia, who is the author of the amendment which we are supporting, and who has contributed greatly in that way as well as in the debate.

Mr. TALMADGE. I thank the Senator.

Is it not a fact that the greatest civil right that any of us has is the right of trial by jury?

Mr. STENNIS. The Senator is undoubtedly correct. I make that statement as a lawyer, as a former prosecuting attorney, and as a former judge. My answer is based upon my courtroom experience. The right applied to all people regardless of color, race, religion, national origin, station in life, or any other consideration.

Mr. TALMADGE. Is that not the only bulwark that our citizens have that prevents tyranny and oppression?

Mr. STENNIS. It is the ultimate bulwark, and it is absolute. It prevents oppression even in normal times at the community level or at the State level or at any level. It protects the people from anyone in office who might abuse power. It protects the so-called little people, if we may use that term, against economic oppression in their own community from the top of the ladder to the bottom and on all sides. The principle applies in all cases. It is fundamental in the American concept of justice.

Mr. TALMADGE. Has not Magna Carta come down to us from 1215 to the present time as the greatest and most fundamental liberty that all people possess, that is, the right of trial by jury, which the nobles wrested from King John at Runnymede at that time?

Mr. STENNIS. The Senator is correct. The right was granted in all criminal cases, and it has stood the test of centuries. It is practical. It is real. The trouble is that there has grown up outside that basic principle which the Senator has mentioned the power to punish for contempt of court without a jury trial. Originally cases arising under that power were few, but in modern times the number of such cases has increased.

Mr. TALMADGE. The courts have subverted their equitable powers, and have gotten around the three provisions of the Constitution of the United States which guarantee the right of trial by jury. Is that not correct?

Mr. STENNIS. Unquestionably that is true. Whoever drafted the bill deliberately, consciously, and purposely set out to avoid the provisions of the Constitution of the United States that guarantee the right of a jury trial in criminal proceedings. The provisions have been treated in such a way that if the bill were left in its present form, the rights given to men by the Constitution would be avoided, particularly the right of trial by jury.

Mr. TALMADGE. Is that not what King George did with the admiralty courts prior to the War of the Revolution?

Mr. STENNIS. Yes; that is exactly what he did, in a far different time. It is an illustration of the old system.

Mr. TALMADGE. Did not Thomas Jefferson, who wrote the Declaration of Independence, state therein that one of the main reasons for the War of the Revolution was that King George had denied the Colonies the right of trial by jury?

Mr. STENNIS. Yes. That was one of the foremost things in the minds of the colonists. As the Senator has said, it is reflected in the Declaration of Independence. It is also reflected in three distinct places in the Constitution of the United States and in every State constitution of the 50 States.

Mr. TALMADGE. Does not the Senator from Mississippi agree with me that it is strange indeed that we could even be seriously considering a so-called civil rights bill that would invite denial to the citizens of our country—190 million of them—the right of trial by jury in five different titles of the bill?

Mr. STENNIS. There is a contradiction in terms. It is a discrimination of the rankest kind. Furthermore, it involves the basic denial of established, essential and fundamental rights of all citizens.

Mr. TALMADGE. I agree with the Seator. I congratulate him on the able speech which he is making.

Mr. STENNIS. I thank the Senator. I appreciate very much his contribution to the debate today as well as on previous days.

Mr. President, I do not believe that the question is fully understood yet. It is becoming better understood by the membership of the Senate, by the press of the Nation as a whole, and by the people of the Nation as a whole.

We are not fighting for any kind of split-level-model jury trial which leaves it up to someone else to say whether or not a person shall have a jury trial, as the amendment offered by the Senator from Illinois and the Senator from Montana provides. The latter would give the judge the right to allow a jury trial if he wanted to make the punishment greater than a certain jail sentence or fine.

Mr. TALMADGE. Mr. President, will the Senator yield further?

Mr. STENNIS. I yield.

Mr. TALMADGE. Is it not true that the criminal contempt procedure is judge-made law, and was not ordained by the Constitution?

Mr. STENNIS. It was not ordained by the Constitution. It grew up outside of it. It became a sort of outside appendage to our system of jurisprudence. As Judge Black said, it is judge-made law. He is the one who originates the charge, prosecutes the charge, is the jury that passes on the facts, and then is the man who hands down the sentence. Judge Black says the practice ought to be stopped.

Mr. TALMADGE. I agree with him.

Is it not true that some persons have been incarcerated in prison for as long as 4 years by a judge, without the right of trial by jury?

Mr. STENNIS. The Senator is correct. I know of one sentence that was 4 years.

Mr. TALMADGE. I recall seeing one opinion which cited several of them. One had been incarcerated for 4 years, one for 3 years, another for 18 months, and so on. That is clearly not in conformity with article III of the Constitution, which provides that in all criminal cases an accused shall be tried by a jury.

Mr. STENNIS. That is correct. No one has proposed to try to limit trial by jury in other matters. No one proposes that a man who is charged with murder shall be denied a jury trial.

Mr. TALMADGE. Or one accused of rape or treason.

Mr. STENNIS. Or the worst kind of social crimes, including assault, rape, or being a thief in the night. No one has suggested that a person accused of such crimes shall not have a jury trial. But when anything bears the label of "civil rights," the leadership says, "We must have the bill as it is." James Farmer appeared on television and demanded it, and said we must have it. So we get into a predicament of jeopardizing a fundamental right. That is the issue facing the Senate today.

Mr. TALMADGE. The sum total of it is that the bill would deny civil rights to all citizens, while trying to achieve preferential rights for a few citizens.

Mr. STENNIS. That is correct. It would deny a fundamental right to all citizens and in a measure would transfer the right to another group by way of a privilege.

Mr. TALMADGE. Is it not true that the only new right contained in the bill is the right to trespass on private property against the wishes of the owner?

Mr. STENNIS. Yes. Under the present regime, that is a right that is being more firmly established in law all the time—that, under the name of "civil rights," one has a right to trespass on other people's property, lock up the doors of little businesses, and trespass in the entrances of places of business. Something has to be done to stop it.

Mr. TALMADGE. My "right" to do business with a person is a privilege, and not a right; is that not correct?

Mr. STENNIS. That is correct. That is the basic American concept which has existed.

Mr. TALMADGE. And the property owner has the same right to do business with me or not to do business, as he sees fit. Is that not true?

Mr. STENNIS. That is correct. If the Senator from Georgia has a place of business in his State, I have no "right" to get a job from him. It is his right to decide whether he wants to give me a job.

Mr. TALMADGE. It is by mutual consent.

Mr. STENNIS. Yes. I would have a right to work for the Senator, if I were in his employment, and it was agreeable, and to leave when I felt like it. But in the bill there is embodied the principle of servitude.

Mr. TALMADGE. To change that right would be to subordinate freedom.

Mr. STENNIS. Certainly. It contradicts freedom itself.

Mr. TALMADGE. Would not the bill give citizens the right to go on anyone's property and use it against the wishes of the property owner?

Mr. STENNIS. It certainly would. An inducement is offered to people to go from one State to another for the purpose of committing trespass, violating the laws, and being arrested. They announce before they leave that they are going to do it. My State has been picked out as a target for a forthcoming demonstration this summer.

Mr. TALMADGE. Many of the demonstrators have been encouraged by some of the highest officials in the land. Is that not correct?

Mr. STENNIS. They are encouraged by statements made by some of the highest officials. They are protected to a degree by the Attorney General of the United States in his general approach to this problem. They have been encouraged. This movement is running away with itself. It is on a scale that is beyond control, not only in the South, but in the North and the East.

Mr. TALMADGE. The Senator has offered an amendment to the pending bill, now lying on the desk, that would make it a Federal offense to go from one State to another for the avowed purpose of violating State or local laws. I commend him for it. It is in accordance with a long series of legislative acts that have been enacted since 1910. Congress adopted the Mann Act, which made it a violation of Federal law to transport women in interstate commerce for immoral purposes. Later, in 1919, Congress made it a criminal offense to transport stolen automobiles in interstate commerce. In 1934 Congress enacted the Fugitive Felons Act; and there were various other acts.

I compliment the Senator for offering such an amendment. To my mind, nothing could be worse than for groups of citizens to travel about from State to State for the purpose of violating State laws and fomenting strife.

I have had the pleasure of reading the lead editorial from the Clarion-Ledger of Jackson, Miss., dated May 8, 1964, with reference to the amendment offered by the Senator from Mississippi. The editorial is entitled "Senator Stennis' Plan Is Sound, Need Federal Law To Curb Riots."

I ask unanimous consent that it may be inserted in the RECORD at this point.

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

[From the Jackson (Miss.) Clarion-Ledger, May 8, 1964]

SENATOR STENNIS' PLAN IS SOUND, NEED FEDERAL LAW TO CURB RIOTS

Senator JOHN C. STENNIS, of Mississippi, has proposed an amendment to the civil rights bill making it a Federal offense to travel between States for the purpose of violating State laws. His measure is aimed at such groups as "freedom riders" and kindred troublemakers who openly and brazenly travel into States for the express purpose of violating local laws.

The Stennis amendment is designed to help prevent the acceptance of a philosophy of disrespect for law. It would become a Federal offense for any person to travel or transport material, or to aid and abet any person in traveling or transporting material in interstate commerce with intent and purpose of violating the law of any State, district, or possession of the United States.

Senator STENNIS rightly contends that such efforts are nothing other than open and flagrant flouting and disregard for law and order as established by duly constituted authorities. The epidemic of racial troubles which have plagued this Nation stems from a philosophy that is utterly foreign to our national heritage and jurisprudence.

Our country urgently needs the Federal legislation proposed by Senator STENNIS. Agitators and their organizations from afar have been invading State and communities, inciting the emotionally unstable to fever pitch and causing enormous damage. In every case, the disobedience of law has been shown to have been methodically inculcated into what were ordinarily peaceful and law-abiding people.

II

Mass uprisings and organized flouting of law must stop, if we are to avoid major tragedy on a national scale. The best way to avoid tragedy, as Senator STENNIS wisely proposes, is to forbid outside agitators from invading States where they have no real business except to stir up disorder, or from conspiring to do so.

The amendment to the civil rights bill proposed by Senator STENNIS would have equal application to everyone. It would apply to the KKK, NAACP, CORE, SNCC and to the Communist Party and its hired agents. In short, it would apply to all agitators and anarchists who travel in interstate commerce for sinister purposes.

The Stennis amendment seems clearly within the purview and intent of the Constitution. It is something that is needed to protect the great majority of the population—the lawabiding public that bears the responsibility of our industry, our Government, and our religion. There is nothing radical or revolutionary about the Stennis proposal when viewed against the background of existing law.

Since 1910, when Congress adopted the Mann Act (18 U.S.C. 2421) the legislative body has enacted a substantial number of criminal laws to free interstate commerce of corruptive influence and to aid the States in law enforcement. The Clarion-Ledger reviewed such legal precedents in an editorial of September 25, 1963, worth restating here and now:

"The Mann Act was aimed at the suppression of the 'white slave' traffic. It prohibited the transportation of females across State lines for immoral purposes."

Later, in 1919, Congress made it a Federal offense to transport stolen automobiles in interstate commerce, and this was later expanded to cover other kinds of stolen goods.

In 1934 Congress enacted the Fugitive Felon Act, prohibiting interstate travel to avoid prosecution for crime. Clearly, it is sensible to penalize interstate flight to avoid prosecution, and it makes even more sense to prohibit interstate travel which is undertaken with the intent of violating the law. Such a Federal enactment could have the effect of deterring wrongdoing at its very source.

III

Congress has seen the wisdom of this approach. In 1961 it enacted a law prohibiting interstate travel with the intent to carry on or commit any crime of violence to further any of a number of specified activities.

The amendment to the civil rights bill proposed by Senator STENNIS merely carries this approach to the logical and thoroughly justifiable conclusion of prohibiting travel across State lines with the intent to provoke civil disorder or violate the laws of any State.

The States, without exception, are capable and desirous of enforcing the law on a local basis. This can be accomplished if the States are protected from vicious outside influences which defy local laws, resulting in the violence and chaos so widely prevalent in this country.

State and local officials are entitled to exercise their police powers freely—"to insure domestic tranquillity," as guaranteed by the Constitution. Such power legally and historically rests with their States and their communities. It is painfully obvious that Federal legislation is needed to forbid any person irrespective of race, creed, or color, from crossing State lines for the purpose of violating laws, fomenting strife, and inciting to riot.

Mr. TALMADGE. I compliment the Senator for offering his amendment.

Mr. STENNIS. I thank the Senator very much for his questions and his very good comments and his interest in the amendment, to which I shall advert quite briefly.

That amendment would make it a Federal crime to cross a State line for the purpose of violating a State law. That has already been going on, on a considerable scale, and the press is full of stories of great plans being made for migrations from one State to another, for the purpose of trespassing, and engaging in all kinds of parades and civil disobedience acts. Something has to be done. A State must protect its people in some way. The demonstrators block entire streets in places. That happened in Greenwood, Miss. They blocked a whole street. Traffic could not get through. Mailmen carrying mail could not get through. Mail trucks were stopped. Half of those people came in from the outside.

If a bill like this is to become the law, or whether it becomes the law or not,

something has to be done to make a penalty fall on those who go from State to State to violate a State law.

The most outstanding case I can recall now is that of a prominent person, Mrs. Peabody—and I refer to her with great deference—who went from Massachusetts to Florida and said, before she got there, that she was going down to be arrested.

She had gone down there to get arrested. She had failed the first day, but she finally got arrested; and there was a big picture in the paper showing that she had been arrested and was on her way to jail. That may be amusing to some but a great deal of it is intolerable, because the functions of the economy, and our everyday life cannot move along when this sort of thing occurs.

Mr. JAVITS. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield to the Senator from New York. His State has had some trouble in that respect and I know he was concerned about it and still is, I am sure.

Mr. JAVITS. I feel that in New York we handle our troubles in a little bit different way, but I should like to ask the Senator this question:

The Senator is an excellent lawyer and is familiar with the Edwards case involving the arrest of 187 Negroes on the grounds of the State Legislature of South Carolina. It was subsequently found that they had been illegally arrested by a Federal court, notwithstanding they were charged with trespass, the very offense to which the Senator is referring.

Does not the Senator feel that provision should be made in respect to Mrs. Peabody, or in respect to his amendment with respect to State and municipal statutes on this subject which are unconstitutional?

Mr. STENNIS. That is a legal matter for the court to decide, as to those laws which have already been enacted. The ones we are passing on now we have responsibility for. I was told yesterday that the Federal court in Georgia had upheld a statute of that kind, and when the argument was made to the court that the statute was passed by the Georgia Legislature with the purpose of trying to circumvent the laws with reference to civil rights, the judge implied that it did not make any difference what the motive of the legislature was, that they had adopted a necessary rule to allow the economy of the country to move, the rights of people to be protected, and that it was a valid law.

Mr. JAVITS. Would not the Senator agree, with respect to Mrs. Peabody—and the Senator remembers that our Founding Fathers provided the right which all of us strongly endorse—that in order to test out an unconstitutional statute, it is sometimes necessary to get arrested to test it out?

Mr. STENNIS. That might be. That is one of the ways to test it, yes. I was not really directing myself to a single case of violation. It is this mass action which must be stopped. That is what impedes traffic. That is what stops the wheels of the economy from moving. That is what infringes on the rights of other people. Something must be done along that line, I am sure the Senator would agree.

Mr. JAVITS. Well, the Senator was disturbed by the fact that it seems to take such mass action to get even minimal reforms. For example, the first instance of the sit-ins occurred in Greenville, N.C. They did result—unfortunately for those who feel that they should not have been held—in the fact that Negroes could go to lunch counters in these stores.

What troubles me, is that we have, by failing to move forward in the social sense in areas of segregation, made these issues sacrosanct. If we should fail to effect a remedy under the law, we are practically saying that the only other way to attain what was ultimately granted—as I pointed out as a result of the sit-ins and the lunch counter sit-ins—the posture of human dignity, is to engage in mass demonstrations.

The Senator knows my respect for him, that I am not seeking to trick him into any admissions, but it does trouble me deeply because I know the Senator feels that he is patriotic—and he is; but it seems to me that if we feel the demonstrations are a matter of serious public inconvenience—and they have grave dangers inherent in them, naturally, of public conflagration—that somehow or other we must, as long as we once show that the demonstrators do produce results, we must find some way to resolve the situation. If we give them no other recourse, what can we expect? I wish the Senator would address himself to that thought.

Mr. STENNIS. Every lawyers knows, and the Senator, being a good lawyer, knows that there are ways to contest all rights. We do not have to get up a group of people to go a thousand miles from home and demonstrate in the streets and say before they leave that they are going down there to be arrested. It is just too ridiculous and absurd.

No one has pointed out any clearer than has the Senator from New York here a few days ago when the opening of the New York World's Fair was endangered by threat of the stall-ins, on the highways, where the demonstrators were going to intentionally run out of gas. I believe the Senator was entirely right and I admire the way he vigorously denounced it. I am sure he contributed quite a bit to the failure of the stall-in.

Mr. JAVITS. Let me point out, however, the differences between us on this subject. I did denounce the stall-in, because it was an element of civil disobedience, unlawful by any statute and under perfectly constitutional ordinances which made it unlawful; but notwithstanding the public inconvenience, notwithstanding even—much to my dismay and personal embarrassment, and the embarrassment of all Senators—what occurred in the presence of the President of the United States.

Mr. STENNIS. Yes.

Mr. JAVITS. But, nonetheless, not to say anything other than that the demonstrators' rights—that is, the right to hold a placard and walk up and down to make one's views known, is a constitutional right. It seems to me that where we get into difficulty—it is not easy to grasp, but I believe the public is gradually catching up—is where we lump in a generic way all of these activities under one condemnatory concept.

I do feel that we face a situation in the country where we have either got to get relief, or expect that people will seek action in the streets which apparently, to them, as evidenced by the lunch counter desegregation, can produce results where we do not ourselves, either socially or by law, show some signs of emotion upon the subject.

I submit my thoughts to the Senator, because I know that whatever may be his deeply held views on the subject—and I credit him with sincerity—he knows that I feel exactly the other way. We both have a common interest in public order. The problem is that exhortation and deep feeling, that "it is not right." Even though I do not agree with the Senator, he is still not dealing with a practical problem which the whole Nation faces in the North, and which I believe is going to be faced in the South as it has been, and very soon perhaps even more seriously in the days ahead. I submit these thoughts to the Senator because more than anything else we all want the dignity, the honor, and the tranquillity of our fair Nation to be preserved.

Mr. STENNIS. I thank the Senator for his contribution. With all deference, in my view these marches do amount to a trespass. I am not talking about the mere carrying of a banner, but I am concerned with mass invasions and activities along that line. They must be stopped. I have saved a recent article written by William F. Buckley, Jr., the title of which is "Northern Patience Worn Thin by Demonstrators."

The article refers to the situation in New York, at the opening of the World's Fair, and refers to the police commissioner, Mr. Murphy, in a commendatory way, and also refers to something that he had said about his patience having been exhausted.

The article states:

> On the morning of the same day that Mr. Murphy boiled over, a three-man panel of judges led by Judge Gassman, sentenced a white CORE leader in Brooklyn, who had taken part in the effort to close down the World's Fair, to 1 year in jail. More precisely, the court activated a 1-year suspended sentence that had previously been earned by 26-year-old Arnold Goldway, but suspended for a probationary period that ran out of gas along with Mr. Goldway's car, en route to the World's Fair. On receiving the news in the courtroom, Mr. Goldway responded by throwing himself on his back right there in front of the three judges and refusing to budge. In due course he was propped up by some of Mr. Murphy's patient men, and thereupon sentenced to an additional 30 days for contempt of court.

That illustrates a direct act committed in the presence of the court. The defendant was sentenced to an additional 30 days. My point is that these things occur everywhere. The amendment of the Senator from Mississippi would not apply to this situation, but would take care of those that involve crossing State lines.

I wish to refer back to the discussion about the real reason for the amendment and the real reason why there is not an absolute constitutional right to a trial by jury in these particular contempt cases.

The Senator from Georgia has brought out the absolute guarantee of a jury trial in all criminal cases, and that applies in the Federal and in the State courts.

There has grown up what is a very small addendum to our system of permitting courts, without a trial by jury, to punish persons whom they believe to be guilty of contempt. The most immediate and primary reason for that is that the court must have control of its courtroom and the surrounding area, and, further, must have the power to compel one who is ordered to do a thing to carry out the command.

That is the law now, and it will remain the law if the Talmadge amendment is adopted.

Going back a little in history, it is unfortunate that there has been permitted to grow up in our system of law a permissive power on the part of a judge to proceed against a person who he thought had violated his order. It is a special proceeding against a person for the violation of any criminal law which might have been involved in the acts that the person had committed. Unfortunately, the law permits the judge to call before him the defendant on a criminal charge, in effect, and try him and sentence him without a jury trial. That practice has developed very slowly and gradually, and has had a very minute application in our law.

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

Mr. STENNIS. I yield.

Mr. TALMADGE. Is it not true that Congress has changed that situation in several instances, beginning with the Clayton and Norris-La Guardia Acts, which are applicable to labor disputes, as a result of which members of labor unions are now entitled to jury trials in criminal contempt cases?

Mr. STENNIS. The Senator is correct. I shall come in a minute to a discussion of the growth of the criminal contempt procedure. When the Norris-La Guardia Act was before Congress in the mid-thirties, Congress examined the situation and found the law to be as we have stated it. Congress said, "We will not give the judge such power in these cases."

The labor leaders rightfully appealed to Congress not to leave them victims of a misguided or mistaken judge, but to give them the right of a trial by jury. The Senator is correct. Congress heeded that plea and provided in the law that they should have the right of trial by jury.

Mr. TALMADGE. Did not Congress also further grant that right under the Sherman Antitrust Act?

Mr. STENNIS. I believe it was an amendment to the original Sherman Antitrust Act. I believe it was an amendment which was adopted later. The same principle applies, however.

Mr. TALMADGE. Did not the late President John F. Kennedy, when he was floor manager of the Landrum-Griffin bill, stand at his desk in the rear of the Chamber and accept the same amendment offered by the distinguished Senator from North Carolina [Mr. ERVIN], and was it not adopted unanimously without even a yea-and-nay vote, in 1959?

Mr. STENNIS. The Senator is correct. The late President voted for the jury trial amendment. It was adopted by the Senate, as the Senator from Georgia says. It was not a split-level amendment, of the kind that is offered to us by the Senator from Illinois [Mr. DIRKSEN] and the Senator from Montana [Mr. MANSFIELD]. It was an outright, flat, final amendment for jury trials as a matter of right in civil rights cases. The Senator from Massachusetts was joined in that vote by the then Senator from Texas, now President of the United States, Lyndon B. Johnson.

Mr. TALMADGE. The Senator is correct in what he has said, but that was in the Civil Rights Act of 1957; whereas the question posed by the Senator from Georgia was with respect to the Landrum-Griffin Act, which relates to a disclosure of pension funds, and so on, by labor unions.

Mr. STENNIS. I thank the Senator. I was mistaken.

Mr. TALMADGE. The Senator was correct in his response, but the question posed by the Senator from Georgia related to a different bill. The bill to which I referred was signed by the then President, Dwight D. Eisenhower, and is on the statute books today.

Mr. STENNIS. The then Senator from Massachusetts, Mr. Kennedy, the late President, handled the bill on the floor of the Senate, as the Senator from Mississippi recalls.

Mr. TALMADGE. Yes.

Mr. STENNIS. It had in it a provision for jury trials.

Mr. TALMADGE. Yes. The Senator pointed out, and I commend him for doing so, that the late President of the United States, John F. Kennedy, cosponsored, along with our distinguished majority leader, the Senator from Montana [Mr. MANSFIELD], an all-inclusive jury trial amendment, which is word for word, line for line, and paragraph for paragraph the same amendment that the Senator from Mississippi, along with other Senators, has sponsored as an amendment to the civil rights bill.

Mr. STENNIS. The Senator is absolutely correct. The amendment proposed by the Senator from Georgia [Mr. TALMADGE] is word for word, line for line, and sentence for sentence the same as the amendment voted favorably 3 years ago by the late President Kennedy and by President Johnson, when they were Senators.

Mr. TALMADGE. Did not President Lyndon B. Johnson, then a Senator, make the concluding speech in favor of the amendment in 1957?

Mr. STENNIS. Yes; and it was one of the most powerful speeches on the subject that I have ever heard.

Mr. TALMADGE. I agree with the Senator. Does he not agree that both the late President Kennedy and President Johnson then offered words of wisdom which the Senate should heed now?

Mr. STENNIS. Absolutely. All we ask is that the Senate follow the same guidelines. That amendment was adopted by an overwhelming vote. It was not a split-level jury trial amendment, but an absolute right to a jury trial. I commend the Senator again for offering his amendment and presenting it in such a fine way.

Let me reiterate that when we refer to the vote of the late President Kennedy on the identical language that is in the amendment now before the Senate and the vote of the present President, Lyndon B. Johnson, on the identical language that is in the amendment now before us, those votes having occurred as recently as 1957, we contend that those men were voting for a so-called constitutional right.

They were voting for the jury amendment because they felt compelled to do so under their interpretation of the Constitution and they voted for it because of the rightness of the proposal, the spirit of it, the need for such an amendment. It involved not a privilege, but a right to a jury trial. It was not a split-level amendment to provide for a jury trial if a judge imposed excessive punishment or was undecided about the punishment. It was an absolute, unyielding right to a jury trial for which those two men voted a few years ago. They did so because their judgment and their conscience demanded it. That is one of the most powerful arguments any Senator could now apply—the justice and the right of the case.

That brings me back to an argument that is frequently made. I have not read of any distinction between the constitutional right of the accused in this peculiar jury situation and the basic spirit of the right of it. But it is frequently said on the floor of the Senate, in great triumph, in a way, that the Constitution does not require a jury trial in criminal contempt cases.

The Supreme Court of the United States has almost stricken down already the outside growth I have spoken of, which permits a judge to try a person for an alleged criminal act without a jury. The most recent case on this subject was decided a few weeks ago, after most thorough and exhaustive consideration. It was a case that came up from the Fifth Circuit Court of Appeals. In that case the court, composed of eight eminent judges, divided 4 to 4 on the question. Four judges thought that under the Constitution, whether a statute expressly provided that there must be a jury trial or not, the Constitution required that there be a jury trial.

The case was appealed to the Supreme Court of the United States, where nine judges passed on it. Four judges there held that there was a constitutional right to a trial by jury. But five judges, who prevailed over the four, voted the other way and held that the Constitution did not require a jury trial as a matter of right.

By no means do they condemn the idea of having Congress make it mandatory that there be such a trial. In fact, in one of their footnotes they said that if a court in imposing punishment were to go

beyond what was considered punishment for a petty crime, they would believe the court had overstepped the line.

But when we consider this basic right, which has been so favorably considered by former Members of this body, and when we urge it as a right which has been so favorably considered by the courts, we are told we are trying to emasculate the bill, and that we are killing time. I do not know whether we are killing time; but my guess is that if a vote had been taken on the amendment on the day when debate on the bill began, or even a week later, the amendment would have received very few votes. However, after attention was focused on this situation and after we were able to get the message about it to more and more Members of the Senate and to more and more members of the press and to more and more of the people of the country, when the vote was taken, at a time when 90 Senators were present and voting, exactly 45 of them voted for the amendment. So someone must have been doing something more than merely kill time; there must have been a great deal of right behind the amendment; there must have been a great deal to the amendment, so as to commend it to so many Members of this body, for the overwhelming pressure—almost all the political pressure in the country—is the other way. The President of the United States is urging that the bill be passed forthwith. The Attorney General and all the rest of the administration are behind the bill as it now stands. They are working day and night for its passage as quickly as possible. The pressure for quick passage of the bill exists in all the channels of political thought. There is great demand for prompt passage of the bill; and those of us who take the position which we maintain are called obstructionists and "killers of time." But I say there must be a great deal of support for the amendment; and I maintain that it would not have been supported by the late President Kennedy and by the 45 Senators who voted for it the other day if it did not have merit.

So I believe we would be turning our backs on the correctness of this cause and on our duty if we did not continue to urge that this amendment be adopted. Yet, Mr. President, only a few hours ago, this morning, there was great clamor and demand that the Senate vote immediately on the bill.

I know there is a very strong chance that support for this amendment will grow; and I believe there is a great probability that the amendment will be better understood, and that a majority of the Members of the Senate will not see fit to vote further to enlarge the unfortunate development, in criminial contempt proceedings, by which men or women are punished without a jury trial. When I say that, I do not mean to refer only to those who may be guilty. After all, the right of jury trial is not solely for the benefit of those who may be guilty. A great part of the good it does is found in its protection of those who are innocent.

I served for 11 years as a judge, and I know that the jury trial helps judges maintain the proper attitude and the proper balance as between the two sides of a case, and helps the judges in the administration of justice. Juries serve as important instruments in our system of government, to help pass on the facts.

However, it is said that even the State laws of the Southern States do not require a jury trial for criminal contempt. That is true of a number of them; but I point out that in both the State courts and the Federal courts there has been only a limited application of criminal contempt procedure, until a few years ago. That power had been permitted, in special deference to the judges; but it was never intended to have anything except the most minute application in the field of law.

Its limited application is illustrated—although I hesitate to make a personal reference—by the fact that during the 11 years in which I served as a trial judge, and had before me hundreds and perhaps thousands of cases in a court of unlimited jurisdiction, and heard both civil cases and criminal cases, involving tens of thousands of persons, I never charged anyone in that court with contempt; and I had to pass on only one case of contempt, which developed when a drunk wandered into the courtroom during a trial; he did not know where he was, and he stumbled into the courtroom. I told the sheriff to hold him in jail until he sobered up.

But now there seems to be an attempt by some to have contempt proceedings control in many fields.

Mr. TALMADGE. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield.

Mr. TALMADGE. As a lawyer practicing in the Georgia courts, it has been my experience that the circumstances related by the Senator from Mississippi, in his references to his experience as a circuit court judge in Mississippi, usually prevail. Normally, the judge uses the contempt power to preserve the dignity of the court and to preserve order, peace, and decorum in the courtroom. Except for such uses, I have rarely seen even the power of civil contempt applied by judges. It is normally reserved for use in domestic relations cases—for instance, in order to compel a husband to pay alimony, in connection with divorce matters. Normally, it is limited to such practice.

Is it not true, however, that under the pending bill, the power of criminal contempt could be exercised in virtually every area of human life, from the cradle to the grave, and thus could affect all of the 190 million citizens of our country?

Mr. STENNIS. That is absolutely correct. The bill is as broad as the English language—and particularly the provision that in a pending matter the Attorney General may intervene. If he did, he would be in command.

Mr. TALMADGE. In other words, the bill would authorize the Attorney General, after satisfying only himself, to file suits in regard to any area of human life, would it not?

Mr. STENNIS. Yes. By that means, the Attorney General would have jurisdiction and control over where we eat, where we sleep, for whom we work, with whom we eat—in fact, as the Senator from Georgia has said, over almost every avenue of human conduct.

Mr. TALMADGE. Yet the same bill would extend the Federal police power to every area of human conduct, and would authorize people to be jailed for criminal contempt, without the right of trial by jury; is that correct?

Mr. STENNIS. The Senator from Georgia is entirely correct. The bill would build a new system of law, and would include provision for such contempt proceedings without a jury trial.

Mr. TALMADGE. The distinguished Senator from Mississippi has been an outstanding lawyer and an outstanding judge. Does that practice comport with his idea of American liberty, freedom, and justice?

Mr. STENNIS. It is directly contrary to our concept of individual liberty and justice, and if permitted to continue, it will destroy our system.

Mr. TALMADGE. Does the Senator from Mississippi believe that an employer in any area of our country ought to be jailed without the right of trial by jury if he does not hire someone who the Civil Rights Commission or the Equal Employment Opportunity Commission believes ought to be hired?

Mr. STENNIS. I do not. Had many of the proponents of the measure known fully what was in it when they signed it, I do not believe they would have ever put their names to it.

Mr. TALMADGE. Does the Senator from Mississippi believe that a lady who operates a boardinghouse with six rooms or more ought to be jailed without the right of trial by jury merely because some official in Washington thinks that she did not exercise good judgment in selecting the guests in her boardinghouse?

Mr. STENNIS. I think not. She would certainly be entitled to her day in court, and anyone who might have been connected with her establishment would likewise be entitled to his day in court. It could be some innocent person who might be mistaken about an order. But if the judge thinks the other way, he could send that person to jail, not until he would comply with the order of the court, but, under the bill, the judge could sentence him to jail for 100 days or longer.

Mr. TALMADGE. Does the Senator from Mississippi believe that every voter registrar in the United States of America ought to be jailed for criminal contempt without the right of trial by jury any time the Attorney General of the United States feels that such action would be appropriate?

Mr. STENNIS. Certainly not; and it should not be possible under our laws for such things to happen. Still, it is proposed to lay down rules that would make it possible.

Mr. TALMADGE. Mr. President, does the Senator from Mississippi believe that the owner of every hamburger stand or hot dog stand in America ought to be jailed for criminal contempt any time the Attorney General might see fit to do so, without the right of trial by jury, merely because he exercises his own judgment

as to whom he shall serve by preparing a hamburger or a hot dog?

Mr. STENNIS. The Senator is correct. Such a man should not be so treated.

We are not advocating that anyone should disobey the order of the court or fail to carry out the law of the court once an adjudication has been made. But the amendment of the Senator from Georgia would apply to cases in which a person might have intended to do the right thing under the court's order, but became confused by a set of facts that caused him to violate a State law, if it involved nothing more than a trespass. He could be brought in and, if the judge happened to see fit to do so, he could sentence the defendant to a term in jail without a jury trial. Such action ought not to be permitted.

Mr. TALMADGE. Does the Senator from Mississippi believe that every operator of a beauty shop in America ought to be jailed without the right of trial by jury merely because the beautician exercises his or her right as a free citizen not to dye the hair of the wife of the Senator from Mississippi or my wife's hair?

Mr. STENNIS. The Senator is eminently correct. Last week the Senator from Ohio [Mr. LAUSCHE] gave an illustration. He called on Senators to explain why they should provide the right of a jury trial to the labor leader, as the Norris-La Guardia Act does, and then, on the same set of facts, turn around and deny a jury trial to a little barber who might have gotten into trouble in some way with the court. That question has never been answered.

Mr. TALMADGE. The Senator from Mississippi, of course, is familiar with the 13th amendment that freed the slaves and prohibited involuntary servitude, is he not?

Mr. STENNIS. Yes. That is the 13th amendment.

Mr. TALMADGE. Can the Senator from Mississippi explain to me how I could go to a shoeshine parlor or barbershop and compel a shoeshine operator or a barber to shine my shoes or cut my hair against his will?

Mr. STENNIS. There is no way to explain it consistent with his right as a free citizen. If we should compel him to do it, it would be involuntary servitude.

Mr. TALMADGE. I agree with the Senator from Mississippi. I believe it would be violative of the 13th amendment. I compliment the Senator on his great speech seeking to preserve the right to liberty and freedom for all citizens of every color and of every religion, no matter where they may reside.

Mr. STENNIS. I thank the Senator. The purpose is to apply the rule of rights for the benefit of all people and not merely a special group. We should not take anything away from one and transfer it to another to the exclusion of the first group.

The trend of the proposals about which we are speaking, as well as other proposals, is to enlarge the scope of the application of criminal contempt cases to include a great multitude of American activities—a field so broad that it covers the daily lives of the people, and includes such questions as where we may eat, where we may sleep, and where we may go to a theater. It covers employment, reemployment, promotions, the firing of people, and a multitude of other things. Still those activities are brought within the new scope of criminal contempt that can be handled without a jury trial. That is the greatest part of the entire picture. It makes no difference whether 1 or 100 have been denied a jury trial. The issue involves the system of law that we are building up outside the ordinary jury trial requirements under the Constitution of the United States.

Congress has a special responsibility in that field. The question has already been presented to the Congress several times before. The Senator from Mississippi does not know of any instance, until now, in which it has been turned down.

Last Thursday it was rejected, but only on a tie vote. In major fields under the antitrust laws there is provided a right to trial by jury. At the time of the passage of the Norris-La Guardia Act, after labor came in and presented its case, the right to trial by jury was granted in an amendment. The question was before the Senate when it considered the Civil Rights Act of 1957. When the bill came to the Senate in 1957, it denied the right of trial by jury. But, as the Senator from Georgia pointed out a moment ago in his questions, that part of the bill was changed on the floor of the Senate. It was voted on by the two Senators who have since been elevated to the Presidency. It was voted for by a great majority of this body. The amendment gave the absolute right which is now proposed in the Talmadge amendment. The 1957 act, as it passed the Senate, contained that amendment, but it was modified later—not in conference but by the House—and a provision granting a right to trial by jury in certain cases was retained. Later, in 1959, I believe, the Landrum-Griffin Act was passed. In that act the same principle was dealt with.

I think it is highly significant—and I call this to the special attention of the Senator from Georgia—that in the final enactment of the law by Congress when this question was raised, Congress never failed to insert a provision for a jury trial. True, in 1957 it was a hybrid, split-level provision, but there was a provision for jury trial. As late as last Wednesday the effort was again made, and it received 45 votes.

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

Mr. STENNIS. I yield.

Mr. TALMADGE Is it not true that the substitute which has been proposed by the distinguished majority and minority leaders would authorize a judge to impose a fine of $300 or a jail sentence of 30 days without a jury trial?

Mr. STENNIS. Will the Senator repeat that question?

Mr. TALMADGE. Is it not true that the substitute amendment offered by the distinguished Senator from Montana, the majority leader, and the Senator from Illinois, the minority leader, would authorize the judge, in criminal contempt cases, to impose a fine of $300 or a jail sentence of 30 days without a right of trial by jury?

Mr. STENNIS. Yes. The Senator has correctly stated what that unfortunate amendment would do. It does not go far enough.

Mr. TALMADGE. Yet that same substitute amendment would grant a jury trial if the fine imposed was $300.01.

Mr. STENNIS. The Senator is correct.

Mr. TALMADGE. Or would authorize a jury trial if the sentence were 30 days and 1 second. Is that correct?

Mr. STENNIS. Yes. That is a provision of the bill which, unfortunately, comes from a statute on the subject, the Civil Rights Act of 1957.

Mr. TALMADGE. Does the Senator believe that the greatest right all citizens have, the right of trial by jury, can be weighed on the basis of 1 cent in money or 1 second in time?

Mr. STENNIS. The answer to that question is obvious. It cannot be done. It is very unfortunate and it is a judicial monstrosity to have a provision in the law that permits the amount of the punishment to determine whether or not there will be a jury trial as a matter of right.

Mr. TALMADGE. The able Senator has been a judge. If the substitute were adopted, would not a judge, before he started to hear a case, have to determine first the guilt or innocence of the accused? Second, after he had determined the guilt or innocence of the accused, would he also not have to determine the amount of sentence he would impose; and would he not have to make those two determinations before he heard a single word of evidence?

Mr. STENNIS. Unfortunately, that is correct. The Senator from Georgia has well stated the situation. It illustrates what an absurdity it is that before any of the evidence has been officially and actually heard—as is supposed to be done in open court—the judge must decide that the man is guilty and that his punishment shall be thus and so—in other words, a certain determination of guilt and punishment.

Mr. TALMADGE. And if he decided that the punishment should be a fine in excess of $300 or a jail sentence in excess of 30 days, he would then have to impanel a jury; is that correct?

Mr. STENNIS. The Senator is correct.

Mr. TALMADGE. Does that comport with the Senator's ideas of sound justice and judicial proceedings—to require a judge to make two decisions as to the guilt or innocence of the accused and the severity of sentence to be imposed before hearing one word of evidence in the case?

Mr. STENNIS. It is contradictory to all our principles of the administration of justice. Let me illustrate. When an ordinary criminal case comes before a judge, he impanels a jury in the box and makes them swear that they will consider the defendant to be innocent of the crime charged until convinced beyond a reasonable doubt, from the evidence, that the man is guilty. He not only swears the jury and instructs them to follow that guideline, but he follows it himself. He must rule on the admissibility, the relevancy, and the materiality of the evidence. As the Senator knows, there are many close questions to be decided.

Both judge and jury are supposed to do that with the premise of innocence applying to the defendant. If a judge has already tried the case to the extent that he has made up his mind that the man is guilty, and he impanels a jury thereafter, can he sit and try that case and give the defendant the benefit of the presumption of innocence? He cannot do it. Furthermore, not only would he deny the accused that right, but the jury would sense, from the judge himself, from the tone of his voice, the guilt of the accused. Furthermore, the jurors would probably be told that they were sitting in a case in which the judge had decided the guilt of the defendant, and that the jury is to decide whether the defendant is guilty or not.

Mr. TALMADGE. If a jury were impaneled, it would be a clear indication not only that the judge thought he was guilty, but thought he should have a severe sentence. Is that correct?

Mr. STENNIS. That is correct.

Mr. TALMADGE. Does the Senator remember the name of the judge who used to try cases by shotgun, and who was known as the law west of the Pecos?

Mr. STENNIS. Yes; the Senator refers to Judge Roy Bean.

Mr. TALMADGE. Judge Bean's court would be a court that all courts trying citizens under this bill could emulate in order to comport with the provisions of this bill. Is that correct?

Mr. STENNIS. He was a mild representative of the judiciary compared with the power sought to be given to the courts under this bill.

Mr. TALMADGE. Judge Bean's court would be the best court in America as compared with what could happen under this bill.

Mr. STENNIS. It would build a new judicial system outside the spirit of the law. There would be thousands of Judge Beans. One man can make a very bad mistake; and the jury is a check on the punishment he may impose.

There are additional points concerning a trial by jury. One phase of the question I shall discuss with respect to the pending amendment offered by the Senator from Montana and the Senator from Illinois is the "split-level" jury trial, which in effect provides that a man has no right to a trial by jury in criminal contempt cases. It does not purport to give him one. It merely provides, in effect, that the judge may not impose a sentence beyond a certain point without granting a jury trial. That decision is left in the control of the judge. It is not governed by a congressional mandate. It is not a matter of living up to one's responsibility. The provision is that the judge may grant a jury trial if he has already decided that the punishment should be imprisonment for more than 30 days or a fine of more than $300. However, the process that the judge must go through—and we are talking about an honest and upright judge—to reach a conclusion as to what the punishment shall be is that, in effect, he must try the accused, as the Senator from Georgia says, and find him guilty, or reach a conclusion that the 30 days or $300 is not enough punishment.

In going through that process, which is the vital part of the case to the judge, the bill would give the defendant no right to be heard. He would have no right to be represented by counsel. He would have no right to summon witnesses. The judge would make decisions on the basis of impressions which he might receive from witnesses, and not evidence presented in a judicial way. This is an unthinkable procedure. It would not have to be in open court. It would really take us back to the old star chamber days. There would be no requirement for representation, and no requirement that the defendant have the right to summon witnesses and present his testimony in open court where people could hear it, and the newspapers could record it. In that respect, it would be directly contrary to our elemental principles of justice.

It should be remembered that we are discussing a criminal act. We are not talking about the refusal of someone to carry out an order of the court. That comes under civil contempt, and a judge could handle that offense without a jury. We are talking about an act that a defendant committed, which someone believes is a criminal violation of some order of a Federal court.

Mr. TALMADGE. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am happy to yield to the Senator from Georgia.

Mr. TALMADGE. In one of those criminal contempt cases, would not the judge himself be the prosecutor?

Mr. STENNIS. He could not avoid being the prosecutor, because he would be the court, and it would be his tribunal.

Mr. TALMADGE. Would not the judge himself, in addition to acting as prosecutor, serve the same purpose as a grand jury?

Mr. STENNIS. Yes; there would be no grand jury. I am glad the Senator brought up that point. There would be no grand jury to pass on the charges, even though they would involve criminal law. The judge would be the only grand jury.

Mr. TALMADGE. In addition to being the prosecutor and the grand jury, would he not also serve as a petit jury?

Mr. STENNIS. The Senator is correct. He would be the jury, too. He would be the 12 men, tried and true.

Mr. TALMADGE. As the prosecutor, would he not also act as the chief prosecuting witness?

Mr. STENNIS. The Senator is correct to a degree. To a degree, he would be the injured party.

Mr. TALMADGE. After having assumed all those functions, would he not pass sentence?

Mr. STENNIS. The Senator is correct. He would go back, then, to the true judicial function of passing sentence.

Mr. TALMADGE. After doing all of that, would he not also act as executioner?

Mr. STENNIS. The Senator is correct. He would be the executioner. He would carry out his own orders.

Mr. TALMADGE. So under this procedure, a judge alone would be exercising every function designed by the Founding Fathers to protect American citizens; is that not correct?

Mr. STENNIS. The Senator is correct. The judge would be refuting and running contrary to the progress which has been made through the law for 800 or 900 years, building a little at a time a wall of freedom and liberty for the average person, regardless of his station in life, the color of his skin, his religion, or his national origin. This bill would run contrary to all those safeguards.

Mr. TALMADGE. Does the Senator believe that we could do all those things and rightfully declare that we were enlarging the civil rights of the American citizen?

Mr. STENNIS. We would be greatly constricting and restricting the fundamental civil rights of all the people under the guise of protecting the civil rights of some. The bill was written on the basis of enthusiasm and emotion. Good intentions, however, are not enough. I concede that the intentions of the proponents are good. However, they run contrary to the basic principles upon which our country was founded. I am glad to say that we are making headway toward convincing our fellow Senators that that is true.

Mr. TALMADGE. I thank the Senator from Mississippi. I agree wholeheartedly with him.

Mr. STENNIS. I thank the Senator from Georgia for his contribution.

Mr. President, I was looking for a magnificent quotation from one of the Justices of the Supreme Court, in which he summed up all the points the Senator from Georgia was making. I do not have it readily at hand at the present moment, but later I shall come back to it.

Mr. President (Mr. McINTYRE in the chair), I wish to emphasize with the greatest clarity I can muster that we are not dealing with a mere racial question. We are not dealing with a sectional matter; we are not providing for a rule of law with reference to jury trials to apply to one particular kind of group. We are dealing with principles which will plague us in the years to come if the bill is enacted. If the Nation starts to follow such practices,the so-called little people, those who are subject to oppression and pressures of various kinds, will suffer.

I do not believe that there is a more prominent red light or caution warning which could be possibly flashed upon the American scene today than the warning with reference to jury trials.

If I may make one passing observation based on years of experience—I do not like to keep referring to them because they are personal in a way but, after all, there is nothing like experience to enable one to understand principles—in all the years that I was a judge in criminal cases, I remember a good many cases in which, if I had had to render a verdict, I would perhaps have rendered a guilty verdict, whereas the jury rendered one of not guilty. In many of those cases, time proved the jury to be right. It proved that the jury had understanding and perception, and understood the background of the cases better,

after having heard the evidence, than I did.

Mr. President, I am opposed to the amendment No. 516 proposed by the Senator from Illinois [Mr. DIRKSEN] for himself and the Senator from Montana [Mr. MANSFIELD], as a substitute for amendment No. 513. I wholeheartedly support amendment No. 513 offered by the distinguished Senator from Georgia [Mr. TALMADGE] in which I joined as a cosponsor. I was privileged and pleased to join the Senator from Georgia in presenting this amendment because it would secure basic and fundamental rights by providing for a trial by jury in all criminal contempt cases.

I am convinced that this is the American way and is in keeping with the spirit of the Constitution which provides for a jury trial in all criminal proceedings. Of course, I am mindful of the court precedents holding that a defendant is not entitled, as a matter of right, to a jury trial in a criminal contempt proceeding. But even if in a strict constitutional sense, the defendant is not constitutionally entitled to a jury trial in criminal contempt cases, in fairness and in justice and in keeping with our sound principles of Anglo-Saxon law, he should be granted a jury trial. Certainly, the Constitution does not prohibit a jury trial in criminal contempt cases. And in the case of basic and fundamental rights of an individual, where a person is charged with a crime and the conviction carries with it a jail term, then any doubt in the matter should be resolved in favor of a jury trial. A jury trial in criminal cases, where an individual's liberty is at stake, is of supreme and vital importance. Indeed, the right to a jury trial, in cases where an individual may be imprisoned upon conviction is one of the basic and fundamental bulwarks of our entire system of government. Under this system our Nation has grown great and our people have maintained their freedom. This fundamental right should not and must not be abandoned.

I know that Senators will recall the long debate in the Senate in 1957 over the so-called civil rights bill that year. During that debate after long discussion, the Senate adopted the amendment proposed by the late Senator from Wyoming, Mr. O'Mahoney; the late Senator from Tennessee, Mr. Kefauver; and the Senator from Idaho [Mr. CHURCH], which would have guaranteed jury trials in all criminal contempt cases.

In 1957 the proponents called the debate a filibuster. The bill came from the House without any semblance of protection with reference to jury trials. Finally, by a substantial yea-and-nay vote the jury trial amendment was added. In conference the amendment was whittled down to the split-level amendment to which I have referred, which provided for jury trials in some circumstances.

Now, 7 years later, we are back in debate on the same general subject matter. I hope that the Senate will adopt an absolute amendment which demands and gives, as a matter of law the right of trial by jury in all criminal contempt cases.

What is happening now is a complete refutation of the charge that it was a waste of time in 1957 or that it is a waste of time to force consideration of such an amendment.

By the rollcall vote of 51 to 42, the jury trial amendment was approved by the Senate in 1957. This was a straight jury trial amendment, applicable to all criminal contempt cases, and was similar to the Talmadge amendment now before the Senate.

At that time the jury trial amendment had the active support of President Lyndon B. Johnson, then Senate majority leader; the late President Kennedy, then a Senator from Massachusetts; the present Senate majority leader [Mr. MANSFIELD], and many other leaders in the Senate.

Unfortunately, when the bill reached the House the amendment was rewritten by the House and modified so as to provide that in criminal contempt proceedings arising under that act, the judge might proceed in his discretion with or without a jury, but if without a jury he could not impose a sentence of more than $300 or 45 days in jail, upon conviction of the defendant, without according that defendant a new trial, upon demand, with a jury.

Contrary to reason and in a rush to push a civil rights bill through the Congress, the Senate bowed to the House demand for this modification, thus creating the worst "split-level" justice ever devised, under the guise of protecting the rights of a defendant by giving him a jury trial.

The 1957 amendment was a jury trial amendment which did not guarantee a jury trial. The 1957 amendment was bad, but the Dirksen-Mansfield substitute is worse. It is another step in the gradual chipping away at this fundamental civil right of all Americans, the right to a trial by jury. This is just the latest attempt.

Some years ago Congress enacted section 402 of title 18 of the United States Code, which denied the right of trial by jury in criminal contempt cases brought by the Federal Government. Again, in 1957, the Congress adopted the "split-level" jury trial amendment which I discussed a moment ago.

Mr. President, if section 402 of title 18 of the United States Code and the Civil Rights Act of 1957 encroached upon and whittled down the right of trial by jury, H.R. 7152 as now written would trample ruthlessly upon this right. And the substitute amendment proposed by the Senator from Illinois [Mr. DIRKSEN] in behalf of himself and the Senator from Montana [Mr. MANSFIELD] does not help at all.

I think it is unfortunate indeed that proponents of the pending bill, who say they are great protectors of basic human rights, place themselves in the position of denying to individual citizens one of the greatest protections against tyranny and arbitrary government action which the mind of man has ever devised.

The most frequent argument against a trial by jury in criminal contempt cases is one which is, in effect, an argument against the jury system itself. This argument is that there will be times when a jury will not convict and, therefore, the defendant must be denied his basic civil right to a jury trial. Those who make this argument indict and attack the jury system itself in all cases—not merely those involving an alleged violation of civil rights.

I, of course, do not deny that there are cases in which a guilty man has been set free as a result of a jury's verdict. Every lawyer who has been involved in jury trials certainly knows that juries sometimes make mistakes. This happens in cases of murder, larceny, burglary, and other crimes. However, my experience makes me conclude that juries reach the correct decision far more often than they are given credit for.

In any event, the occasional mistakes of juries and the resulting miscarriages of justice are a price which Americans have always willingly paid for the preservation of this basic right of a free people. No real American has ever urged that an alleged murderer be denied a trial by jury because juries sometimes acquit a guilty person. No one in the Senate has ever said that an alleged thief should be tried only by a judge because thieves sometimes escape punishment when the jury errs.

Mr. President, I repeat that with emphasis. No one is proposing a constitutional amendment or introducing a bill of any kind under the guise that a person who is guilty of murder should be denied a jury trial; or that one who has stolen a ham or has committed burglary or even a grave social crime, such as assaulting a woman and committing rape, should be denied a jury trial. No one is proposing that. No one is seeking to attack the jury system as a whole.

The proponents are attempting to get around a jury trial in certain cases by coming through the side door into this limited, microscopic field, until a few years ago it had been a field so small that even a microscope could not have found it.

I know that more and more there is a disposition to try to do away with juries. Many persons do not want to let juries pass on cases. Many persons want to have civil cases tried without juries having anything to do with them. But advocates of the whole spectrum of civil rights want to avoid trials by jury.

The Attorney General, who was highly instrumental in writing the bill, cannot escape the charge that he flatly tried to avoid letting juries pass on civil rights questions which so vitally affect counties, States, and areas in the whole national picture.

This is a deliberate, planned move, for which unfortunately there is some precedent, to get around the use of juries. It has been attempted before.

It was attempted in the field of labor relations about 30 years ago, in the Norris-La Guardia Act. That act provides for jury trials, though, and I am glad it does.

It is necessary to view these problems in proportion to the whole picture in order that we may guard certain areas. The jury system is the best that has yet been devised, even if it is not infallible. None of us would consent to its abolition. I believe that it should be pre-

served in all cases where there is a factual dispute. Its preservation is absolutely essential where an individual's liberty is at stake.

I wish to make it clear that I do not advocate that any court be denied the right to proceed directly in demanding that its orders be carried out, and that it have the remedy under its sole control, always available to require that a mandate of the court be obeyed.

My remarks are directed to criminal contempt, which includes violations of criminal statutes or criminal law of some kinds. I am talking about a person who may be charged with a transgression of the criminal law. All persons are not guilty, by any means. But the case is more important than that. There are those who never get to court because of the principle written into our law that the accused shall have a right to a jury trial. That principle prevents oppression. It is what prevents anyone from taking advantage of the so-called little man in a community. The principle of the jury trial, always in the Constitution and on the lawbooks, keeps those who would be aggressors or who would impose on me or any other citizen from taking a chance on acting.

It is proposed to enlarge the scope of the nonjury trial in fields of activities where disaster would be courted. It would be courting a lack of protection not only to the person who is formally charged in a court with crime, but it is proposed to accord a lack of protection to the average citizen, whoever he may be.

I hope it will be clearly understood that the Talmadge amendment under discussion would insure a trial by jury only in criminal contempt cases and would have no effect upon civil contempt proceedings. On April 21, the able Senator from Georgia [Mr. TALMADGE] read into the RECORD a legal brief outlining the distinction between civil and criminal contempt proceedings in the Federal courts. I commend this memorandum and hope that the Members of the Senate will familiarize themselves with it so that they will fully understand the basic differences between civil and criminal contempts. It is important that this be done and that we all realize that criminal contempt, in essence, involves punishment for an act which constitutes a crime.

In other words, as the memorandum referred to sets forth, cases of criminal contempt are punitive in nature. Such criminal contempt proceedings involve punishment either by a fine paid into the court or by imprisonment for a fixed period. In these cases the defendant must be proved guilty beyond reasonable doubt and cannot be compelled to testify against himself.

That is another matter. This is another word of caution. The degree of proof required before guilt can be adjudged before a jury is that the jury—every member of it—must be convinced. They are sworn to impartiality, and they are selected on that basis. They must be convinced from the evidence beyond a reasonable doubt of the guilt of the defendant. Furthermore, not only 1 of them, not 6 of them, not 9 of them, not 10 of them, but all of the 12 must be believers beyond a reasonable doubt. Someone may say that standard is too severe; it is too much. But that has been the requirement in criminal cases in the United States ever since the founding of this Republic.

Members of the jury are apart from the case, and are not connected with it in any way. They are supposed to know nothing about it, except what they learn from the testimony given from the witness stand. As I have said, they are sworn to impartiality; and each side has a right to excuse within certain limitations, proposed members of the jury, for any reason it may wish to give, or for no stated reason at all, if it desires not to state the reason. So although that seems to be a rather liberal safeguard, time has proved that it is wise and that it works.

On the other hand, as Mr. Justice Black has so clearly pointed out, the judges are parts of the proceedings; and, try though they may—and I am sure they would, it is impossible for them to be absolutely detached from the cases. So by means of this part of the bill we would not only throw overboard the procedure which usually applies in such matters, but we would also make provision for an effect to be had by means of the inclinations or attitudes of the judges, who in a way thus would be parties to the criminal contempt cases.

On the other hand, civil contempt proceedings are remedial in nature. The punishment imposed is for the purpose of compelling compliance with the order of the court. The customary expression is that "the defendant holds the key to the jail door in his own hand." It is only necessary that the defendant be proved guilty by the preponderance of the evidence; and the constitutional protection against self-incrimination does not apply.

I hope all will understand that the Talmadge amendment would apply only to cases of criminal contempt. In other words, it would be applicable only to acts which amounted to the commission of a crime. The amendment would not apply to contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice; nor would it deprive the courts of their power by civil contempt proceedings, without a jury, to secure compliance with, or to prevent obstruction of, any lawful process, order, rule, decree, or command of the court, in accordance with prevailing usages and practices.

Now let us consider how the Talmadge amendment would apply to, and would affect H.R. 7152. As a preliminary, let me say that in criminal contempt proceedings under the pending bill, the entire legal might and power of the U.S. Government would be arrayed against the defendant. Thus, the contest would be unequal. This, in my judgment, makes it doubly imperative that the citizen be afforded the right of trial by jury. Such a right would tend to equalize an otherwise unequal proceeding.

Mr. President, there are honest differences of opinion in regard to many of the provisions of the bill. If the bill were to be passed—although God forbid—there would be many differences of opinion about its application. Many of the small cafe owners and cafeteria owners in the country and thousands of others who would be affected by the provisions of the bill would not throw up their hands in despair, and surrender, but, instead, would fight for their rights. Thus, there would be many, many court proceedings. Such matters would be of the greatest importance to many small businessmen. As a lawyer, I know there would be nothing much more important to a businessman than to be brought into court at a great distance from his place of business and his friends, in a place where his lawyer friends do not practice, and where they would not be permitted to take entire charge of the case. Even though we may assume that he would have a competent lawyer to represent him there, yet, Mr. President, with the power and might of the Attorney General and the Department of Justice arrayed against him, with the assistance of the experienced prosecutors of the Department of Justice, as well as the local district attorney, the contest would not be too fair.

I do not believe we could imagine anything worse, in our day-to-day affairs and in connection with day-to-day matters affecting citizens, than to require a defendant to stand trial in such a situation. Furthermore, such cases would not be "chicken feed"; and the parties to them would be "playing for keeps." I venture to assert that there are already in the Department of Justice men who study the success of their "crack" operators in such proceedings—whether before a judge or before a jury. I have heard of such things, and I have heard confirmation of such statements. I do not refer now to an individual. But the special prosecutors they have want to add up their own score. That is natural; it is true of lawyers anywhere; and they feel that in their work of prosecution, they are engaged in a contest, not in a game.

So when a small businessman—regardless of who he might be or where he might live—had to face such a situation, he would be in an awful fix, and he must have the protection of a jury trial in any contempt proceeding arising out of such a trial.

I think that fact of life and the situations which underlie it are not fully understood by many Senators. I wish there were some way in which to get over to them what the bill means. We witness the Department of Justice urging passage of the bill. It has written that no constitutional right is involved. We see all the power that would go with the bill. We observe the Department of Justice keeping watch on the Senate debate. The President of the United States is urging that the bill be passed. The Senator from Minnesota [Mr. HUMPHREY] is urging that the bill be passed. In the effort to pass the bill, the proponents would eliminate many basic rights which belong to our people.

Not the least of these dangers would be the terrible precedents that would be established if we should turn down the

idea of the right of trial by jury in criminal contempt cases. I do not see how we could ever make much headway in having that principle written into any other provision that might come up. There is no other subject as to which the proponents come as near to closing their eyes to what is contained in the bill as is the case with civil right bills. The proponents come to the Senate with a blue ribbon bill that has a special passport. There is some kind of magic in it. It has already been stamped and approved. To some extent—to too great an extent—it goes through without a close examination.

If we should bring in a bill which would regulate truckers as they operate their trucks over the highways, or a bill relating to the railroads, as the railroads operate over their roads, or if we were to talk about providing criminal penalties for violations arising from those operations, and in effect providing that violators should not have the right of trial by jury, the Senate would be turned upside down. The press would be greatly concerned.

But if a bill with a civil rights label on it is brought into the Senate, it is brought in under a great amount of steam. We are not admonished to consider the bill. We are told, "Pass it as it is."

In analyzing the effect of the proposed amendment on the pending bill it is necessary that the titles of the bill be considered separately.

Title I deals with voting rights. It is amendatory of the Civil Rights Act of 1957 as amended. Thus it would appear that any criminal contempt proceedings which might arise under title I would be subject to the provisions of section 151 of the 1957 act.

We should bear in mind the fact that the right to a jury trial afforded by section 151 of the Civil Rights Act of 1957 is very minimal. It does not give the defendant the direct right to a trial by jury in criminal contempt cases generally. Its effect is that, if the defendant in a criminal contempt proceedings is found guilty by the judge and the judge imposes punishment of a fine of $300 or more or imprisonment for 45 days or more, then the defendant, upon his demand, is entitled to another trial before a jury. Even in criminal contempt proceedings, however, if the punishment is less than a fine of $300 or less than 45 days in jail the defendant cannot obtain a jury trial.

I emphasize that the Mansfield-Dirksen amendment contains the same provision as the 1957 Civil Rights Act, except that the term of imprisonment would be 30 days instead of 45 days, as provided in that act.

In a great number of cases the defendants would not have a jury trial. The judge would not be inclined to give the right of trial by jury. He may give the defendants a lighter sentence than he would otherwise impose in order to retain jurisdiction. But so far as the stigma and condemnation are concerned, violators of the law would be forever so marked. It makes little difference so far as honor is concerned whether one is sentenced to jail for 1 day or 31 days. The mark of guilt is still there, and that is contrary to our system of government. With all deference to judges, I know that there would be many who would arbitrarily dispose of cases under the bill in a summary way and, since the punishment would not be more than 30 days imprisonment or a fine of $300, not much proof would be required to convict.

Thus, in all of the cases which can conceivably arise under title I involving an alleged criminal contempt, the defendants would not be entitled to a jury and could be denied a trial by jury by the simple device of holding the punishment below that specified in section 151 of the 1957 act. Except in the most serious cases it is to be assumed that the Attorney General and the Federal judge would take this course.

It will be remembered that when the Civil Rights Act of 1957 was being considered by the Senate, an amendment proposed by the late Senator O'Mahoney was adopted by very substantial vote. That amendment was precisely the same as the amendment now proposed by the Senator from Georgia.

As I have said, Senator O'Mahoney's amendment was adopted by the Senate by a substantial majority. However, when the bill went to a conference with the House of Representatives, the amendment was mutilated and watered down and section 151 was the result.

I felt then, and feel now, that section 151 was inadequate. I think it contravened the spirit of the sixth amendment which provides that in all criminal prosecutions the accused shall enjoy the right of trial by jury.

There is the key word to the entire principle that we are discussing. The spirit and letter of the sixth amendment require that in all criminal prosecutions the accused shall enjoy the right of trial by jury. That means the concurrence of 12 jurors in a conviction of guilt based upon the evidence beyond a reasonable doubt. I see no power in Congress greatly to enlarge the scope of contempt proceedings and make a trial by jury dependent upon the severity of the punishment involved.

The pending amendment would rectify this situation. It would repeal section 151 of the 1957 act and guarantee to a defendant in all criminal contempt proceedings the basic and fundamental right of a trial by jury upon his demand therefor.

As it is, where a voting right suit has been filed and an injunction obtained, an uninformed election official who unwittingly and unknowingly committed some act which the Attorney General thought violated the injunction could be hauled into court, tried by the judge without a jury, and fined or imprisoned in a more or less summary fashion provided that the punishment imposed did not exceed the limits laid down by section 151, 45 days in jail or a $300 fine.

This is a type of procedure which should not be visited upon the free people of this Nation. As I have said before, if H.R. 7152 passes in its present form, with one stroke of the pen it will make the Attorney General the most powerful official in the Government of the United States. He will possess almost unlimited power in these fields of operation. Certainly it is in keeping with all of our principles of justice to interpose between a hapless and helpless defendant and the vast power and authority of the Attorney General and the U.S. Government under this bill, the basic and long-cherished right of a trial by jury in criminal cases. If we fail to do this, then the rights guaranteed to our people by the Constitution and the Bill of Rights will be gradually destroyed.

Let me now consider title II, which deals with injunctive relief against discrimination in places of public accommodations. Under section 204, the Attorney General has a right to bring an action for and in the name of the United States even before a prohibited act has been committed.

Mr. President, that deserves special consideration. There is a proviso in the proposed law that could lead to a man's being charged with contempt of court and convicted before a judge without a jury in a proceeding started before he had ever violated the law, before he was guilty of any conduct that would make him guilty of violating a provision of the Civil Rights Act.

It is only necessary that he finds reasonable grounds to believe that the person is about to commit such a prohibited act and that the purpose of the title will be materially furthered by the filing of an action. There is no control whatsoever placed upon the discretion of the Attorney General to bring such an action under this title.

It would be the same as driving up and down a highway, picking up owners of establishments, and directing them into the court. They would be people in legitimate businesses, obeying the law. The operation would be similar to what we hear takes place in certain areas where squad cars go up and down "drunk row" and "bum row" and pick up all persons found there and take them to the "calaboose" and then determine who may be guilty of something.

All kinds of legitimate businesses would be affected by title II, the so-called public accommodations bill. The Attorney General would be permitted to round them up and take them into the Federal court I have described—with great deference to the court—whether the accused had violated any law or not, but merely because the Attorney General believed that there was a purpose to violate the law.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. JORDAN of North Carolina. Would not the situation be similar to that in which a man gave his boy a thrashing, stood him up over the counter, and asked "What did you do it for?" They boy said nothing. Then the father asked, "What are you thinking now?" The boy said nothing. The father said, "I know what you are thinking, and I am going to give you a whipping again." Is that not about what would happen?

Mr. STENNIS. After the crusade starts, what the Senator has described

will be what will be done by some officials, at least.

Mr. JORDAN of North Carolina. That could be done under the bill; could it not? It would be a question of saying, "You are going to disobey this law, and I am going to yank you up for it."

Mr. STENNIS. The Senator is correct. The provision is that if there is a reasonable feeling that the person is about to do a prohibited act, the Attorney General may act. To justify the arrest of a person for the smallest kind of infraction now, the offense must be committed in the presence of the officer, or the officer must have reasonable ground to believe that the accused has committed a violation of law. The provision in this bill would bring the accused into court before anything had been done, and therefore lay the predicate for proceedings that could result disastrously for him.

To continue with my statement, if, on information satisfactory to himself, the Attorney General should conclude that a small restaurant owner was about to commit a prohibited act, the Attorney General could forthwith go into court, backed by the might of the Federal Government, and bring an action for preventive relief, including an application for a permanent or temporary injunction or a restraining order. Thus, the unequal contest would begin. On one side would be the vast might of the U.S. Government and the Department of Justice. On the other would be the small restaurant owner possessed of limited resources and inadequate financial means. It is obvious that the restaurant owner in most cases would be defeated merely by the filing of the suit itself.

It would be the end of many small businessmen. They might not have done anything, but it might have been thought they did. A small businessman would not be able to go to court and defend himself and make his case because of the lack of finances, perhaps.

Let us go further, however, and assume, as would almost inevitably be the case, that the injunction or restraining order applied for was granted by the court. Suppose then that the restaurant owner, not being learned in the law, should inadvertently and unknowingly engage in some act or practice which the Attorney General or some person complaining to the Attorney General construed as violating the terms of the injunctions or restraining order. The result would be the same as under title I. The defendant would have no definite right to a trial by jury if the acts about which there was a complaint constituted a basis or could be a basis, for criminal contempt proceedings.

Section 204,(c) provides that proceedings for contempt arising under provisions of title II shall be subject to the provisions of section 151 of the Civil Rights Act of 1957. As I have already pointed out, this means only that in a criminal contempt proceedings the defendant would be entitled to a trial by jury only in those cases where the punishment exceeded a fine of $300 or imprisonment for more than 45 days. In all other cases the defendant's property and liberty would be in the hands of the Federal judge alone. The basic and fundamental right of a trial by jury with respect to an act which is alleged to amount to the commission of a crime would be denied to him. This is both unfair and un-American.

I come now to title III, which deals with the desegregation of public facilities. Under it the Attorney General may bring a civil action when he receives a complaint that an individual is being deprived of or "threatened with the loss of" his right to equal protection of the laws, on account of his race, color, religion, or national origin, by being denied access to any public utility other than a public school or public college.

Here again the Attorney General can bring an action before any actual wrong has been committed. All he needs is a complaint that the person complaining is "threatened" with the loss of his rights. Upon receipt of such a complaint the Attorney General has the power to institute suit if he certifies that the complainant is unable to initiate and maintain appropriate legal proceedings for relief and that the institution of the action will materially further the public policy of the United States favoring the orderly progress of desegregation of public facilities.

The action would be brought by the Attorney General "against such parties and for such relief as may be appropriate." He would be expressly empowered to "implead as defendants such additional parties as are or become necessary to the grant of effective relief."

Buried away in title III is the now infamous section 302 which would give the Attorney General the broad and sweeping power to intervene and intermeddle in any action "in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin." In the language of the bill, when such an intervention occurs "the United States shall be entitled to the same relief as if it had instituted the action."

Any lawyer will instantly recognize the broad and sweeping power of this language, couched in two relatively short sentences as old part III, with one exception, which I shall explain. It was part III of the proposed Civil Rights Act of 1957.

That part III was debated on the floor of the Senate for days and weeks. They called that a filibuster, too. Finally, when it came to a vote, the amendment was offered to take part III out of the bill, and when it finally came to a vote—I do not recall now just what the vote was, but it was a sizable majority—it was taken out of the bill and repudiated on the floor of the Senate. The bill then went back to the House of Representatives which had originally passed it, and the House agreed that the Senate was right, they would not hold out for part III, and it fell by the wayside and was dead as Hector, until it came back this time, masked in one particular. The old part III had permitted the Attorney General to file such suits. Section 302 of H.R. 7152 has one little "handle" on it. It provides that the Attorney General may intervene. All that has to be done is for someone else to file a suit. One could go up and down the highway and on the street and get anyone to file a suit. Then this provision says that he may intervene. That means a court cannot keep him out. The Attorney General comes in and the law says he may intervene, so he files as intervener—as I interpret this—and it would have to be granted. This would make the United States a party plaintiff. Then he can bring in such additional parties as he may wish.

The second line then states that he shall have all the powers as if he had filed the action, and the United States shall be entitled to the same relieve as if it had instituted the action.

So there is part III. The Attorney General is in court. He is the plaintiff. He can bring in whomever he wishes. He has to seek relief which goes with the action the same as if he had executed it. There goes one's power of injunction. There goes the right to jerk up people and have them tried without benefit of jury.

Those sentences are actually buried in here in title III—headed, "Desegregation of Public Facilities."

That section has no limitation whatsoever on it. It applies to public facilities. It applies to any other kind of case which might be filed in which it is alleged that there is a denial of equal protection of the law on account of race, color, or national origin.

So, Mr. President, I just do not believe that half the men who signed the bill realize the meaning that those sentences carry.

I know that I have studied it a long time and had I not done so I would not really have realized what it meant because it was hidden there in title III.

A newspaperman one morning about a month ago called me out of the conference room and asked me what I thought it meant. Apparently, on close reading, even though it is buried down in the title, it will have most far-reaching effects and applies to all such cases, whether public facilities or not.

As far as I have heard, there has been no denial on the floor of the Senate of the charge that it does apply across the board. I have not heard it said that it is limited to title III or that it was intended to be limited to title III. This is one of the main provisions in the entire bill. I call it tricky language, to have such far-reaching powers in the bill, which is written into the act to confer upon the Department of Justice—and I am not referring to the present Attorney General—any Attorney General—the power here to proceed in such a broad way to take over a suit merely by getting someone to file a suit or getting some particular pressure group to get some suits filed and then give the Attorney General the power to take them over. The Attorney General may then seek injunctive relief with the possible consequence of imposing criminal punishment without trial by jury.

Mr. SPARKMAN. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield to the Senator from Alabama.

Mr. SPARKMAN. Was not this section in the bill originally sent up to Congress.

Mr. STENNIS. I undertsand that it was not in the bill when the late President Kennedy sent it to Congress. And when these gentlemen signed the bill on this side, as I understand it, it was not in the bill. Is that the Senator's understanding also?

Mr. SPARKMAN. That is my understanding, that it was put in by the subcommittee of the House Judiciary Committee.

Does not the Senator also understand that the Attorney General in testifying on the bill said that he did not wish and did not recommend it?

Mr. STENNIS. I read the Attorney General's testimony on that point. Attorney General Kennedy said, "My position with reference to title III is that I am against it."

Mr. SPARKMAN. Yes.

Mr. STENNIS. Now, in fairness, though, it was in a form, then, different from what it is now in the bill. There is some difference in it. I am not prepared to say just what the difference is, but I believe the power carried in this sentence has been changed.

Mr. SPARKMAN. Does not the Senator—I wish to see if the Senator's memory is in accord with mine—when we had section III in the old 1957 bill.

Mr. STENNIS. We called that part III, then.

Mr. SPARKMAN. Part III, yes. Is it not the Senator's recollection that after considerable discussion of that and the effect it would have and its undesirability, which was shown, that President Eisenhower himself disowned it.

Mr. STENNIS. The Senator is absolutely correct. I remember that in the way it developed. The bill was brought in here, and the Senator from Georgia made a fine analytical speech of what was in it. That was carried by the press. I understand—I did not hear this—but President Eisenhower sent for the distinguished Senator from Georgia and asked him for an explanation of it. I know that later President Eisenhower withdrew his support from title III. It was defeated on the floor of the Senate and failed to be taken up again over in the House.

I appreciate the Senator bringing this point to my attention. The Senator is correct.

Mr. SPARKMAN. In the past, the President who submitted it later disowned it, and Congress decidedly defeated it, and then when the late President who sent the bill up to Congress left it out and when the Attorney General, the one who was supposed to know most of what was in the bill, disowns it, can the Senator give me explanation as to why it should be in this bill?

Mr. STENNIS. Well, I am at a loss for words on that point, except for the reasons I have already stated, that emotions were aroused, water is running strong, this is an election year, and anything put into the bill labeled "civil rights" just goes on and on and on. And it would be heresy to question it, it would be unpatriotic—the way some people say—to even question it, that we would be trying to downgrade certain people, that it must be passed and passed now.

On a prominent television program on Sunday evening a person said, "I demand cloture. I demand a vote. I demand that the bill be passed now." It shows how far this movement has gone.

I believe that if we can keep the debate going long enough, there will be some second thoughts on these questions, and that a majority of Senators will tear this provision out of the bill, just as was done in 1957. However, we must overcome the momentum that is running now.

Mr. SPARKMAN. With respect to taking the bill exactly as it came from the House—and that was the cry when it first came over—is not the Senator of the opinion that a decided change in that attitude has resulted from the debate in the Senate?

Mr. STENNIS. I heartily agree with respect to the matter of jury trials. That is what we are primarily discussing now. I believe that that has become the situation as a result of the 45-to-45 vote, and also as a result of the 46-to-45 vote. Those votes reflected a great change in sentiment. What we are trying to do today is to further discuss these vital issues, so that we may increase those affirmative 45 votes. Something must be done along the line the Senator has mentioned with reference to the old part III, too.

Mr. SPARKMAN. The Senator has read press reports and heard reports on the radio and TV to the effect that a package of amendments is about to be presented.

Mr. STENNIS. Yes; I have heard the reports, but I have not seen the amendments.

Mr. SPARKMAN. But something is stirring.

Mr. STENNIS. Yes.

Mr. SPARKMAN. It is realized that some amendments must be made.

Mr. STENNIS. Yes. I understand what the Senator has in mind. I appreciate his bringing up that point.

Mr. SPARKMAN. I thank the Senator.

Mr. STENNIS. A few days ago that idea was scoffed at.

Mr. President, I ask unanimous consent that I may yield to the Senator from Alaska [Mr. GRUENING] without losing my right to the floor; that the resumption of my remarks will not constitute an additional appearance; and that the Senator from Alaska may suggest the absence of a quorum without my losing my right to the floor.

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

Mr. GRUENING. 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. 216 Leg.]

Aiken	Bayh	Boggs
Allott	Beall	Burdick
Bartlett	Bennett	Cannon
Carlson	Javits	Nelson
Case	Johnston	Neuberger
Church	Jordan, Idaho	Pearson
Clark	Jordan, N.C.	Pell
Cooper	Keating	Prouty
Cotton	Kuchel	Proxmire
Curtis	Lausche	Ribicoff
Dirksen	Long, Mo.	Robertson
Dodd	Magnuson	Scott
Dominick	Mansfield	Smith
Douglas	McGee	Sparkman
Fong	McGovern	Stennis
Gruening	McIntyre	Symington
Hart	McNamara	Walters
Hartke	Metcalf	Williams, Del.
Hickenlooper	Miller	Williams, N.J.
Holland	Monroney	Yarborough
Humphrey	Morton	Young, N. Dak.
Inouye	Moss	Young, Ohio
Jackson	Mundt	

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

Mr. STENNIS. Mr. President, I now resume my discussion of title III of the bill, particularly that part of title III denominated as section 302, which I shall now read for the purpose of the RECORD. Section 302, title III, of the bill (H.R. 7152), begins on page 13, line 4. It reads as follows:

SEC. 302. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action. In such an action the United States shall be entitled to the same relief as if it had instituted the action.

Mr. President, for continuity again in the RECORD I now read literally from title 18 of the United States Code, 1958 edition, entitled "Crimes and Criminal Procedure," chapter 233, entitled "Contempts." The section number is 3691, "Jury trial of criminal contempts." I read:

Whenever a contempt charge shall consist in willful disobedience of any lawful writ, process, order, decree or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any State in which it was done or omitted, the accused, upon demand therefor, shall be entitled to a trial by a jury, which conform as near as may be to the practice in other criminal cases.

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 contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command in any suit or action brought or prosecuted in the name of, or on behalf of, the United States.

I have just quoted section 3691, entitled "Jury Trial of Criminal Contempts." Here there is fully recognized by existing law the principle of trial by jury as applied to criminal contempt cases. The express provision of the Federal law is that in all such matters in a district court there shall be a jury trial granted in all classes of cases, insofar as this section is concerned, except one. I will come to that in just a moment. But, unmistakably, clearly, and forcefully there is recognized in present law the clear principle that the defendant is entitled to a jury trial for disobedience of an order of the court when the act committed also constitutes a criminal offense under acts of

Congress or the laws of any State. The exception to that rule is the same exception that is written in the Talmadge amendment. The exception is that the section shall not apply to a contempt committed in the presence of a judge when it would obstruct the administration of justice. That exception is also carried in the Talmadge amendment.

There is another exception in section 3691 which provides that the entire section shall not apply to cases in which the United States is a party. I raise the question as to why a man should be denied a jury trial merely because the United States is a party to the suit. Certainly the United States is not superior to any citizen thereof. Why should a man be entitled to a jury trial in a contest with a fellow citizen, but not be entitled to a jury trial in a contest with the Federal Government? There is no reason in law or logic for it. The only answer is that a former Congress made that exception when the field of injunctive relief and criminal contempt was much narrower and limited in scope than it is today.

In effect, the Talmadge amendment merely provides that the exception when the United States is a party be stricken.

Section 302 of the proposed law starts by referring to a suit between two individuals, but it provides that the United States may intervene in the name of the United States. So section 302 in the first instance relates to a suit between two individuals. The Federal law now expressly provides that if a criminal contempt is involved in such a suit, a jury trial must be accorded the defendant. But section 302, in effect, further provides that if the Attorney General should intervene, even though he does not change the suit or do anything to make it different in any way, the defendant will not be entitled to a jury trial under criminal contempt.

What rhyme or reason, what logical reason or any other kind of reason, can be given to justify that distinction for this kind of suit?

There is one other question which does arise concerning the recent case decided by the Supreme Court which we have been talking about so much since debate began—the Barnett case. This section did not apply to it. The Attorney General had intervened in that suit, but not as a plaintiff He was there as a friend of the court on request of the court; but, anyway, this section would not have applied because they held that the case was not in district court but was in the court of appeals, whereas this section limits the matter to a district court. That makes no difference, though, because the fact is that the case was the first one in which it was held directly that the Court of Appeals has the authority directly to punish for contempt.

But, coming back to my original proposition, the very principle we are trying to provide here in the bill and which has been heretofore denied, the very principle we were able to get fully recognized on the floor of the Senate in the bill in 1957, but which was later limited in the House, this very principle we are fighting for is already law. It is already in the code, except it does not apply when the United States is a party.

That is why this "sleeper" is in the bill, this hidden section in title III, which gives this vast power to the Attorney General, when he intervenes in a suit. To make it clear and certain, this sentence was added:

> In such an action the United States shall be entitled to the same relief as if it had instituted the action.

Also they added the words in the section:

> The Attorney General, for and in the name of the United States, may intervene in such action.

So that brings it within the exception to the rule about jury trials. This is a very clever, almost secret way of bringing it in. But in this broad authority, the way this bill is written now, a trial by jury in criminal contempt cases will be denied in tens of thousands of cases.

So, Mr. President, if the Senate means what it says about not allowing a jury trial in criminal contempt cases in these titles in the bill, it should repeal this section I have read so there will be no jury trials in any other contempt cases. To be logical and to be consistent, that must be done. I repeat the question propounded by the Senator from Ohio [Mr. LAUSCHE] last week:

> How are you going to square yourself by giving a trial to a labor leader in a criminal contempt proceeding, but jerk up a little individual barber somewhere and skin him alive on identical facts and not give him any trial by jury in the whole proceedings?

Mr. JORDAN of North Carolina. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I am glad to yield to the Senator from North Carolina.

Mr. JORDAN of North Carolina. I should like to ask the Senator from Mississippi a question: If a person is arrested for speeding, and is tried before a magistrate, does he not have a right to appeal his case to a higher court and be granted a trial by jury?

Mr. STENNIS. The Senator is correct. We have magistrates' courts that do not allow jury trials, but under the appeal process takes such a trial to a higher court; the trial is de novo before a jury.

Mr. JORDAN of North Carolina. There is nothing in the law to prevent a man from appealing to a higher court.

Mr. STENNIS. The Senator is correct.

Mr. JORDAN of North Carolina. All he has to do is say, "I appeal to a higher court," and it is granted.

Mr. STENNIS. The Senator is correct. A man says, "I appeal." That is about right.

Mr. JORDAN of North Carolina. He is granted a jury trial as a matter of right.

Mr. STENNIS. As a matter of right, he is granted a jury trial; the Senator is correct.

Mr. JORDAN of North Carolina. This has always been accepted as part of the American system of jurisprudence.

Mr. STENNIS. The Senator is correct.

No one suggests that that be repealed. No one suggests we not give a murderer, a burglar, a thief, or a rapist a jury trial, but they do not wish to give a jury trial under these proceedings.

Mr. JORDAN of North Carolina. I have wondered, since we have become involved in this debate on jury trials, if we were to introduce a bill on the floor of the Senate to do away with all jury trials, whether we would have many Senators supporting it?

Mr. STENNIS. Such a bill would not get one vote—not one single vote.

Mr. JORDAN of North Carolina. I agree with the Senator from Mississippi. We would not get any votes. I cannot understand why, therefore, anyone would wish to do away with the jury trial in this particular case, in this particular bill. It could affect more people than any other one thing which has ever been done in this country. It could do that.

Mr. STENNIS. The Senator is correct. I should like to point out to the Senator, in further response to his inquiries, that in this criminal proceeding for contempt of court when a crime is also involved, Congress does not have to give a jury trial under the Constitution of the United States as interpreted by the Supreme Court. It certainly would abide by the spirit of the Constitution, but it does not have to do so. Congress has already provided that persons shall have the right to a trial by jury in criminal cases, but they made that one exception, "when the United States is a party."

By advocating this bill, the proponents wish to come into the courts of law and make the United States a party, and thereby escape having to give the defendant the benefit of a trial by jury. It is a process that is dangerous. It is not in keeping with our institutions. It sets forth precedents that will gradually destroy the jury system.

Mr. JORDAN of North Carolina. I thank the Senator for yielding to me.

Mr. STENNIS. I thank the Senator from North Carolina for his contribution to this debate.

Mr. President, I do not believe anything can be clearer, or any more forceful, or any more logical than this point right here. That point is that the right of trial by jury in criminal contempt cases is already recognized by present Federal law. There is no split-level limitation on it. It does not depend upon the whim of a judge, or the decision of a judge, as to what the punishment shall be. It provides trial by jury as a matter of right and says, "you shall be entitled to a trial by jury which shall conform as near as may be to the practice in other criminal cases."

So I go back to the original question, Why put this old part III back in here anyway?

No. 2. Why disguise it, as is attempted to be done by sticking it in here in title III under the title of "Public Facilities"?

The third question is, Why disguise it further by putting in the little proviso that the suit must actually be brought originally in the name of someone else,

when it is a very easy matter to have that done?

Why skip the matter of trial by jury and slip in a proviso which makes it come under the exception here?

It all conforms to what I said earlier in the day, that this is a plain, deliberate, conscious design on the part of whoever drafted the bill—and I am not referring to the authors of the bill whose names appear on it, but to the draftsmen of the bill—to evade a basic fundamental principle of our system of government and the spirit of it, as reflected in the Constitution, and the actual requirement of it, as reflected in the statutory law to which I have referred. I believe that is a fair comment. It is characteristic of other provisions in the bill.

The bill is not worthy of the men whose names are shown as its sponsors. I do not believe that they had the time really to look into it and analyze it, or have it analyzed, and did not realize the effect of its far-reaching provisions.

Reference has been made this afternoon to the debate, 7 years ago, in which the late President Kennedy and President Johnson, then Senators, both voted in favor of the jury trial provision.

Reference has been made to the debate in 1957 when we struck out part III of the bill by a yea-and-nay vote in the Senate. Reference was made to the defeat of part III in the Senate, and not defended in the House thereafter, it being almost identical with section 302 of title III of the present bill.

The unlimited power which the Attorney General would acquire under the provisions of this half-concealed section has previously been discussed by me and others. I will not repeat this discussion here. However, it is well to note again that the authority to intervene under this section is not limited to matters involving public facilities. It embraces the entire spectrum and scope of any and all litigation alleging a denial of equal protection of the law because of race, color, religion, or national origin. Its implications are tremendous.

Notwithstanding the broad field of human affairs and human relations which could result in injunctions as a result either of suits originally filed by the Attorney General under section 301 or suits in which he intervened under section 302 there is no provision whatsoever in title III which affords any guarantee whatsoever of a trial by jury in criminal contempt proceedings.

I ask the question again: How can a man be entitled to a trial by jury when the contest is between Sam Smith and James Jones, but not be entitled to a trial by jury when the United States has intervened? No one can explain that to me. I dare say no one will attempt to explain it away. If we are to make a distinction between the two cases, it should be that the man would be entitled to a trial by jury when the Attorney General and the Department of Justice, and great legal array, and the FBI are arrayed against him, rather than a trial by jury when he is arrayed only against his neighbor.

Even the inadequate protection provided by section 151 of the Civil Rights Act of 1957 is not extended to title III. Therefore, even though the punishment in a criminal contempt proceeding under title III exceeded a fine of $300 or a jail term of 45 days the defendant would be denied the right of a trial by jury. He could not get one as a matter of right under this section in its present form under any circumstances.

I do not understand how anyone can contend that this is in accord with basic American tenets of fair play and even-handed justice for all. This section, as it now reads should certainly shock the conscience of those in the Senate who really believe in preserving and protecting fundamental human rights.

Let us discuss the limit of the punishment which could be imposed by a Federal judge in a contempt case arising under title III. I know of none that is prescribed. No limitation is specified in this title.

It is true that section 402 of title 18 of the United States Code provides that, in the case of a natural person, the fine in a criminal contempt case shall not exceed $1,000 and the imprisonment shall not exceed the term of 6 months. But—and I hope this point will be fully understood—the last paragraph of section 402 provides that the section "shall not be construed to relate to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States."

The effect of this exception upon the limitation of punishment was considered by the Supreme Court in *Hill* v. *United States ex rel Weiner*, 57 S. Ct. 347, 300 U.S. 105, 81 L. Ed, 537 (1937), in which it was held that an individual who was convicted of criminal contempt for violating a decree entered in a suit brought by the United States under the Sherman Antitrust Act was not entitled to the benefit of the limitation of punishment under section 402 in view of the provision which I have quoted declaring that nothing in the section should be construed to relate to contempts committed in disobedience of any lawful decree entered in a suit brought by the United States.

That is another illustration. This may sound technical, but is hard law, and it is a part of the record which is necessary to be brought out point by point. It refers to the ceiling on the punishment, and also provides that that shall not be the ceiling in cases to which the United States is a party.

Thus, as matters now stand, and as title III is now written, it would appear that a Federal judge could try an alleged contemnor on a criminal contempt charge without a jury and, upon conviction, there would be no limit on the punishment the judge could impose except for the remote, vague and undefined restrictions which might arise from the eighth amendment's prohibition against cruel and unusual punishment.

We must also be mindful that a Federal district judge, being properly and understandably jealous of the dignity and prestige of his court and the weight of his orders, might very well be prone to an overexaggerated view of the gravity of the act or omission which constitutes the alleged offense. He is the offended party and he is also the party who punishes the offender.

These are but some of the reasons which should compel us to safeguard and guarantee the right of trial by jury in criminal contempt cases. I submit that any legal proceedings in which an individual may be imprisoned or deprived of his property for penal reasons, as is true of criminal contempt proceedings, should be considered to be a criminal prosecution within the meaning of the sixth amendment and all rights guaranteed by that amendment should be accorded the alleged contemnor. Any inconvenience, delay, embarrassment, or freeing of a guilty man which might ensue are far outweighed by the bolstering of our freedom and constitutional liberties which would result.

My comments with respect to title III are equally applicable to title IV which deals with desegregation of public education. Under this title the Attorney General, in the cases specified, is authorized to initiate and maintain legal proceedings "against such parties and for such relief as may be appropriate." In such suits he would have the right to "implead as defendants such additional parties as are or may become necessary to the grant of effective relief."

As is true in the case of title III there is nothing in title IV giving an alleged contemnor the right of trial by jury. Even the inadequate protection of section 151 of the Civil Rights Act of 1957 is denied him. In criminal contempt cases he could and would be hauled before and tried by a judge who would have no statutory limitation on the punishment which he might impose when a conviction resulted.

Injunctive proceedings are entirely possible under other titles of the bill. They are expressly authorized by section 707 of title VII. Again, we find that title VII is entirely devoid of any guarantee that a defendant in a criminal contempt proceeding will be afforded a trial by jury. Not even the minimal protection of section 151 of the Civil Rights Act of 1957 is afforded. As I have pointed out, in cases brought or maintained by the United States, the sky would be the limit insofar as the statutes are concerned. That applies under present law to the right of trial by jury and also to the question of punishment.

Furthermore we shall do nothing more than to protect and preserve a basic and fundamental right if we adopt the amendment of the Senator from Georgia [Mr. TALMADGE]. That right is reflected in present Federal law with the condition that it does not apply in cases in which the Federal Government is a party. My position is that there are more reasons for it to apply in such cases than in any other.

On the other hand, the adoption of the amendment will not destroy or undermine the basic and proper powers of the courts to enforce their orders and commands. As a matter of fact, the sub-

mission of the factual question to an impartial jury will relieve the courts from the oft-repeated charge that the judge who has been offended by the violation of his orders is the very judge who seeks to punish the offender and thus cannot be impartial. This charge results because, in usual practice, an alleged contemnor is tried by the court whose order, decree, or mandate has been violated. In other words, as I have said, it is the offended person who decides the guilt and punishes the offender.

The eloquent and forceful words of the late distinguished Senator from Wyoming, Mr. O'Mahoney, are directly applicable to the question now before us.

On July 16, 1957, a little less than 7 short years ago, while speaking on the floor of the Senate, the late Senator O'Mahoney said:

The right of trial by jury will be taken away under this bill from all persons charged with such crimes unless it is amended to preserve that right, because the bill attempts to clothe the Attorney General with the authority to bring about the punishment of persons so charged without a trial by jury. In every instance the section authorizing the Attorney General to bring a civil action includes as defendants not only persons whom the Attorney General believes are about to commit these offenses but any persons who are alleged to have already engaged in the prohibited acts or practices.

The argument in support of these attempts to take away the right of trial by jury is based upon the contention that Congress has already authorized Government by injunction without a right of trial by jury in many other statutes. We are told that there are 28 such laws. An examination of these statutes reveals the important fact that without exception they seem to deal with the regulation of commerce and with the activities not of natural persons but of artificial persons known as corporations.

That is a significant fact. The right of trial by jury has not heretofore been denied indiscriminately. The exception has not been concerning natural persons, but it has dealt without exception, as Senator O'Mahoney said, with the regulation of commerce and the activities, not of natural persons, but of artificial persons known as corporations. I continue to read Senator O'Mahoney's statement:

No corporation can exist unless it has been brought into being by the act of some government. Governments like corporations are the creatures of men, but men are the creatures of God. And here we come directly to the old, in fact, the eternal issue of human rights versus property rights.

The Constitution of the United States was drafted for the protection of human rights. The drafters were thinking of individuals, of living human persons, when they provided for trial by jury. They made an exception in cases of impeachment because impeachment involves not crime but failure of an officer properly to discharge the duties of office. The framers of the Constitution were so careful to protect the human person against conviction for crime except by jury that even in providing for the trial of treason they wrote it down that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or in confession in open court."

Here is the extreme case, involving treason against the Government of the United States. Even a person charged with such an offense as that cannot be found guilty and cannot be punished until he has had a trial by jury under the ordinary rules that apply in such procedure. The jury must render a unanimous verdict—12 out of 12—all certifying under their oaths that they believe from the evidence beyond a reasonable doubt that the defendant is guilty.

I continue to quote from the statement of the late Senator O'Mahoney.

Shall we now, under color of a civil action on the equity side of the court, break down this shield which for centuries has been the only protection of living persons against the authority or the pretended authority of government? Everybody knows that whenever we attempt by law to violate the Constitution we imperil free government itself because we set a precedent which can easily be followed by future Congresses and future administrations.

That quotation was from the late Senator Joseph C. O'Mahoney, a great constitutional lawyer, a solid liberal, a stanch patriot, and one of the finest Members ever to sit in this body. He was a Member of the Senate for some 25 years, until a few years ago.

Those words are reaffirmed again today in this Chamber. They have been referred to in recent days, and they will continue to be referred to for a long time, so long as men proclaim for their just right of trial by jury. I urge Senators to consider these words of wisdom from that wise and great man.

Mr. David F. Maxwell, of Philadelphia, is one of the 22 lawyers who signed the memorandum which stated the opinion that H.R. 7152 is constitutional—a conclusion with which I strongly disagree. However, since the proponents of this proposed legislation have placed such great weight on Mr. Maxwell's opinion, I think it appropriate to call the attention of the Senate to his views upon the necessity of preserving the right to trial by jury.

The American Bar Association Journal for June 1957, carried a very enlightening article by Mr. Maxwell. At that time he was president of the American Bar Association. In his article he expressed his concern over "the insidious process which has been gradually eroding our right to trial by jury." He said:

For some time I have been deeply concerned by the insidious process which has been gradually eroding our right to trial by jury in civil cases. The right to trial by jury is firmly embedded in the American system of jurisprudence and is as old as the country itself. Reference to it is found in the Declaration of Independence, which deplores the abuses and usurpation by George III "depriving us in many cases of the benefits of trial by jury."

Article VII of the Bill of Rights guarantees trial by jury in suits at common law, where the value in controversy shall exceed $20.

Yet, during the past half century, bit by bit, there has been a whittling away of jury jurisdiction. Arbitration has replaced the jury trial in many areas, notably in the motion picture, building trades, and textile industries, and generally in the field of labor law. Various administrative bodies and tribunals, both on a Federal and State level, are determining the rights of citizens in a manner affecting their everyday lives, without the benefit of juries.

In Saskatchewan, Canada, such a board is vested with authority to award damages in automobile accident cases on the basis of liability without fault, and there are many authorities in this country advocating the adoption of a similar system here. The Compulsory Arbitration Act in Pennsylvania, adapted in 1952, provides that the trial court may, by appropriate rule, substitute arbitration for trial by jury when the amount in controversy is $1,000 or less, and the constitutionality of the act has been upheld by the supreme court of that State.

The extension of this plan to all civil cases is being seriously urged by no less eminent jurists than David W. Peck, presiding justice of the New York Supreme Court, appellate division, first department, and C. Campbell McLaurin, chief justice of the Supreme Court of Alberta, Canada, on the theory that this is the most effective way to attack clogged dockets.

Personally, I have never subscribed to this doctrine. To me, it is more important to preserve the fundamental right of trial by jury than it is to dispose of cases in a hurry.

Furthermore, I doubt whether the jury trial is primarily responsible for court congestion; if so, how can you account for the delays in disposing of cases on appellate dockets in certain States.

Mr. Maxwell's comments were directed specifically to the right of trial by jury in civil cases. Surely they should be applicable with multiplied force to criminal contempt proceedings in which a man can lose, not only his money and property, but his liberty, as well.

Mr. President, in further connection with the matter of jury trials in contempt cases, I wish to read briefly certain excerpts from an opinion written by Mr. Justice Black in a case in which he was a dissenting Justice, and in which he wrote a special dissenting opinion. So I propose to quote briefly from volume 356 U.S. Reports, at page 196, for the October term, 1957. This is the dissenting opinion of Mr. Justice Black in the case of Green against United States, a contempt case. The defendant was tried without a jury and was found guilty, and was sentenced to 4 years in the State penitentiary.

The case holds in what we must recognize as the majority holding, that there is no absolute constitutional right under the present situation to a trial by jury. But the logic, the reasoning, and the force of the dissenting opinion by Justice Black is overwhelming, unanswerable, and compelling. I shall read only briefly:

If ever a group of cases called for reappraisal it seems to me that those approving summary trial of charges of criminal contempt are the ones. The early precedents which laid the groundwork for this line of authorities were decided before the actual history of the procedures used to punish contempt was brought to light, at a time when "[w]holly unfounded assumptions about 'immemorial usage' acquired a factitious authority and were made the basis of legal decisions." These cases erroneously assumed that courts had always possessed the power to punish all contempts summarily and that it inhered in their very being without supporting their suppositions by authority or reason. Later cases merely cite the earlier ones in a progressive cumulation while uncritically repeating their assumptions about "immemorial usage" and "inherent necessity."

Continuing another paragraph by Mr. Justice Black:

Summary trial of criminal contempt, as now practiced, allows a single functionary of

the State, a judge, to lay down the law, to prosecute those who he believes have violated his command (as interpreted by him), to sit in "judgment" on his own charges, and then within the broadest kind of bounds to punish as he sees fit. It seems inconsistent with the most rudimentary principles of our system of criminal justice, a system carefully developed and preserved throughout the centuries to prevent oppressive enforcement of oppressive laws, to concentrate this much power in the hands of any officer of the State. No official, regardless of his position or the purity and nobleness of his character, should be granted such autocratic omnipotence. Indeed if any other officer were presumptuous enough to claim such power I cannot believe the courts would tolerate it for an instant under the Constitution. Judges are not essentially different from other Government officials. Fortunately they remain human even after assuming their judicial duties. Like all the rest of mankind they may be affected from time to time by pride and passion, by pettiness and bruised feelings, by improper understanding, or by excessive zeal. Frank recognition of these common human characteristics, as well as others which need not be mentioned, undoubtedly led to the determination of those who formed our Constitution to fragment power, especially the power to define and enforce the criminal law, among different departments and institutions of government in the hope that each would tend to operate as a check on the activities of the others and a shield against their excesses thereby securing the people's liberty.

Continuing the quotation:

When the responsibilities of lawmaker, prosecutor, judge, jury, and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true and reflecting impartially on the guilt or innocence of the accused. He truly becomes the judge of his own cause. The defendant charged with criminal contempt is thus denied what I had always thought to be an indispensable element of due process of law—an objective, scrupulously impartial tribunal to determine whether he is guilty or innocent of the charges filed against him. In the words of this Court: "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. * * * Fair trials are too important to part of our free society to let prosecuting judges be trial judges of the charges they prefer." *In re Murchison*, 349 U.S. 133, 136–137. Cf. *Chambers* v. *Florida*, 309 U.S. 227, 236–237; *Tumey* v. *Ohio*, 273 U.S. 510; *In re Oliver*, 333 U.S. 257.

The vices of a summary trial are only aggravated by the fact that the judge's power to punish criminal contempt is exercised without effective external restraint. First, the substantive scope of the offense of contempt is inordinately sweeping and vague; it has been defined, for example, as "any conduct that tends to bring the authority and administration of the law into disrespect or disregard." It would be no overstatement therefore to say that the offense with the most ill-defined and elastic contours in our law is now punished by the harshest procedures known to that law. Secondly, a defendant's principal assurance that he will be fairly tried and punished is the largely impotent review of a cold record by an appellate court, another body of judges. Once in a great while a particular appellate tribunal basically hostile to summary proceedings will closely police contempt trials but such supervision is only isolated and fleeting.

Mr. President, interrupting the quotation for a moment, I point out that those are not my words, but the words of a member of the Supreme Court of the United States. Writing in a dissent, on his own responsibility, Justice Black is suggesting—it is not my suggestion—that as a matter of practice it is only once in a great while that an appellate tribunal basically hostile to summary proceedings will closely police contempt powers, but such supervision is only isolated and fleeting.

So, even here, in a situation in which the right of trial by jury in criminal contempt cases is recognized by statute, an exception is made in cases in which the United States is a party. There is another law which puts a ceiling on punishment for contempt. An exception is made when the United States is a party. In one case there is no ceiling for punishment, and in the other, no jury is permitted. Now a member of the Supreme Court of the United States says that on review, summary proceedings, which means those without a trial jury, seldom are very carefully or closely scrutinized. In other words, the judges in appellate courts are very slow to reverse the judge in a trial court who decided the case on the facts without the intervention of a jury. So there are three ordinary safeguards that apply in the average case in which a man is charged with crime, all of which are suspended in these proceedings too often by Congress under congressional act, and one by what Justice Black said is the practice of the appellate tribunals regarding contempt cases.

Continuing with the quotation from Justice Black:

But even at its rare best appellate review cannot begin to take the place of trial in the first instance by an impartial jury subject to review on the spot by an uncommitted trial judge. Finally, as the law now stands there are no limits on the punishment a judge can impose on a defendant whom he finds guilty of contempt except for whatever remote restrictions exist in the eighth amendment's prohibition against cruel and unusual punishments or in the nebulous requirements of "reasonableness" now promulgated by the majority.

In my view the power of courts to punish criminal contempt by summary trial, as now exercised, is precisely the kind of arbitrary and dangerous power which our forefathers both here and abroad fought so long, so bitterly, to stamp out. And the paradox of it all is that the courts were established and are maintained to provide impartial tribunals of strictly disinterested arbiters to resolve charges of wrongdoing between citizen and citizen or citizen and state.

I interrupt the reading of the decision again to raise the question, Why should there be a jury trial when a case is between a citizen and citizen, and no jury trial, even though the case is in the same court, when the contest is between a citizen and his government?

To bring it down to a specific case, under this nefarious section 302, why should a jury trial be granted when a case is filed by Mr. A against Mr. B, and a jury trial denied when the Attorney General intervenes and it becomes a case of Mr. A plus the U.S. Government against Mr. B? Why should Mr. B be entitled to a jury trial in the first instance, and in the same kind of case and under the same facts not be entitled to a jury trial in the second instance?

That shows beyond all doubt what a ridiculous position the bill has taken. It takes the foundation out from under any claim or any logic that could be reasonably propounded to sustain the position of the proponents of the bill.

The bill is drafted in such a way as to willfully, arbitrarily, and consciously avoid having to face a jury, and thereby make the defendants, whoever they may be, run the gauntlet of the ordinary safeguards that would usually apply in contests and in critical situations of this kind.

So I want someone to answer, now or at any other time, the question, Why should a man be entitled to a jury trial under situation A, when a contest is between citizen and citizen, and not be entitled to a jury trial when the contest is between a citizen and the Government?

I continue with Mr. Justice Black's quotation:

The Constitution and Bill of Rights declare in sweeping unequivocal terms that "The trial of all crimes * * * shall be by jury," that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" and 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." As it may now be punished criminal contempt is manifestly a crime by every relevant test of reason or history. It was always a crime at common law punishable as such in the regular course of the criminal law. It possesses all of the earmarks commonly attributed to a crime. A mandate of the Government has allegedly been violated for which severe punishment, including long prison sentences, may be exacted—punishment aimed at chastising the violator for his disobedience. As Mr. Justice Holmes irrefutably observed for the Court in *Gompers* v. *United States*, 233 U.S. 604, at 610–611: "These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure * * * and that at least in England it seems that they still may be and preferably are tried in that way."

Let me emphasize the last part of that quotation: So truly are they crimes that it seems to be proved that in early law they were punished only by the usual criminal procedure, and that at least in England it seems that they still may be and preferably are tried in that way.

Continuing to quote from this very logical and closely reasoned and forceful statement by Mr. Justice Black:

This very case forcefully illustrates the point. After surrendering, the defendants were charged with fleeing from justice, convicted, and given lengthy prison sentences designed to punish them for their flight. Identical flight has now been made a statutory crime by the Congress with severe penalties. How can it possibly be any more of a crime to be convicted of disobeying a statute and sent to jail for 3 years than to be found

guilty of violating a judicial decree forbidding precisely the same conduct and imprisoned for the same term?

The claim has frequently been advanced that courts have exercised the power to try all criminal contempts summarily since time immemorial and that this mode of trial was so well established and so favorably regarded at the time the Constitution was adopted that it was carried forward intact, by implication, despite the express provisions of the Bill of Rights requiring a completely different and fairer kind of trial for "all crimes." The myth of immemorial usage has been exploded by recent scholarship as a mere fiction. Instead it seems clear that until at least the late 17th or early 18th century the English courts, with the sole exception of the extraordinary and ill-famed court of star chamber whose arbitrary procedures and gross excesses brought forth many of the safeguards included in our Constitution, neither had nor claimed power to punish contempts committed out of court by summary process. Fox, "The History of Contempt of Court"; Frankfurter and Landis, "Power To Regulate Contempts," 37 Harvard Law Review 1010, 1042–1052; Beale, "Contempt of Court, Criminal and Civil," 21 Harvard Law Review 161. Prior to this period such contempts were tried in the normal and regular course of the criminal law, including trial by jury. After the star chamber was abolished in 1641 the summary contempt procedures utilized by that odious instrument of tyranny slowly began to seep into the common-law courts where they were embraced by judges not averse to enhancing their own power. Still for decades the instances where such irregular procedures were actually applied remained few and far between and limited to certain special situations.

I call special attention to that point. The courts of the 17th and 18th centuries did not follow the practice of punishing without jury trial except in the court of star chamber, which gave rise to gross excesses which resulted in the safeguards being included in our own Constitution. Finally, that court really passed out of existence and was outlawed, but some time later judges of other courts commenced picking up the power that had once been exercised by the outmoded and really disgraced courts. Though such courts had fallen by the wayside, the precedents were picked up and built into at least a small structure that found its way into our courts. The talk now about no jury trial has been exploded by title 18, section 3691, which I quoted this afternoon; although it has the proviso denying this right in a case in which the United States is a party. In the vote of 45 to 45 and the subsequent vote of 46 to 45 taken last week, the 45 votes for the amendment was really an affirmation of that portion of section 3691 providing for trial by jury as an absolute right, regardless of whether the Federal Government is a party or not.

Continuing the quotation:

Then in 1765 Justice Wilmot declared in an opinion prepared for delivery in the Court of King's Bench (but never actually handed down) that courts had exercised the power to try all contempts summarily since their creation in the forgotten past. Although this bald assertion has been wholly discredited by the painstaking research of the eminent authorities referred to above, and even though Wilmot's opinion was not published until some years after our Constitution had been adopted, nor cited as authority by any court until 1821, his views have nevertheless exerted a baleful influence on the law of contempt both in this country and in England. By the middle of the last century the English courts had come to accept fully his thesis that they inherently possessed power to punish all contempts summarily, in or out of court. Yet even then contempts were often punished by the regular criminal procedures so that this Court could report as late as 1913 that they were still preferably tried in that manner. *Gompers* v. *United States* (233 U.S. 604, 611.) [1]

The Government, relying solely on certain obscure passages in some early law review articles by Fox, contends that while the common-law courts may not have traditionally possessed power to punish all criminal contempts without a regular trial, they had always exercised such authority with respect to disobedience of their decrees. I do not believe that the studies of Fox or of other students of the history of contempt support any such claim. As I understand him, Fox reaches precisely the opposite conclusion. In his authoritative treatise, expressly written to elaborate and further substantiate the opinions formed in his earlier law review comments, he states clearly at the outset:

"The first of [this series of earlier articles], entitled '*The King* v. *Almon*,' was written to show that in former times the offense of contempt committed out of court was tried by a jury in the ordinary course of law and not summarily by the court as at present [1927]. The later articles also bear upon the history of the procedure in matters of contempt. Further inquiry confirmed the opinion originally formed with regard to the trial of contempt and brought to light a considerable amount of additional evidence which, with the earlier matter, is embodied in the following chapters." [2]

Then in summarizing he asserts that strangers to court proceedings were never punished except by the ordinary processes of the criminal law for contempts committed out of the court's presence until some time after the dissolution of the star chamber; he immediately follows with the judgment that parties were governed by the same general rules that applied to strangers.[3] Of course he recognizes the antiquity of the jurisdiction of courts to enforce their orders by conditional confinement, but such coercion, as pointed out before, is obviously something quite different from the infliction of purely punitive penalties for criminal contempt when compliance is no longer possible.

Professors Frankfurter and Landis in their fine article likewise unequivocally declare:

"The Clayton Act [providing for jury trial of certain charges of criminal contempt] does nothing new. It is as old as the best traditions of the common law.

"Down to the early part of the 18th century cases of contempt even in and about the common-law courts when not committed by persons officially connected with the court were dealt with by the ordinary course of law, i.e., tried by jury, except when the offender confessed or when the offense was committed 'in the actual view of the court.'

"[U]ntil 1720 there is no instance in the common-law precedents of punishment otherwise than after trial in the ordinary course and not by summary process." [4]

And Professor Beale in his discussion of the matter concludes:

"As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that is all the chancellor can do.' This imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the king. Down to within a century [Beale was writing in 1908] it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. * * * In any case the contempt of a defendant who had violated a decree in chancery could be purged by doing the act commanded and paying costs.

* * * * *

"Where the court inflicts a definite term of imprisonment by way of punishment for the violation of its orders, the case does not differ, it would seem, from the case of criminal contempt out of court, and regular process and trial by jury should be required." [5]

In brief the available historical material as reported and analyzed by the recognized authorities in this field squarely refutes the Government's insistence that disobedience of a court order has always been an exception punishable by summary process. Insofar as this particular case is concerned, the Government frankly concedes that it cannot point to a single instance in the entire course of Anglo-American legal history prior to this prosecution and two related contemporary cases where a defendant has been punished for criminal contempt by summary trial after fleeing from court-ordered imprisonment.[6]

Those who claim that the delegates who ratified the Constitution and its contemporaneous amendments intended to exempt the crime of contempt from the procedural safeguards expressly established by those great charters for the trial of "all crimes" carry a heavy burden indeed. There is nothing in the Constitution or any of its amendments which even remotely suggests such an exception. And as the Government points out in its brief, it does not appear that there was a word of discussion in the Constitutional Convention or in any of the State ratifying conventions recognizing or affirming the jurisdiction of courts to punish this crime by summary process, a power which in all particulars is so inherently alien to the method of punishing other public offenses provided by the Constitution.

In the begining the contempt power with its essentially arbitrary procedures was a petty, insignificant part of our law involving the use of trivial penalties to preserve order in the courtroom and maintain the authority of the courts.[7] But since the

---

[1] In passing it is interesting to note that even Wilmot felt obliged to bolster his position by pointing to the fact that a defendant, under a notion then prevalent, could exonerate himself from a charge of contempt by fully denying the charges under oath. In this event he could only be prosecuted for false swearing, in which case he was entitled, as Wilmot elaborately observes, to trial by jury. See Curtis & Curtis, "The Story of a Notion in the Law of Criminal Contempt," 41 Harv. L. Rev. 51.

[2] Fox, "The History of Contempt of Court," VII.

[3] Id., at 116–117. See also, id., at 3–4, 13, 54–55, 71–72, 89.

[4] "Power to Regulate Contempts," 37 Harv. L. Rev. 1010, 1042, 1046.

[5] "Contempt of Court, Criminal and Civil," 21 Harv. L. Rev. 161, 169–170, 174.

[6] See *United States* v. *Thompson*, 214 F. 2d 545; *United States* v. *Hall*, 198 F. 2d 726.

[7] Although records of the colonial era are extremely fragmentary and inaccessible, apparently such contempts as existed were not the subject of major punishment in that period. From the scattered reported cases it appears that alleged offenders were let off after an apology, a reprimand or a small fine or other relatively slight punishment. I have found no instance where anyone was unconditionally imprisoned for even a term of months, let alone years, during that era when extremely harsh penalties were otherwise commonplace.

adoption of the Constitution it has undergone an incredible transformation and growth, slowly at first and then with increasing acceleration, until it has become a powerful and pervasive device for enforcement of the criminal law. It is no longer the same comparatively innocuous power that it was. Its summary procedures have been pressed into service for such farflung purposes as to prevent unlawful labor practices, to enforce the prohibition laws, to secure civil liberties and now, for the first time in our history, to punish a convict for fleeing from imprisonment.[8]

Mr. President, I invite special attention to the following words. They are not mine. They are the words of Justice Black:

In brief it has become a common device for bypassing the constitutionally prescribed safeguards of the regular criminal law in punishing public wrongs. But still worse, its subversive potential to that end appears to be virtually unlimited. All the while the sentences imposed on those found guilty of contempt have steadily mounted, until now they are even imprisoned for years.

I cannot help but believe that this arbitrary power to punish by summary process, as now used, is utterly irreconcilable with first principles underlying our Constitution and the system of government it created—principles which were uppermost in the minds of the generation that adopted the Constitution. Above all that generation deeply feared and bitterly abhorred the existence of arbitrary, unchecked power in the hands of any government official, particularly when it came to punishing alleged offenses against the state. A great concern for protecting individual liberty from even the possibility of irresponsible official action was one of the momentous forces which led to the Bill of Rights. And the fifth, sixth, seventh, and eighth amendments were directly and purposefully designed to confine the power of courts and judges, especially with regard to the procedures used for the trial of crimes.

As manifested by the Declaration of Independence, the denial of trial by jury and its subversion by various contrivances was one of the principal complaints against the English Crown. Trial by a jury of laymen and no less was regarded as the birthright of freemen.[9] Witness the fierce opposition of the Colonials to the courts of Admiralty in which judges instead of citizen juries were authorized to try those charged with violating certain laws.[10] The same zealous determination to protect jury trial dominated the State conventions which ratified the Constitution and eventually led to the solemn reaffirmation of that mode of trial in the Bill of Rights—not only for all criminal prosecutions but for all civil causes involving $20 or more. See 2 Story, "Commentaries on the Constitution" (5th ed. 1891), sections 1763–1768. I find it difficult to understand how it can be maintained that the same people who manifested such great concern for trial by jury as to explicitly embed it in the Constitution for every $20 civil suit could have intended that this cherished method of trial should not be available to those threatened with long imprisonment for the crime of contempt. I am confident that if there had been any inkling that the Federal courts established under the Constitution could impose heavy penalties, as they now do, for violation of their sweeping and far-ranging mandates without giving the accused a fair trial by his fellow citizens it would have provoked a storm of protest, to put it mildly. Would any friend of the Constitution have been foolhardy enough to take the floor of the ratifying Convention in Virginia or any of a half dozen other States and even suggest such a possibility?[11]

As this Court has often observed, "The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning," *United States* v. *Sprague*, 282 U.S. 716, 731; "constitutions, although framed by conventions, are yet created by the votes of the entire body of electors in a State, the most of whom are little disposed, even if they were able, to engage in such refinements. The simplest and most obvious interpretation of a constitution, if in itself sensible, is the most likely to be that meant by the people in its adoption," *Lake County* v. *Rollins*, 130 U.S. 662, 671. Cf. Mr. Justice Holmes in *Eisner* v. *Macomber*, 252 U.S. 189, 219–220 (dissenting opinion). It is wholly beyond my comprehension how the generality of laymen, or for that matter even thoughtful lawyers, either at the end of the 18th century or today, could possibly see an appreciable difference between the crime of contempt, at least as it has now evolved, and other major crimes, or why they would wish to draw any distinction between the two so far as basic constitutional rights were concerned.

I complete my reading of that opinion, at page 211. It is an extraordinary dissenting opinion of Mr. Justice Black. I recommend the reading of the remainder of that opinion to my colleagues in the Senate. It refutes, in a closely reasoned opinion, based on extensive research, the idea that there is an immemorial practice of the English law that permits punishment for criminal contempt by a court without a jury trial.

Mr. Justice Black shows that it has no true beginning in history; that, in fact, the assumption that it had such beginning is proved to be false. He shows clearly that the practice is frought with most extraordinary possibilities of wrong.

He shows further, as we have argued here today, that its subversive potential to that end is virtually unlimited.

In other words, what started as a small subject, extending the idea of punishing for contempt without a jury trial, has been extended and enlarged; and those who would extend it have been challenged from time to time and, when sufficiently challenged, Congress has said, "We will give that right of trial by jury," or the principle of the right of trial by jury has been recognized in general law, in section 3691, title 18, United States Code, 1958 edition, to which I have referred.

The principle of it is fully recognized, soundly enacted, and clearly elucidated in the provisions of that section. However, the exception was made when the United States was made a party to the suit.

Taking advantage of that situation, the designers of the bill before us, added section 302 in an effort to brush aside the whole spirit of the Constitution. They brush aside the statute to bring themselves in the back door.

I believe it is already clearly evident that a majority of the Senate will not let them get by with it. They won by one vote the other day. I predict, with the greatest concern for our welfare in the future, that that is the highest vote that they will get, and that our amendment will prevail and that it will be better understood every day of debate.

Instead of making any apologies for taking up the time of the Senate and taking up the time of the Congress, those of us who are fighting this battle should make an apology if we did not stand here and fight for these principles which are imbedded in our law, the principles which the proponents are trying to get around. Insofar as section 302 is concerned, they are trying to do it in a devious way in a hidden section of the law. We shall be here as long as necessary and as long as we are permitted by the rules of the Senate.

Mr. President, I yield the floor.

ORDER OF BUSINESS

During the delivery of Mr. STENNIS' remarks,

Mr. SYMINGTON. Mr. President——

Mr. STENNIS. Mr. President, I ask unanimous consent that I may yield to the Senator from Missouri [Mr. SYMINGTON], without losing my right to the floor, without having my resumption of my remarks counted as a second speech by me today on the pending matter, and with the further understanding that his remarks will be printed elsewhere in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and the Senator from Missouri may proceed.

Mr. SYMINGTON. I thank the distinguished Senator from Mississippi.

DEATH OF REPRESENTATIVE CANNON OF MISSOURI

Mr. SYMINGTON. Mr. President, I understand there is at the desk a resolu-

---

[8] The following are merely random samples of important and far-reaching Federal regulatory acts now in effect under which a violation of any provision of the act is not only a statutory crime punishable as such but also may be enjoined at the Government's request and punished as a criminal contempt by summary process if the injunction is disobeyed. Securities Exchange Act, 48 Stat. 900, 15 U.S.C. 78u; Natural Gas Act, 52 Stat. 832, 15 U.S.C. 717s; Fair Labor Standards Act, 52 Stat. 1069, 29 U.S.C. 217; Atomic Energy Act, 68 Stat. 959, 42 U.S.C. (Supp. IV) 2280; Federal Communications Act, 48 Stat. 1092, 47 U.S.C. 401; Defense Production Act of 1950, 64 Stat. 817, 50 U.S.C. App. 2156.

[9] As early as 1765 delegates from nine Colonies meeting in New York declared in a declaration of rights that trial by jury was the "inherent and invaluable right" of every Colonial (43 Harvard Classics 147, 148).

[10] In 1775 Jefferson protested: "[Parliament has] extended the jurisdiction of the courts of Admiralty beyond their ancient limits thereby depriving us of the inestimable right of trial by jury in cases affecting both life and property and subjecting both to the decision arbitrary decision [sic] of a single and dependent judge" (2 Journals of the Continental Congress (Ford ed.) 132).

[11] Although sec. 17 of the Judiciary Act of 1789, 1 Stat. 73, 83, authorized the Federal courts to punish contempts "in any cause or hearing before the same," it did not, as this Court has pointed out, define what were contempts or prescribe the method of punishing them. *Savin, Petitioner*, 131 U.S. 267, 275. Sec. 17, which contains a number of other provisions, appears to have been a comparatively insignificant provision of the judicial code enacted by the Congress without material discussion in the midst of 34 other sections, many of which were both extremely important and highly controversial.

tion from the House of Representatives. I ask that the Chair lay that resolution before the Senate.

The PRESIDING OFFICER. The Chair lays before the Senate the resolution, which will be read.

The resolution (H. Res. 718) was read, as follows:

Resolved, That the House has heard with profound sorrow of the death of the Honorable CLARENCE CANNON, a Representative from the State of Missouri.

Resolved, That a committee of 43 Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect the House do now adjourn.

Mr. SYMINGTON. Mr. President, on behalf of myself and my distinguished colleague, the Senator from Missouri [Mr. LONG], I submit a resolution for which I request immediate consideration.

The resolution (S. Res. 328) was read and, by unanimous consent, was considered and unanimously agreed to, as follows:

Resolved, That the Senate has heard with profound sorrow the announcement of the death of Hon. CLARENCE CANNON, late a Representative from the State of Missouri.

Resolved, That a committee of two Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

The PRESIDING OFFICER. Under the second resolving clause the Chair hereby appoints the two distinguished Senators from Missouri [Mr. SYMINGTON and Mr. LONG] to serve as the Senate members of the committee.

The remainder of the Senate resolution (S. Res. 328) will be read.

The Chief Clerk read the following:

Resolved, That as a further mark of respect to the late Representative, the Senate, at the conclusion of its business today, take a recess until 10 o'clock a.m. tomorrow.

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

THE SPACE PROGRAM

During the delivery of Mr. STENNIS' speech,

Mr. SYMINGTON. Mr. President, yesterday the Honorable Walter L. Lingle, Jr., Deputy Associate Administrator of the National Aeronautics and Space Administration, delivered an address to the Missouri Bankers Association, in St. Louis, which it was my pleasure to hear.

Mr. Lingle is returning to the Procter & Gamble Co. He left it some time ago, in order to serve his Government, at a reduction in salary of over 90 percent.

Not only because of this patriotic gesture on his part, but also because the talk would appear to be as fine a summary of the space program as has been presented, I ask unanimous consent that his address be printed at this point in the RECORD.

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

THE SPACE PROGRAM

I am going to assume that as bankers and businessmen, you would like first to know something about the history and structure of the organization which manages our country's space program. I have found that this history and structure is not well understood by a great many people.

It is not generally recognized that the organization which manages our space program had its beginning in 1916.

At that time, President Wilson and his Cabinet concluded that the airplane was likely to become an important part of this country's military and commercial fabric. They also concluded that private industry did not have the resources to carry on enough basic research in the field of aerodynamic structures and propulsion to meet this country's needs.

President Wilson asked Congress to establish the National Advisory Committee for Aeronautics as an independent civilian governmental agency, responsible directly to the President. In its charter from the Congress, the NACA was authorized to build facilities for aeronautical research and to advance the state of the art in aeronautics both for the military and civilian sectors of this country's body politic. Much of the dominance which the United States has enjoyed in military and civilian aviation has been due to the basic research of the NACA. Over the years, the NACA created the Langley Research Center at Hampton, Va.; the Lewis Research Center in Cleveland; the Ames Research Center at Moffett Field, Calif.; and the Flight Research Center at Edwards Air Force Base, in California.

At the time the first Russian sputnik made its appearance on the horizon, these centers were going organizations and employed about 8,000 civil service personnel.

Following the appearance of the first Russian sputnik in October 1957, the Eisenhower administration, in response to a tremendous public reaction, decided that a new civilian governmental agency should be created to manage and advance this country's space program.

In May of 1958, the Congress enacted the National Aeronautics and Space Act in which the opening section reads as follows:

"DECLARATION OF POLICY AND PURPOSE

"SEC. 102. (a) The Congress hereby declares that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind.

"(b) The Congress declares that the general welfare and security of the United States require that adequate provision be made for aeronautical and space activities. The Congress further declares that such activities shall be the responsibility of, and shall be directed by, a civilian agency exercising control over aeronautical and space activities sponsored by the United States, except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States (including the research and development necessary to make effective provision for the defense of the United States) shall be the responsibility of, and shall be directed by, the Department of Defense; and that determination as to which such agency has responsibility for and direction of any such activity shall be made by the President."

This statement became the charter of the new National Aeronautics and Space Administration. The NACA was dissolved and all personnel and facilities of that organization were transferred to the new space agency—or NASA, as we now call it. In addition, the Naval Research Laboratory with 400 civilian personnel was incorporated into NASA at its inception. On July 1, 1960, the Army transferred to NASA the Development Operations Division of the Army Ballistic Missile Agency at Huntsville, Ala., with its 5,500 civilian personnel. This is the facility which was, and still is, under the direction of Wernher von Braun.

Thus, NASA had transferred to it approximately 14,000 civil service personnel who had been under the jurisdiction of other governmental agencies before NASA came into being.

I think it is interesting that both the Wilson administration in 1961 and the Eisenhower administration in 1958, felt that a research and development organization of this type should be under civilian and not military jurisdiction. At the same time, it was axiomatic that the resources of such an organization should be available as needed to our Military Establishment.

Setting the organization up as a civilian, rather than a military group has, I believe, at least three advantages.

1. First, this type of research demands outstanding scientific and engineering personnel and many such scientists and engineers are happy to work for the Government only in a civilian agency.

2. An optimum space research effort demands close cooperation with independent scientists and universities and nonprofit organizations, both in this country and abroad. This type of cooperation is hard to attain, unless there can be a rather full disclosure of information between the parties involved and unless the independent scientists feel that they are free from the restrictions of military secrecy.

3. And third, the establishment of worldwide tracking facilities is acceptable to some countries on a civilian basis, whereas it would not be acceptable to the same countries as part of a U.S. military organization.

The Eisenhower administration established a relatively limited set of space objectives for NASA and in the closing years of the Eisenhower administration, the NASA budget was as follows:

	Million
1959	$335
1960	518
1961	967

When President Kennedy came into office, he ordered a reexamination of the country's space program and space objectives. This culminated in May 1961, in a joint recommendation from Mr. James Webb, the Administrator of NASA, and Defense Secretary McNamara to Vice President Johnson and to President Kennedy, setting forth a new and enlarged plan for space research and development.

Incidentally, in his capacity as Vice President, Lyndon Johnson was chairman of the Space Council. This council has general oversight over our country's space activities and consists of the Vice President, the Secretary of State, the Secretary of Defense, the Chairman of the Atomic Energy Commission and the Administrator of NASA.

The recommendation from Messrs. Webb and McNamara pointed out that the space program had four major purposes as follows:

1. International prestige.
2. Scientific inquiry.
3. Possible military uses.
4. Possible economic payoffs.

It was, and still is, in my opinion, impossible to weigh the relative importance of these four major purposes of the program. It would be interesting to know how they

will be evaluated by historians 50 years from now.

President Kennedy seems to have developed in 1961 a concept of our space objectives which I think he best expressed in a speech which he made some time later at Rice University in Houston, Tex. In that speech, he said, and I quote:

"Our leadership in science and in industry, our hope for peace and security, our obligation to ourselves as well as to others, all require us to make this effort * * * and to become the world's leading spacefaring nation.

"We set sail on this new sea," the President said, "because there is new knowledge to be gained, and new rights to be won, and they must be won and used for the progress of all people. For space science, like nuclear science and all technology, has no conscience of its own.

"Whether it will become a force for good or ill depends on men, and only if the United States occupies a position of preeminence can we help decide whether this new ocean will be a sea of peace, or a new terrifying theater of war."

You will note that the President did not say that our national goal is that of landing the first man on the moon—or, for that matter, of being "first" with respect to any single achievement in space. We have done many things first, and we will do many other things first—including, we feel confident, sending the first explorers to the moon—but this is not the objective President Kennedy stated.

Rather, he forcefully declared our determination to attain "a position of preeminence" in space and to "become the world's leading spacefaring nation."

President Kennedy did feel, however, that the whole program would be given focus and cohesiveness if it was built around some single specific and major objective. And it was for this reason that he and his associates decided to make it a national objective to land American astronauts on the moon in this decade and to return them safely.

Three years have now passed since the scope of the present program was agreed upon. And there has been very little change during those 3 years in the charter and objectives to which NASA is adhering.

For the purpose of achieving these objectives, a basic philosophy of organization and operation was agreed upon in 1961 and I believe that NASA has pretty consistently adhered to this philosophy.

Some of the essential elements in this philosophy were as follows:

1. It was agreed that private industry, nonprofit organizations, and our universities should supply most of the resources for the program. The extent to which this philosophy has been followed can be judged by the fact that 92 percent of NASA's expenditures have gone to outside contractors and not spent in-house.

2. It was agreed that NASA would have a decentralized organization and that the backbone of NASA's in-house research and management organization should be in its field centers and not in its Washington headquarters. In addition to the field centers in Hampton, Va., Cleveland, Ohio, Moffett Field, Calif., Edwards Field, Calif., and Huntsville, Ala.—which I have already named and which NASA inherited from other organizations—it has been necessary to create the Manned Spacecraft Center at Houston, Tex., which controls the design of manned spacecraft and the training of astronauts; the Goddard Space Flight Center at Greenbelt, Md., which controls the design and management of weather and communications satellites and of our worldwide communications network; and the Kennedy Space Flight Center at Merritt Island, Fla., just north of the DOD facility at Cape Kennedy, which will serve as the launch site for the lunar landing program and other major manned space missions. In addition, an Electronics Research Center in Boston, Mass., has been approved.

It was agreed that NASA would have a relatively small organization in Washington to establish and control NASA's overall budgets and policy, to control final approval of specific programs and projects, and to coordinate the actions of the field centers. NASA now has about 125 specifically approved projects, each of which has required approval from the administrator before it could be implemented by a field center. Once a project has been approved, the responsibility for contractor selection, contract negotiation, project direction, and management and contract closeout is delegated for each project to one of the field centers. However, contractor selection on all projects involving $5 million or more must be approved by the administrator with the advice and consent of the deputy administrator and the associate administrator.

It was agreed that the Agency's total effort should be broken into four major segments and that four program offices in Washington, responsible to the administrator, would have planning and budgetary control over these four segments. The authority of the field centers to fund and carry out any project must flow to the Centers from one of these four organizational elements in Washington.

These four offices are as follows:

The Office of Manned Space Flight has the responsibility for all manned programs, including the Mercury project which has been concluded; the Gemini project which is now well underway, and in which manned flights may take place in this calendar year; and the Apollo program under which our astronauts will eventually land on the moon. This program office controls approximately 70 percent of NASA's total budget.

Second, there is the Office of Space Science and Applications which has budgetary and planning control over unmanned space missions such as the Telstar, Relay, and Syncom communications satellites; the Tiros and Nimbus meteorological satellites; the Ranger, Surveyor, and Orbiter programs for lunar exploration; and the Mariner programs for exploration of Venus and Mars. This office controls approximately 17 percent of NASA's budget.

It is this Office which is now contributing greatly to improved weather forecasting through its research on weather satellites and which may some day contribute to weather control. This, I suspect, could be a matter of great importance to Missouri bankers.

3. Third, there is the Office of Tracking and Data Acquisition. This Office controls all budgeting and planning for our worldwide tracking and communications network consisting of 47 stations—almost all of which are located in other countries. This Office controls approximately 6 percent of NASA's budget.

4. Fourth, there is the Office of Advanced Research and Technology. Although this Office has few specific missions in space as such, it may well have the most important responsibility in the entire NASA organization. It controls the budgeting and planning for very basic research in materials, structures, propulsion, and life sciences as they are related to our total space objectives. The development of nuclear propulsion, fluoride propulsion and ion propulsion; the development of materials which will stand the heat of reentry into the earth's atmosphere at 40,000 miles per hour (necessary for planetary exploration and almost double the speed which John Glenn experienced); the development of compact onboard power sources for large satellites; the development of life support systems for man in space vehicles, such as the Gemini and Apollo capsules; wind-tunnel research on configuration of airplanes such as those which have made the X–15 program successful and which are expected to make the supersonic transport program successful—all are a part of the responsibility of the Office of Advanced Research and Technology. This Office is looking ahead 10, 15, and even 20 years and will provide the sinews for this country's future dominance in space. It controls approximately 7 percent of NASA's budget.

As these four program offices conceive and budget their projects, there is a constant flow of communication with the Department of Defense through a special NASA office established for that purpose. This link assures the Military Establishment an adequate opportunity to inject its needs into NASA's project planning.

Finally, it was agreed back in 1961 that NASA would lean heavily on this country's university system to provide much of the scientific and engineering support necessary to carry out the program and that we would pursue a policy of building a space research capability in our university system on a broad basis.

As an agency, we have tried to retain in-house only enough scientific and engineering capability and manpower to give us the competence to plan our programs and supervise our industrial and university contractors. At the present time, we have about 30,000 civil service employees on the NASA payroll, of whom 10,000 are scientists and engineers doing research and overseeing our projects. This compares with approximately 60,000 engineers and scientists who are participating in the program full time in industries and in our universities.

In 1965, approximately $150 million will flow from the NASA budget to the universities and colleges in this country. This breakdown is as follows:

	Billion
1962	$1.822
1963	3.647
1964	5.100
1965 (proposed)	5.304

Until the moon landing is achieved, the NASA budget will probably remain near its present level.

In addition to the NASA expenditures, the DOD spends just under $2 billion currently for space projects which it manages. These are purely military projects and are classified.

NASA now has about 1,100 active prime contractors.

In the last complete Government fiscal year, that being the last year for which we have an accurate record, the State of Missouri stands second among all States in the dollar volume of NASA prime contracts and was exceeded only by the State of California. Approximately 9 percent of the total dollar volume of NASA's prime contract awards in fiscal 1963 went to Missouri and I would estimate that this percentage will be about the same in the current Government fiscal year ending June 30, 1964. It should, again, be somewhat the same in the Government fiscal year 1965.

Missouri's participation in the NASA expenditures is, of course, heavily weighted by NASA's contracts with the McDonnell Aircraft Corp. For example, in fiscal 1963, McDonnell received contract awards from NASA totaling $193 million and in the first 6 months of fiscal 1964, it received awards totaling $139 million. My best estimate is that NASA currently accounts for approximately 30 percent of McDonnell's total sales volume.

Since we do not like to burden businessmen with reports to NASA, I cannot tell you what the full financial impact of the NASA program is on the State of Missouri. To get this information accurately would require a complex reporting system. I can only give you a broad basis for making a judgment of NASA's impact.

Out of NASA's current prime contractors, only eight are headquartered in Missouri; but this is not, by any means, a true measure of the financial impact of the program on the State.

A number of prime contractors such as the Eagle Picher Co., the North American Aviation, Inc., and the General Electric Co. are headquartered in other States, but have major facilities where NASA work is performed in the State of Missouri.

In addition, we estimate that NASA's 1,100 prime contractors have 12,000 or more first- and second-tier subcontractors and suppliers. Some sampling which we have done has demonstrated clearly that these subcontractors and suppliers to whom about 50 percent of our prime contract money eventually flows are broadly scattered throughout the United States and that any State with sizable industrial facilities is certain to feel considerable financial impact from the program.

There is also one other factor to be considered.

NASA's largest prime contractor is the Department of Defense. The DOD acts as NASA's agent for contracting out about 20 percent of NASA's current appropriations. Most of this expenditure is for construction of fixed facilities. This construction contracting is largely handled by the Army Corps of Engineers, since the corps manages the bulk of NASA's construction activity.

In recent years, the segment of NASA's appropriations which has gone into the construction of facilities has been as follows:

	Million
1962	$325.7
1963	743.6
1964	673.5
1965 (estimated)	281.0

The construction expenditure has gone largely into ground support facilities such as launch pads, test stands, liquid hydrogen and oxygen storage facilities, tracking and communications systems, and research laboratories. In the main, these have been one-time nonrecurring expenditures which provide the United States with basic testing and launching capability. The rate of appropriation for NASA construction is expected to decline sharply after 1965, but the rate of expenditure for construction will probably not peak out until after 1966 because construction expenditure lags appropriation by at least 18 months.

The contractors and suppliers who are participating in this construction activity are widely dispersed and I am sure that this construction program is having some impact in Missouri. Incidentally, one of the principal architect and engineering firms involved in this program is Sverdrup & Parcel, which has a primary office in St. Louis.

I have mentioned NASA's reliance on our colleges and universities and nonprofit organizations.

Some of the principal university and nonprofit contractors are the University of Missouri at Columbia; Kansas City University and the Midwest Research Institute at Kansas City, and St. Louis University at St. Louis, and Washington University at St. Louis.

A high proportion of NASA's expenditure goes for research and development projects. Because of the difficulty of writing precise specifications for such projects, it has been necessary to let most of our large contracts on a cost-plus-fixed-fee basis. This is a form of contract which we use through necessity. At the same time, we recognize its many disadvantages both from the contractor's and the Government's viewpoint.

For this reason, we are now making every effort to include in new contracts incentive features for achieving specific cost, scheduling, and technical objectives. We are also trying to convert as many as possible of our present CPFF contracts to an incentive basis, in whole or in part, or to identify elements of hardware which can be bought separately on a fixed-price basis.

The establishment of technical, cost, and schedule targets for incentive contracts, which are acceptable to both parties, is extremely difficult. We believe, however, that there is no substitute for such financial incentives as a mechanism of motivating our contractors to give us optimum technical and financial performance—and also for creating through this mechanism the pressure from the contractor on the NASA organization to perform with optimum efficiency.

I cannot overemphasize the importance of incentive contracting as a force for improving NASA's own planning and decisionmaking processes, as well as the contractors.

We expect to write more than $500 million of incentive contracts in the present fiscal year.

As you know, President Johnson has taken a very personal interest in the cost effectiveness and efficiency of companies which are contractors to the Government. We regard incentive contracting as a primary means for achieving the added efficiency which President Johnson seeks.

More than incidentally, we think that they can become a primary means for improving contractor profit levels. It is NASA's policy to let a contractor substantially improve his profit ratios if he can achieve the incentive targets which we mutually establish. Some recent targets which we have established will permit the contractor to more than double the profit ratio which he otherwise would have been agreed to by NASA, if all incentive targets are achieved.

I have tried to emphasize the fact that NASA seeks preeminence for the United States in all avenues of space endeavor and that the lunar landing program is only a part of the broad total. At the same time, it is the spectacular feats of manned flight which generally galvanize interest in the program. So let me close by giving you a few facts about things which are yet to come in the Apollo lunar landing program.

The ability of man himself to explore space is directly proportional to his ability to lift weight into space. Until recently, the Russians have topped the United States in this capability largely because of their early technical inability to make effective nuclear warheads as small as those of the United States.

In the early days of rocket development, it appears that the Russians were forced to build larger rockets than we built in order to create their version of the intercontinental ballistic missile. In turn, they could probably make fewer rockets within their resources. This situation, perhaps, contributed to the fact that the number of our ICBM's now seems to be far larger than the number of Russian ICBM's.

This same set of circumstances, however, meant that the Russians had a weight-lifting capability to put man into space at a much earlier date than the United States.

The largest payload which the Russians have put into space and into earth orbit seems to have weighed about 14,000 pounds.

The Atlas rocket, a military vehicle, which sent John Glenn and his fellow astronauts into earth orbit stood 100 feet high, weighed 260,000 pounds fully fueled and was capable of putting just under 3,000 pounds into earth orbit.

The Titan II rocket, also a military vehicle, which will put the Gemini capsule into orbit is able to put about 7,000 pounds into earth orbit.

Our Saturn rocket is the first which we have designed, not for direct military use, but primarily to put man into space. This first version of the Saturn which has been so successfully tested during the past year, and the final test for which will be completed by early 1965, has put more than 20,000 pounds into earth orbit. We have thus regained the weight-lifting championship from the Russians.

The rocket which will send men to the moon will be the Saturn V rocket. This will have three stages. When fully loaded with the Apollo vehicle on top, it will stand 370 feet high, weigh 6 million pounds, and will be capable of putting 240,000 pounds into earth orbit. This is the equivalent of a Boeing 707.

Static test firings of the first and largest stage of the Saturn V rocket, now being built by Boeing, will begin at our Huntsville installation in early 1965. The first test launchings of this vehicle from Cape Kennedy should occur within the next 2 years.

In the past, we have assembled the stages of our rockets and given them their final checkout while they have stood on their launch pads in Florida. You have seen a part of this on TV. In the future, we plan to assemble and check the rockets out in a giant hangar now under construction at the Kennedy Space Center. This hangar will stand 550 feet high, will be capable of housing four Saturn vehicles for vertical assembly and checkout, and will be by quite a bit the largest building by volume in the world. These vehicles will be carried from the new vertical assembly building to the launch pad, a distance of about 2 or 3 miles, on a giant crawler capable of carrying over 10 million pounds of weight. This crawler is adapted from a strip mining machine designed for the Peabody Coal Co. of St. Louis some time ago.

I will show you from this model the sequence of events which will occur when our astronauts are finally launched on their moon voyage which is still scheduled to occur within this decade. The Saturn V rocket which will burn 900 tons of cryogenic fuel per minute will first put into earth orbit the Apollo vehicle containing three astronauts and the service module. Joined together, these will weigh approximately 90,000 pounds.

After one or two orbits of the earth for orientation purposes, the final stage of the rocket will be fired and will send its 90,000-pound payload on a direct course to the moon.

More than 48 hours later, this vehicle will go into orbit around the moon. Again, after a period of orientation, and perhaps picture taking, the moment of decision will be reached to send two of the astronauts down to the lunar surface in the Lunar Excursion Module. The remaining astronaut will continue to orbit the moon in the Apollo vehicle attached to the service module.

After making their landing on the moon, the two astronauts will remain on the lunar surface for somewhere between 2 and 10 hours—depending on the surface conditions—and should be able to explore to a distance of up to 1 to 1½ miles from the point of their landing.

The two astronauts will then reenter the LEM, fire the rocket engine which is a part of that module, go into a lunar orbit close to that of the Apollo vehicle already orbiting, and rendezvous with the Apollo vehicle. It will have been essential for the rendezvous technique to have been mastered in earth orbit with the Gemini and the Apollo capsules quite some time before this particular moment.

Our three astronauts will then reenter the Apollo capsule, refire the rocket motor which will launch them on a trajectory back to the earth, disengage the service module—which is no longer needed—and continue on for an earth reentry. When they reach the earth ready for reentry, they will be traveling at a speed of approximately 25,000 miles per hour—as compared with the speed of 18,000 miles per hour which John Glenn and the other astronauts attained when they reentered the atmosphere for an earth landing.

The question has arisen in many people's minds as to where the moon astronauts will

land, and I am sure that every citizen of Missouri would like to see them land in the State of Missouri.

The present expectation is that they will not land in any State—but rather, will land on water just as our Mercury astronauts have landed in the past. This will not be because we lack the technical capability to make an earth landing as the Russians have done; but, rather, because the apparatus required for an earth landing would weigh several thousand pounds. We would rather use this weight availability for life support systems to make the astronauts more comfortable and for redundant technical systems to make the vehicle more reliable, than to expend this weight capability in the apparatus necessary to make the landing on land.

Will this lunar landing of U.S. astronauts really happen in this decade? Of course, no one can say with certainty what will happen 5 years from now. There are too many imponderables in our economic, political, social, and technical structure for anyone to say—with more than a modest degree of certainty—that such an enormous and hazardous technical undertaking will be accomplished.

On the other hand, there is no doubt that this country has the resources to accomplish this mission without causing serious drain on other sectors of the economy; there is no doubt that the methods for accomplishing the project are feasible and that it involves no major new technical discoveries or breakthroughs; and there is no doubt that for 3 years, public support of the project has been sustained and continues to be sustained.

In the meantime, the project is certainly serving the purpose which President Kennedy had in mind; namely, as a focus for public attention and public support in building the inherent capability to make this country the world's leading spacefaring nation.

We have positioned ourselves to gain from our space exploration whatever the world of space can contribute to our scientific knowledge and to our many scientific disciplines. It now appears that a vast scientific contribution will be forthcoming.

We have positioned ourselves to gain from space whatever practical applications may be forthcoming and we have already been rewarded with the exciting but relatively primitive results of our communications and meteorological satellites.

We have positioned ourselves to augment our military capability with space technology. I believe that we should be simultaneously thankful that such developments have been relatively minor up to date—while, at the same time, taking comfort from the fact that our space capability for all military purposes today almost certainly exceeds that of Russia.

Finally, we have positioned ourselves to reap whatever international political and psychological advantage exists in a superior space capability; and I believe that there is much evidence that our space program has been of considerable benefit to our country in the field of international relations.

In summary, we have gone a long way and we are continuing to make rapid progress toward the goals which were set for us first by President Eisenhower—and later, expanded by President Kennedy.

WHILE AMERICA SLEEPS—U.S. COLLISION COURSE IN THE MIDDLE EAST

During the delivery of Mr. STENNIS' speech,

Mr. GRUENING. Mr. President, the news in this morning's press that Khrushchev in Cairo is strongly backing the Arab League war against Israel, President Nasser's drive against Great Britain to gain control of the oil reserves of the Middle East and to throw the United States off its bases in Libya should come as no great surprise to those who have realistically studied events in the Middle East during the past 12 years since President Nasser seized power in Egypt and has been kept in power by the United States.

The facts are that ever since President Nasser adopted the policy of "neutralism in favor of Moscow" he has been pursuing the "Soviet line" and espousing Soviet policy. Thus, Khrushchev's statements that he is backing Nasser's drive against Israel is merely a case of Khrushchev affirming his own policy, which Nasser has espoused for him for years.

Last year, in a report to the Senate Committee on Government Operations, on my study of our foreign aid program in certain countries in the Middle East, including Egypt, I stated:

> Egypt has been the most adept at playing the Soviets off against the United States. All three of these Arab States (Egypt, Syria, and Yemen) are absolutely dependent upon Soviet arms—so much so that Soviet transport jets were standing by to transport Egyptian troops to Yemen even before the revolt broke out there and have continued to furnish the transportation for the Egyptian troops in Yemen and their supplies. All three countries, while blowing hot and cold with respect to local Communists, continue to welcome technicians in sizable numbers from the Soviet bloc countries.
>
> Today, militarily, Egypt is completely dependent on Soviet bloc countries. Colonel Nasser has maneuvered himself into the position of being completely dependent on Communist Russia for a continued flow of arms and parts.

Khrushchev did not suddenly and unexpectedly come to support President Nasser's drive to throw the British out of Aden and to seize control of oil reserves of the Middle East. He has been behind Nasser's moves in that direction for years. Khrushchev has pulled the strings—and Nasser has moved. With the help of the appeasers in our own State Department, Russia is about to succeed in its centuries-old drive to control the nations of the Middle East.

Mr. DOUGLAS. Mr. President, will the Senator from Alaska yield for a question?

The PRESIDING OFFICER (Mr. BAYH in the chair). Does the Senator from Alaska yield to the Senator from Illinois?

Mr. GRUENING. I yield.

Mr. DOUGLAS. I hope the Senator from Alaska, who is making a very important and much-needed speech, means by the term "appeasers in our own State Department", appeasers of Nasser, not appeasers of Russia.

Mr. GRUENING. That is correct.

Mr. DOUGLAS. I am glad the Senator from Alaska has made that clear, because I do not believe there are in our State Department appeasers of Russia; but I believe there are persons who are "very soft" on Nasser, so to speak.

Mr. GRUENING. That is correct; and they have been appeasing Nasser ever since he came into power.

Mr. DOUGLAS. I thank the Senator from Alaska.

Mr. GRUENING. Coincidently we find—what only those who were blind could not see—that Khrushchev is following Nasser's drive into Algeria. This morning's New York Times carries an article with the four-column head "U.S. Disturbed by Nasser's Overtures to Algeria."

Only prompt and vigorous action on the part of the United States can stop Soviet success. The time to act is now.

For a year and a half President Nasser has been waging a bloody war of aggression in the Middle East. Egyptian military forces have burned to death untold numbers of Yemenite men, women, and children with Russian-made napalm bombs. Hundreds of millions of U.S. dollars have been given to President Nasser, of Egypt, to help him wage this bloody and senseless war. And while people die in Yemen, our State Department apologizes for Nasser, continues to give him more dollars, and calmly reiterates that Nasser is more moderate than he used to be.

This has been the State Department's attitude since Nasser came to power. It has been unchanged by changing circumstances in the Middle East. Indeed, the United States has saved Nasser and largely made him.

In the past few months, the wolf's clothing in which Nasser has been parading before the world has slipped, and beneath we see the old Russian bear—having been given a footing in the Middle East by Nasser—now reaching for the prize it has sought for so long—control of Middle East oil—and heading for a clash with our own ally, Great Britain.

Over a year ago—on May 8, 1963—the able and distinguished majority whip, Mr. HUMPHREY, on behalf of himself and myself, as well as on behalf of Mr. HART, Mr. CLARK, Mr. MORSE, Mr. MCCARTHY, Mr. ENGLE, and Mrs. NEUBERGER, submitted Senate Resolution 135, aimed at reducing tensions in the Middle East.

The operative part of that resolution provided:

> *Resolved,* That it is the sense of the Senate of the United States of America that the President of the United States use his good offices with the states of the area to negotiate with them either through the United Nations, or directly, an agreement that nuclear weapons will neither be produced in the area nor be introduced into the area; that missiles of a mass-destruction nature will neither be produced nor be introduced into the area; that an international policing system will be adopted to enforce such agreement; and that the United States continue, in accordance with the tripartite declaration of May 1950, to take all necessary and appropriate actions, both within and outside the United Nations, to prevent any violation of existing frontiers or armistice lines in the Near East; and that the United States, either through the United Nations, or directly with other nations in the area, devise means to bring to an end the recriminations and incitements to violence which are contributing to tension and instability in the Near East.

A month earlier, alarmed over my findings after an extended trip to the Middle East for the Senate Committee on Government Operations, to study our foreign aid programs there, I had written to the late President Kennedy two letters point-

ing out the grave dangers to world peace. On April 10, 1963, I wrote him as follows:

It is my firm conviction that U.S. foreign policy in the Middle East is set on a disaster course just as surely as it was when we thought we could appease Hitler.

I fervently hope that no future historian will be able to write a book concerning this period of U.S. activity in the Middle East entitled "While America Slept."

In the year that has passed since Senate Resolution 135 was submitted, no hearings on it have been held by the Senate Committee on Foreign Relations, to which the resolution was referred.

In the past year, however, President Nasser of Egypt has not been idle.

I wish I could report that, with an economically underdeveloped country, President Nasser has spent the past year devoting all his time and energies and the hundreds of millions of dollars in aid given him by the United States in building up the economic resources of his own country.

But I cannot so report, for President Nasser has spent the past 20 months, not in peaceful pursuits, but in waging a cruel and devastating war in Yemen—a war financed in good measure by U.S. economic assistance, and more recently in seeking to extend that war to Aden, in an attempt, openly admitted, to put Great Britain out of that area and to control the oil that is there himself.

He has also spent the past year attempting to circumvent U.S. foreign policy, wherever, whenever, and however he could. He has attempted to add fuel to the fires now raging in Cyprus. He has urged Libya to throw the United States off its military air base in that country—a base constructed and maintained at great cost to the American taxpayers, and for which we have paid millions in blackmail to the Government of Libya.

It is striking to note that the news of this morning states that Khrushchev is supporting the demand that we abandon our $100 million base in Libya—a base which has been of very great aid to that backward people.

And his power has waxed so great—due to U.S. aid—that Libya has announced its intention to accede to his pressure, although the presence of the $100 million Wheelus Air Force Base has been of great economic benefit to Libya, in addition to the other economic aid which the United States has been pouring into that backward and undeveloped country, 90 percent of whose people are illiterate and poverty stricken.

Nasser has sought to interfere in the dispute between Algeria and Morocco—two nations also receiving U.S. aid.

I do not seek to give the impression that President Nasser of Egypt has confined his aggressive actions to the meddling outside his own borders. He has also been very busy at home preparing for aggression—also aided in this endeavor by U.S. dollars.

Years ago, President Nasser gave refuge in Egypt to Nazi scientists wanted in Germany for their crimes. He wanted them to help him perfect his missile arsenal. Many of these Nazis were known concentration-camp operators with the most brutal records.

While the United States has continued its economic support of Egypt, these Nazi scientists during the past few years have been working diligently to support Nasser's aggressive intentions and give him the military strength to carry them out. Apparently they are succeeding all too well.

According to a report from the Manchester Guardian, which appeared in the Washington Post and Times Herald on May 4, 1964, entitled "Egypt Is Emerging as A-Force," Egypt is making the following three-pronged nuclear effort:

1. Operation Cleopatra: The purpose of this project is to produce nuclear bombs of the Hiroshima type, which are "out of date" but would be ample to destroy Israel's small and highly concentrated centers of population.

Implementation of this project was held up as a result of the inability of the German scientists to produce an easily transportable bomb or a nuclear warhead light enough to be fitted onto a rocket. But the project probably has not been dropped altogether.

2. Operation IBIS: This is the code name for producing small missiles with limited radioactive fallout. These missiles could be used in three different ways—as bombs dropped from aircraft, as warheads for rockets or as shells fired by artillery.

There are indications that missiles of this kind have already been produced and are being stockpiled in Egypt.

3. Operation Strontium 90: Nasser reportedly has given serious consideration to the possibility of causing heavy losses to civil populations by exploding small packages of strontium 90 (weighing 2 to 3 pounds) in Israel and countries friendly to it.

Strontium 90 in powder form could be exploded in small containers, which could be fired from mortar or bazooka-type weapons.

Egypt was beginning to buy the relatively cheap strontium 90 in 1962. Shielding material to protect carriers and users of strontium 90 has been prepared in Egypt. The chief effects of strontium 90 would be to contaminate food and water supplies, without the civil population knowing about it or being able to take precautions.

Mr. DOUGLAS. Mr. President, will the Senator from Alaska yield?

Mr. GRUENING. I yield.

Mr. DOUGLAS. The Senator from Alaska, before he entered political life, was one of the most eminent journalists in the United States. I ask him whether it is not true that the Manchester Guardian is one of the two or three greatest and most reliable newspapers in the world.

Mr. GRUENING. It certainly is. I agree with that definition. It is certainly one of the two greatest, most reliable, most trustworthy, and most responsible newspapers now being published.

The hundreds of millions of dollars that we have given President Nasser supposedly for the economic development of Egypt—which badly needs it—has enabled Nasser to divert his own resources to a missile buildup in Egypt and to wage an aggressive war against Yemen, in which he has used Russian planes to strafe and burn to death villagers in Yemen.

The history of dictatorships has been the same through history. They mistake appeasement for weakness and emboldened by success reach further and further until they overreach themselves. The time to stop a dictator in his reach for power is when he first oversteps the mark. If we had put up the resistance necessary when Hitler first marched into the Sudetenland, the whole course of history would have been changed.

As a matter of fact, had we taken Hitler's own words in his prophetic "Mein Kampf" realistically, we could have stopped his mass destruction and ruthless aggression.

We face the same situation in the Middle East.

President Nasser has again and again proclaimed his intentions. He wants to conquer the Middle East, and destroy Israel. We need not engage in any subtle interpretation of Nasser's actions to come to such a conclusion. We need only listen to his oft-repeated words—even as Hitler also proclaimed his intention to conquer the world and did everything in his power to carry out that intention, including the initiation of World War II.

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

Mr. GRUENING. I yield with pleasure.

Mr. DOUGLAS. When I was in Egypt in 1956 I saw a pamphlet written by Nasser. I take it that the Senator from Alaska has also seen that pamphlet.

Mr. GRUENING. I have read everything that Mr. Nasser has written.

Mr. DOUGLAS. In the pamphlet, does not Mr. Nasser say that there was a continent in search of a hero?

Mr. GRUENING. That is correct.

Mr. DOUGLAS. And he was the hero?

Mr. GRUENING. He admitted that modestly.

Mr. DOUGLAS. He aimed to get control over the continent of Africa and over the states of the Middle East; is that not true?

Mr. GRUENING. Yes.

Mr. DOUGLAS. The whole Mohammedan world, also?

Mr. GRUENING. Yes; and I regret to say that, as I shall develop later in my speech, the administration at that time joined in the effort to rebuff, quite unnecessarily, our traditional allies—Great Britain and France.

We have in the past followed a policy of appeasing Nasser. We have let him call the tune while we literally paid the piper. The time is long overdue to change our policy of neutrality in favor of Egypt. The time is long overdue to stop appeasing Nasser.

This policy of appeasement is not of President Johnson's doing. That is a policy he inherited. His forthright recent speech lending U.S. support to Israel's efforts at water resource development was the kind of a statement needed to clarify the U.S. position in the Middle East.

More is needed, however.

Why should the United States support Israel against aggression and permit its threatened destruction?

Why should President Johnson reverse the disastrous policy carried on by his predecessors?

Because Israel is an oasis of democracy and freedom in a desert of totalitarianism, backwardness, deliberately fomented hatred, and planned aggression,

threatened unceasingly by Arab forces 50 times greater in population and in an area 100 times larger.

Because Israel, more than any of the new nations born after World War II, embodies precisely the ideals and objectives which America professes and for which the United States presumably stands.

Because Israel, ever since its establishment in 1948 and its recognition by President Truman—despite the opposition of his own Secretary of State and his subordinates—has not only preserved all the basic freedoms, but has been a haven of refuge for the persecuted in other lands, stretching its capacities without stint to absorb in whatever numbers the victims of oppression in other less enlightened countries seek admission to Israel.

Because Israel has conspicuously and uniquely used our U.S. aid dollars with honesty, efficiency, and wisdom. In a historic article in Foreign Affairs in April 1961, John Kenneth Galbraith, professor of economics at Harvard, supporting our foreign aid program, listed four qualifications for its success in any country and pointed out that up to that time only one country fulfilled those requirements; namely, Israel.

When I visited Israel among the 10 Middle East countries in 1962 and 1963 I found Israel to be the only one which displayed everywhere signs and markers to designate the projects to which U.S. aid had contributed. These were seen in none of the other recipient countries, whose governments deliberately, in many cases, conceal the source of this aid. In addition, the Israeli Government, at its own expense, had made a color motion picture which was widely shown, illustrating the entire U.S. aid program in Israel. Finally, Israel, despite its heavy responsibilities to its own people has sent out its scientists to assist some of the newly born nations in Africa to solve their problems.

A sound and wise U.S. policy would, therefore, have been and would now and henceforth be, to tell the Arab States to stop their boycott of Israel, their unceasing fomentation of hate, their planning for Israel's destruction, and instead emulate Israel by educating, sanitating, cultivating, and to start emancipating their masses from their chronic poverty, ignorance, and disease.

During the year that Senate Resolution 135 has laid dormant before the Senate Committee on Foreign Relations, Egypt has begun emerging as an A-force.

Nasser's actions in obtaining sophisticated weaponry from the Russians poses a threat to Israel in two ways.

There is first the physical threat of the destruction of Israel. That country is so tiny and its population is so concentrated that Nasser could cripple Israel in a single afternoon.

But, say Nasser's State Department apologists, Nasser has changed—Nasser has matured—Nasser does not mean what he says—Nasser would not take such a rash step against Israel.

Why not?

Similarly in another day the apologists for Adolf Hitler said he was only talking for effect and would not carry out his threats, would not move militarily. Hitler also had his apologists after his Sudetenland seizure who said that Hitler having secured "Lebensraum," could be trusted to keep the peace. All these apologists could say after the invasion of Czechoslovakia, and Poland, and the Low Countries, and France, was: "We were wrong."

Let us not give the apologists for Nasser the opportunity to say: "We were wrong." Let us act now—firmly and decisively—to head off a bloody calamity in the Middle East. A U.N. resolution of condolence will be of little avail or consolation to Israel some day—which I hope will never come—as it contemplates the burning rubble of what was once Haifa and Tel Aviv and New Jerusalem.

I am not a prophet of doom. I am merely a realist. I cannot fail to note the great strides made in the past few years, and even in the last year, by President Nasser on the road to domination of the Middle East.

He has managed to bring King Hussein of Jordan to his side and use him as a catspaw to come to this country and inveigh against Israel taking its share of water from the River Jordan to start irrigating its Negeb Desert.

Up to a year ago, Nasser's Cairo radio was preaching the assassination of King Hussein and was responsible for the assassination of Hussein's predecessor, King Abdullah, because he was known to be friendly to a policy of peace in Jordan's relations with Israel. Jordan is meanwhile receiving half its national income from U.S. aid and its irrigation project is financed by Uncle Sam.

Nasser's threats and violence have caused King Hussein to abandon a policy of "live and let live" and join the pack of would-be aggressors.

Nasser's radio, moreover, continues to revile the United States, classing indiscriminately as enemies Americans, imperialists, colonialists, and Jews.

Emboldened by his ability to "get away" with aggression in Cyprus and in Yemen, President Nasser has now moved against the British Protectorate of Aden. Nasser's goal is simple—control of the oil of the Middle East.

There are many in our administration charged with the conduct of foreign affairs who refuse to face the facts of life. They have in the past played Nasser's game here at home. For anyone who realistically appraises the facts, for anyone who carefully analyzes what has been going on in the Middle East in the dozen years since Nasser seized power in Egypt, it is clear that President Nasser—wittingly or unwittingly—is playing the Communist game. He is the Kremlin's stooge just as surely as if he had proclaimed it as loudly as has Castro. Ample proof is afforded any who doubt this by Khrushchev's statements in Cairo during the past few days.

Consider President Nasser's actions since he came to power. At that time, Moscow was barred from the Middle East. Moscow wanted a toehold there—as Russia had wanted a toehold there for centuries—but was unable to obtain one.

Then President Nasser came upon the scene. He is the one who gave Moscow the entry into the Middle East. He wanted to build up his own power in the Middle East. He wanted arms. We refused to give him arms. So he turned to Russia and bought arms from the Russians, diverting funds U.S. economic aid made available to him. He thus became a Russian captive, dependent upon the continued flow of arms from that country.

While our U.S. military attachés are rigidly restricted in their movements in Egypt, Russia's are there as advisers and confederates. They are assisting Nasser in his war in Yemen and against the United Kingdom in that area which Nasser has invaded with his troops—40,000 of them now.

It was President Nasser also who permitted scores of Russian technicians to come into Egypt. He became dependent upon Russian arms and advice when Secretary of State Dulles precipitately reversed the U.S. promise to aid in building the Aswan Dam. President Nasser has continued to rely upon Russian arms and men to an ever-increasing degree. With his war in Yemen—for which Russia furnishes logistic support—he is even more dependent on Russian arms and men. But withal he has been enabled to carry out Russian objectives because we have been giving him massive doses of aid. He has now come out into the open for all to see that his present aim is to attain Russia's and his No. 1 objective in the Middle East—control over the rich oil-producing areas.

Here is how Nasser expressed his intentions on May 1, 1964, just a few days ago:

> The British take 500 million pounds from the Arab world and give aid to Israel to enable it to purchase arms and rockets from America in order to use them against the Arab world. Israel is now arming itself from funds derived from the Arab world. The British take 500 million pounds and the Americans take 900 million pounds from Arab world oil.
>
> Israel buys rockets from America. Israel obtains aid from America and from Britain. Israel purchases arms from Britain. Therefore, our own funds are arming Israel. With our money, Israel purchases bullets to kill Arabs and to build an army to rival all Arab armies. In view of this, we shall launch an endless war until we rescue the entire Arab nation from British imperialism, domination, influence, and military bases. We do not fear their talk about economic penalties. We can achieve self-sufficiency.

Mr. JAVITS. Mr. President, will the Senator yield? Is this a convenient point at which to yield?

Mr. GRUENING. I yield.

Mr. JAVITS. I have had the honor of joining the Senator in an amendment to test out the whole question of our aid to President Nasser in view of his aggressive and belligerent intentions. In my opinion the Senator has struck an important blow for freedom in the world by raising this question at precisely the right time, in my judgment. The timing is especially significant because of what we see in the visit of Chairman Khrushchev to Cairo and Egypt, with respect to which there is not even an attempt to have the purpose of the meeting subtly referred to. There is clear support for the charges the Senator from

Alaska makes. I think the Senator is giving excellent prescriptions as to what should be done about the situation.

I wish to ask the Senator two questions.

It is often said, with respect to American foreign policy, that we are caught flatfooted by events, and then we react. We react well, with great force and resources, but we are always caught flatfooted. The point the Senator is trying to make is that in this case we should not be overtaken by events which we see coming. Is that correct?

Mr. GRUENING. The Senator is entirely correct. I have said that certain events will take place unless we take precautionary steps.

Mr. JAVITS. I had one further point. The Senator is as familiar with the history of this matter as I am. I did not notice, in the Senator's speech, although I may have overlooked it, any reference to the 1950 tripartite agreement, which guarantees the borders at the boundaries fixed in the armistice and the agreements, most of which took place in 1949.

I wonder if the Senator feels there is any possibility of an alternative to a mutual defense agreement. Does the Senator feel there might be any good in a reaffirmation of the tripartite declaration, as it is called, on the part of the United States and the other parties? Or does the Senator believe that by now it is so far out of date and so much water has passed under the bridge that he would rather have a completely new agreement?

Mr. GRUENING. That is the case. I feel that because of the strained relations that have arisen between the United States and our longtime ally, France—a most regrettable experience—and a similar situation which may take place with respect to our ally, Great Britain—which I hope will not be the case—the time has come when the United States must take the leadership. If it can take it in concert with other nations, well and good. I believe the time has come—indeed it is due—when the United States itself must assert its power and its might, as to the aggression and destruction of Israel, which I am convinced will come unless we take some such step.

Mr. JAVITS. Would the Senator say, if for some reason or other it proved to be impossible to move us into a mutual defense agreement, that he would not reject out of hand the possibility of a reaffirmation, even by the United States alone, of its 1950 declaration, as at least some minimal bringing up to date of our intentions in the area?

Mr. GRUENING. Certainly, no one who wishes to see peace preserved on earth and in the Middle East would reject any move which seemed to be aimed at that desirable objective; but I feel that the situation in the past, and especially the past history of what happened in 1956, to which I make allusion further in my speech, means that it might be more difficult to obtain a tripartite agreement. That agreement would be less effective than action by the United States. I would hope we could move the United Nations, but there we always encounter the danger of a Russian veto, which certainly would be exercised in this case, to say nothing of the opposition of the Arab bloc.

Mr. JAVITS. The Senator from Alaska is rendering a distinct service to the cause of peace, which I know to be closest to his heart.

Mr. GRUENING. I thank my friend from New York. I know that he is enlisted in precisely the same cause and has struck valiant and effective blows for peace.

I believe that we have not succeeded in "scotching the serpent," so something very dangerous and serious might arise.

Mr. JAVITS. I thank the Senator from Alaska for yielding to me, and I am grateful to him for allowing me to intervene.

Mr. GRUENING. There is a second way in which Nasser's securing sophisticated weaponry from Russia poses a serious threat to the security and very existence of Israel.

Since its birth in 1948, Israel has absorbed more than 1½ million refugees fleeing from other lands. In order to carry out successfully this absorption process, it is essential that the economic development of Israel proceed at a steady pace. But with Egypt, with the help of Nazi scientists and Russian arms, building a formidable weaponry system which President Nasser openly proclaims will be used against and for the destruction of Israel, Israel has had to divert a greater and greater share of its wealth to weapons. This comes at a time when U.S. aid to Israel has ceased, but while U.S. aid to Nasser is continuing.

It is clear that the United States is contributing to the war in the Middle East.

It is equally true that the United States is contributing U.S. dollars to the arms buildup by Egypt.

This is unfair, unjust, and in clear violation of our obligations under the Charter of the United Nations. It is in violation of our professions to work for peace on earth.

Just as President Nasser of Egypt is taking bold and reckless steps in the Middle East to spread the conflagration there to the British Protectorate of Aden and to alienate the United States from its traditional ally, Great Britain; so, too, has the time come—it is, indeed, long overdue—for the United States to take bold, constructive steps to insure peace in the Middle East.

One fact that most people who seek to tone down Nasser's role in the Middle East conveniently overlook is that there exists a declared war in that area. The Arab League—including and led by President Nasser—declared war against Israel when that nation first came into existence. That one-sided declaration of war still exists. It has never been rescinded. Israel has never declared war against the Arab Nations.

So that the United States is in the distasteful position of aiding economically nations which have declared war on an ally—an ally which has through the years proved its friendship for the United States and which has—unlike the Arab countries aided by the United States—kept faithfully the bonds with the West and has not—like Nasser has done—played the Soviet game.

How grateful Nasser is to the United States for this aid can be judged from the following statement by Nasser on May 1, 1964:

> A long and continuous struggle lies ahead. We are confronted with threats. British imperialism is threatening us. Yesterday and the day before we read that Britain had sent its foreign minister to America to convince the United States to impose economic sanctions against us. Naturally, if economic sanctions are imposed, we shall not beg anybody. We shall be able to stand and to resist in the same way we resisted in 1956 and 1957.
>
> From America we accept wheat. We do not receive economic aid. Last year we received from America $30 million in economic aid. This year we have not yet received any economic aid. These are loans, and we pay them back with interest.
>
> This year, they said they would give us $20 million, but they have not yet done so. We took wheat—I believe about 1 million tons. And we accepted corn. If they impose economic sanctions against us, then we are prepared to face those sanctions. Those who eat one loaf of bread can eat half a loaf instead, and so we shall do without the wheat.

This statement by President Nasser is a falsehood. It shows the folly of continuing our economic aid program to Nasser.

He says, for example:

> Last year we received from America $30 million in economic aid.

Figures from AID show that our economic aid to Nasser in fiscal year 1963 amounted to $198.7 million, and that our total economic aid to Nasser has been $807.1 million through fiscal year 1963.

In his May 1 speech Nasser says:

> These are loans, and we pay them back with interest.

Last year, when I was in Cairo, I witnessed the signing of a loan agreement between our Ambassador and an Egyptian official for over $30 million to Nasser for an electric powerplant in Cairo. What were the terms? Three-quarters of 1 percent interest, no principal payment for the first 10 years, repayment in 40 years. This amounts—in addition to the loan—to a grant of over $25 million since we borrow money at over 4 percent interest.

We have in this manner loaned Egypt over $658 million, most of it since 1960. So far, Egypt has repaid $317,000, most of it in its own currency which it is at liberty to print at will. Whether these loans will all be repaid, we shall have to wait years and years to see. On many of these loans, the moratorium on repayment still has years to run.

Parenthetically, I might add that in the case of loans to victims of the earthquake disaster in Alaska, interest is charged at the rate of 3 percent per year, although the law permits the Administrator of the Small Business Administration to fix a lower rate down to the three-quarters of 1 percent of our foreign development loans, or even lower. I have repeatedly in the past weeks urged the Administrator, who has the legal power to do so, to lower the interest rate charged Alaska disaster victims so that they will be at least on a par with those to whom we make loans abroad. To date, my pleas have fallen on deaf ears.

Since we are now contributing economically to President Nasser to enable him to obtain arms superiority over Israel and helping him materially to put his weaponry in a position to crush Israel in a matter of hours, there are those who urge that we have an obligation to provide Israel with the sophisticated weaponry needed to serve as a deterrent to Nasser's warlike aims.

This point of view is very tempting to those in the State Department who for years have lacked the vision to appraise facts realistically, who have been so overzealous in support of Nasser's every move that they have overlooked the basic fact that Nasser's self-aggrandizement works directly contrary to the best interests of the United States. They have, through the years, lacked the wisdom and the intestinal fortitude to stand up for the best interests of the United States.

These appeasers in the State Department now find themselves in the position of Frankenstein, the medical student, who having built a monster and unleashed it in the Middle East still lack the will or ability to control the monster.

These appeasers in the State Department have now maneuvered the United States into the position of siding against proved allies, such as Great Britain and Israel, and siding with President Nasser.

They are repeating the tragic mistake committed by the United States when Secretary of State John Foster Dulles' pique led to breaking with our traditional and actual allies, Britain and France, when they, together with Israel, moved against Egypt after Nasser's illegal seizure—made in violation of existing treaties—of the Suez Canal.

Israel's move was necessitated by the increasing assaults by Egyptian fedayeen—gangster saboteurs—who were nightly raiding Israel and murdering its citizens from advance posts in the Gaza Strip.

Egypt was also denying passage through the Canal—likewise in violation of international law and existing treaties—not only to Israeli ships, but any ships carrying cargo to and from Israel, and threatening to cut the only remaining marine lifeline through the Gulf of Aqaba.

Also obvious were preparations by Egypt to carry the war, which it never ceased to declare, militarily into Israel. When Israel's armies marched into the Sinai Peninsula, they discovered enormous stocks of Russian war material clearly intended for the war on Israel.

Although, following Dulles' indications, Britain and France had exhausted every peaceable means, by negotiation, by an 18-nation mission to Cairo, and appeal to the United Nations, to keep the canal under the international control which had been provided by treaty, they were finally driven to the only possible alternative to complete surrender to Nasser's aggression by moving in to occupy the canal.

They had been misled by Dulles into believing that the United States would not oppose this action.

Then the United States committed the irretrievable folly of immediately denouncing the actions of these allies before the United Nations, unilaterally imposing sanctions upon them, denying them oil and credits, "getting in bed with the masters of the Kremlin," and saving Nasser from the oblivion into which he would have sunk but for Dulles' devious, and at times duplicitous, diplomacy. At the very least, the United States could have refrained from taking any action at all and, being neutral, thereby letting events take their course. Nasser would have been disposed of in a matter of hours and peace and progress would have had a good chance in the Middle East. Instead, the United States condoned—in effect, supported—Nasser's prior aggression, and led the fight against Britain and France.

The story is authoritatively detailed in a definitive book just published, written by Herman Finer, professor of history at the University of Chicago, entitled "Dulles Over Suez." It should be required reading for every student of American history, for every Member of Congress, and for anyone who wonders why all is not well in some aspects of our foreign relations.

Dulles' misguided course was in no small degree responsible for the subsequent alienation of France from the United States. Charles de Gaulle learned at that time that France could no longer count on the understanding and support that it had a right to expect from the United States, an ally in two world wars and subsequently by various treaties, and has felt impelled to chart an independent course, to disassociate his country from NATO, and contrive France's own nuclear arsenal.

Dulles' personally conducted policy led the United States to enthrone Nasser and destroy Eden. Are we now going to alienate and injure Great Britain a second time and again support Khrushchev and Nasser in the Middle East?

The U.S. recognition of the Nasser- and Kremlin-supported revolutionary regime in Yemen—which Britain has not recognized—was another act of appeasement for Nasser. The mere fact that after 20 months of warfare by Nasser's troops, now numbering 40,000, and supported by Russian planes and other weaponry, the war is not yet won, clearly demonstrates the lack of popular following in Yemen of that Nasser-supported regime. It was essentially a creation of the Kremlin and of Nasser. The responsibility for that war, which now involves Britain and threatens the oil supplies of the Middle East, rests in large measure on the appeasement and support policies the United States has in the past adopted toward Nasser.

It is high time—indeed, it is long overdue—that that policy be reversed.

For these appeasers in the State Department, the idea of the United States supplying Israel with sophisticated weapons seems to offer a way out of their dilemma. For, they reason, if they adopt this course of action they will have the best of both possible worlds. They will be able to point to this action in answer to criticism of their long-continued action in enabling Nasser to build his own weaponry with U.S. taxpayers' dollars. Their much vaunted but empty talk of neutrality will—they believe—be given the gloss of reality.

The time has come for decisive U.S. action in the Middle East—but not action designed to accelerate the arms race in that area, which giving additional and deadlier weapons to Israel would do.

Before the United States does more than it unfortunately has done in the past to speed the arms race in the Middle East, it has an obligation to the peace of the world to take every conceivable step to stop the arms buildup there and to achieve disarmament.

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

Mr. GRUENING. I am glad to yield to the distinguished Senator from Michigan.

Mr. HART. I have listened with close attention to the remarks of the Senator from Alaska. I have been reluctant to interrupt him. I hope, parenthetically, that the people of this country, not only the people in the State Department, will read with equal attention his observations. I cannot resist the temptation to make a comment at this point.

Of all the solid, persuasive reasons that the Senator has assigned in his speech for thoughtful American action, none should more quickly bring us to a realization of the need for such action than the point which he now makes. It would be easy indeed, would it not, for those in our own Government now under the gun of this criticism to respond by saying, "All right; at noon tomorrow we will pack off x number of atom bombs in planes equipped to carry them and give them to the Israeli Government"?

Would the Senator feel that any offense would be caused to anyone if I suggested that this would be a hand-washing operation, such as occurred at an earlier time in the Holy Land?

Mr. GRUENING. I believe that the historic scriptural parallel which the Senator has stated is very pertinent. That is what I have tried to say; namely, that we will not solve the situation, but that we will indeed exacerbate it, if we pile more arms into one of those countries. We should strive for fewer arms, and try to insure protection under international law. We could do it by declaring our readiness to come to the aid of any nation which is the victim of aggression or threatened destruction.

Mr. HART. Is it not true that the troubles which break out all across this tiny world reflect in large part the emergence of people and nations from the 17th and 18th century into the middle of the 20th century; and is it not true that at no point in the world is the contrast beween the 17th and 20th centuries more dramatic than in the case of Israel, a 20th century people, rubbing shoulders with people, many of whom, without oversimplifying the situation, are still living in the tradition and practices of the 17th and 18th centuries?

Mr. GRUENING. Yes. However, an interesting contrast is presented by the fact that Israel, a nation only 16 years of age, which has been made up largely of refugees from other countries, has adopted the basic philosophy of the United States, with its freedoms—freedom of assembly and freedom of the

press—and is a true democracy in an oasis in a vast desert of totalitarianism, hatred, and violence, and that that is one of the best reasons why the United States should sympathetically support it and do everything possible to prevent this great experiment from being destroyed.

Mr. HART. Is that not only one of the best reasons for the United States responding to the Senator's suggestion, but also, because Israel is such a modern government, in the midst of frictions which are produced by its presence alongside of 17th century darkness, why this should be the last place in all the world where we should propose increasing the supply of destructive arms?

Mr. GRUENING. I could not agree more. We should always realize what a terrible experience Israel has had in the 16 years of its independence to be constantly threatened by an absolute declaration of war by all surrounding nations, nations which have a population 50 times as numerous and are 100 times greater in area; which have boycotted Israel; which have blocked the transit of ships; and which are constantly threatening further aggression. It must be a terrible state of mind for that nation to survive. The courage of Israel is something that deserves the greatest admiration and support, which should be forthcoming particularly from the United States, in whose philosophical image Israel has been built.

Mr. HART. The Senator from Alaska has said it so well that I shall now desist from interrupting him except to add that, as he says, the area of Israel is not massive, and its population is not large—not much larger, I suppose, than that of the city of Detroit.

Mr. GRUENING. Not much. It has about the same population, and its area is about the size of the State of Connecticut, I should judge.

Mr. HART. But Israel is a historically great event because it vindicates the faith of those who see human beings as the primary agents of historic process. Israel is a crushing argument against those who deny the human will any central part in governing the world's and the people's destiny. It is a sanctuary for the principles of free government in a region dominated by autocracy and, sometimes, despotism. It is a sanctuary of freedom, which must be preserved, not for some sentimental reason, but for our own great good. We must insure not only its survival, but its success.

The words that the Senator from Alaska speaks today should be soberly considered by every thoughtful American.

Mr. GRUENING. I thank the distinguished junior Senator from Michigan.

Mr. HART subsequently said: Mr. President, will the Senator yield for one comment?

Mr. GRUENING. I yield.

Mr. HART. I wish I could find that point in the prepared remarks of the Senator from Alaska that I should like to comment on as the Senator closes. As I recall, he expressed the hope that he would not be regarded as a prophet of doom in giving voice to the concerns that he has put into the RECORD for us, but, rather, I think the distinguished Senator from Alaska expressed the hope that he was speaking as a realist.

Mr. GRUENING. That is correct.

Mr. HART. While the Senator's aspiration is laudable enough, to be thought a realist, and his hope understandable, that he not be regarded as a prophet of doom, I think that we do not have to wait for history's verdict on the speech that he has made today. He speaks eloquently of what I hope are the concerns and the aspirations of the overwhelming majority of the men and women of America, those who do give thought to the developments on this African Continent which we were reminded earlier is in search of a hero. For us as a people to do anything which would advance to the hero's role Mr. Nasser would be folly beyond explanation, and we shall not do that, if men of the ability and understanding of the flow of history, as possessed by the Senator from Alaska, would continue to speak out.

Mr. GRUENING. I thank my friend from Michigan.

Mr. DODD. Mr. President, will the Senator from Alaska yield?

Mr. GRUENING. I am happy to yield to the distinguished senior Senator from Connecticut.

Mr. DODD. I congratulate the Senator from Alaska on his excellent speech. He is always eloquent and always wise in his statements—except, perhaps, on the rare occasions when he and I disagree.

I share his belief that the appeasement of Nasser would pay off in essentially the same way as did the appeasement of Hitler. Instead of preventing aggression, it would serve, as it is already serving, as a stimulus to further aggression.

My own view is that the official silence of our State Department and our representatives in the United Nations on the subject of Nasser's aggression and threats of aggression is something that defies understanding. I find it incomprehensible that our State Department should remain silent.

Knowing that the Senator from Alaska intended to speak on this subject this afternoon, because he was kind enough to notify me that he would do so, I looked up some notes and other papers on the subject, and I was reminded again of how dreadful this situation is.

Is the Senator from Alaska aware that when Nasser addressed his military units that had just returned from Yemen, the Egyptian dictator—I use that descriptive term advisedly, because I believe that is what he is—spoke in these words:

> You, the armed forces, who protect the homeland against any imperialist or Israel aggression, represent justice here. The armed forces are preparing to restore the rights of the Palestinian people because the Palestine battle in 1948 is a shameful thing for the whole Arab Nation. Nobody can forget this shame. The rights of the Palestinian people must be restored. Therefore, we must prepare to face Israel, Zionism, and imperialism which backs Israel.

Such statements are nothing new. Nasser has frequently committed himself to the objective of the military "liberation" of Israel. But his words are worth remembering at this time, because they demonstrate the intention of the man. When he talks of "liberation," he means the subjection of Israel; he means the destruction of Israel.

Mr. GRUENING. That is the "Newspeak" which the Russians long-since adopted. "Peace" in their concept means war. "Democracy" means tyranny. "Liberation" means enslavement. We know that their words have a sense directly opposite, in our understanding, to what they are supposed to mean.

Mr. DODD. That is correct.

I found in my files the text of a broadcast made by the Voice of the Arab Nation, which is really the voice of Nasser, to the people of Jordan last April 30. Imagine a head of state in this hour of history using language such as this:

> Hussein, the 900,000 Palestine refugees on the western bank will tear you to pieces, and each of them will take a piece of your rotten body and throw it into the face of Israel to repay the Jews for the price of treason which your grandfather Abdullah received for Palestine.

Those were Nasser's exact words.

On the following day, May 1, the same Voice of the Arab Nation added this appeal:

> Let the bullets whiz; let the guns roar and declare a raging revolution. Masses of our people! Voice the cries of the revolution and rush to the guns with hearts that are not afraid to die.

Those are certainly reminiscent of the words of Hitler and the terrible dictators who brought on the destruction of World War II.

In the case of Yemen, Nasser moved from threats to direct action. This is significant. His quisling agents staged a coup in the city of Sana. But since those agents were completely without support, Nasser found it necessary to send in an army of 40,000 United Arab Republic troops to help maintain this regime in power. The cost of this military operation more than liquidated any benefits that may have accrued to the Egyptian people from the American foreign aid program. It must have done so. Unfortunately, it can be said that our aid to Nasser made it possible for him to conduct his military operations against the people of Yemen.

Mr. GRUENING. That is precisely correct.

Mr. DODD. It made it possible for him ruthlessly to destroy entire villages, of which the Senator from Alaska has spoken. It made it possible for Nasser to attack defenseless villages with poison gas and all the other terrible instruments of modern warfare. Unfortunately we have been making it possible. It can be truly said that we have been paying for the aggression against those innocent, practically defenseless people. It is high time that we called an end to the indirect subsidizing, if I may put it that way, of Nasser's imperialism and of his subversion and aggressive activities throughout the Middle East. We should make it categorically clear to Nasser—and in a way to everybody else—that neither he nor anyone else can expect to receive additional American assistance as long as he persists in aggression. He will not get another dime if he

persists in this course of conduct in his efforts to subvert and overrun governments of neighboring States, if he continues his threatening aggressive action against Israel, and if he continues to fritter away money he receives from the American aid program on the maintenance of his army and air force and his missile development program.

We must be prepared—and I think we are prepared—always to aid the Egyptian people or any people in their efforts to win the age-old battle against hunger, poverty, and disease; but I say it does not benefit the people of Egypt or the people of the Middle East if, through our aid, we permit Nasser, or make it easier for him, to pursue a goal of subjecting the ancient countries of the Middle East to his personal dictatorship.

It seems to me that this issue is perfectly simple and clear. Therefore, I repeat what I said before to the Senator from Alaska, and I also ask him whether he will comment on it: How does one explain the silence of our State Department and the silence of our representatives in the United Nations in the face of this naked aggression? Day after day we speak of our devotion to, our dedication to, and our deep interest in preservation of the peace of the world; but here is a ruthless, aggressive, bloody dictator who is following the paths followed by the dictators who preceded him. Yet we sit silent, and make no real protest—other than to observe some slight diplomatic niceties; and we continue to supply our aid to him. As the Senator from Alaska has said, this is a repetition of a dismal page of history.

Mr. GRUENING. And it is all the less justifiable because we have before us the performance of Hitler in Germany, and we know what happened there. So it is difficult to understand why the President has not changed the policy which has been in effect ever since Nasser came into power. I hope the President will do that; I hope he will reverse that mistaken policy.

Mr. DODD. I hesitate to say it, but I believe that frankness requires that I say that we seem not prepared to make abandonment of aggression a prerequisite to our assistance. If we do not do that—and certainly that is not asking too much—we become accessories to the crime committed by the aggressors—in this case, by Nasser. I do not see how else one can view this situation. Why should we ask the American taxpayers, who already are greatly overburdened, to take more money out of their pockets, in order to assist the cause of an aggressor?

Mr. GRUENING. The Senator from Connecticut undoubtedly is aware of the fact that Congress took notice of that situation, and wrote into the foreign aid bill of last year—now the Foreign Aid Act, and now a part of the law of our country—a provision opposing the giving of our aid to an aggressor; but of course that provision carried with it a further provision, which allowed administrative discretion, and applied not only to Nasser, but also to Sukarno, in Indonesia, who has said, in effect, "To hell with you," in response to our offered aid. Such a course is utter folly.

Mr. DODD. Of course that is true. Furthermore, as the Senator from Alaska knows, I have previously spoken of the so-called escape clauses.

Mr. GRUENING. But the time may come when we must eliminate such escape clauses.

Mr. DODD. Yes; I think we must.

Mr. GRUENING. It has always been the practice that the expressed will of Congress in regard to a matter of vital concern to the Members of Congress has registered with the Executive. So, in line with the view that the foreign policy is made by the President of the United States, those escape clauses have been included. However, the Senate and the House have a constitutional duty to protect the use of the funds of the American people; and when their funds, appropriated by Congress, are misused in order to support aggression, it is time for Congress to act—as Congress has acted before, and as I am confident Congress will soon do more drastically.

Mr. DODD. I agree; and I believe the Senator from Alaska will agree with me that of equal importance is the fact that by maintaining silence about these crimes—I think they are crimes—and by maintaining silence in councils of the United Nations, we make ourselves, in reality, accomplices of Nasser's repeated and flagrant violations of the Charter of the United Nations. This is a terrible thing to say about us; but I believe that frankness again requires that it be said. What else are we doing when we sit idly by in silence, say nothing, do nothing, pretend to hear nothing and to know nothing, and allow such an aggressor in the world to carry on his activities, but do not reproach him or oppose him in any manner, shape, or form? I say we are accomplices when we sit idly by.

Mr. GRUENING. I agree. Our dollars definitely are financing Nasser's aggression in Yemen, and also his aggression against our ally Great Britain, and also his aggression against Israel—aggression which he has never ceased. We are financing his activities, to the extent of more than $800 million—money which is supposed to be used to rescue his people from ignorance, poverty, and disease. However, he uses the money, instead, for a military buildup.

Mr. DODD. Mr. President, certainly the Senator from Alaska has helped all of us better understand the situation. This is another important contribution by him which is of assistance to all Senators. I think the country will be greatly interested, and I believe he has struck another strong blow for justice and decency in the world.

Mr. GRUENING. I thank the Senator from Connecticut for his valued support.

Amid the tensions of the world today it is bad enough that the United States and the Soviet Union glare each other into a stalemate across a mound of fearfully destructive atomic weapons.

Must we also be party to aiding Egypt, with its allied Arab States, and Israel achieve the same awful stalemate at the expense of the economic development of their countries?

Every means must first be taken by the United States to bring peace and disarmament to the Middle East, before considering arming Israel, which could well be a first step to ultimate devastation, not alone of the Middle East, but of the world, as well.

What should the United States do?

There are several preferable steps on the road to peace which the United States can take short of promoting an arms race.

First, we should make clear beyond any possibility of doubt that the United States will not tolerate an Egyptian attack on Israel, and that the United States power stands ready for instant retaliation as a deterrent to Egypt's A-force. Since Israel is fearful of a sudden rain of missiles, and has not sufficient retaliatory power to deter such an attack, the United States should make clear that we would interpose our own might between Egypt and Israel.

We have a bilateral treaty with the Republic of China—Taiwan—signed on December 2, 1954, whereby each of the parties "recognizes that an armed attack in the west Pacific area directed against the territories of either of the parties would be dangerous to its own peace and safety" and that "each would act to meet the common danger, in accordance with its constitutional processes." We have used, and have available, the 7th Fleet in fulfillment of our obligation to prevent an outbreak of hostilities in that area and as a deterrent to aggressive action by Red China.

We have similar bilateral treaties with Korea, Japan, the Philippines, Australia, and New Zealand.

I urge a similar bilateral treaty with Israel and the use of the 6th Fleet as a deterrent to sudden destructive aggression by Egypt, as the 6th Fleet was used in the Lebanese crisis.

Second, President Johnson, who is the inheritor of this tense situation in the Middle East, because of his predecessors' appeasements of President Nasser, can assume a valuable peacemaking function. He can use his office of President of the United States to summon all the nations which have declared war against Israel to a conference at the highest level, attended also by Israel, and say to those assembled: "Come, let us reason together," and, as a step on the road to peace, can attempt to persuade the declared belligerents to make peace with Israel.

If these efforts fail, Egypt's proposed aggression against Israel and its shooting and bombing war in Yemen and declared designs on Aden should be brought before the United Nations. Egypt's preparations for aggressive war should there be laid bare, for all the world to see; and United Nations efforts should be sought to halt Nasser's collision course.

Some will say that, with Nasser acting as a Moscow puppet, any United Nations action would be vetoed by the Russians, or that the United States does not have sufficient votes to obtain United Nations action. That may or may not be so. But at least the United States will have tried to act through established legal channels, and in the meantime will have placed a solid deterrent shield between Egypt and Israel, to prevent the latter's destruction.

I ask unanimous consent that the letters I sent to President Kennedy on this subject, last year; the article "Egypt Is Emerging as A-Force," from the Washington Post; a copy of the bilateral treaty between the United States and China; and other articles on the situation in the Middle East be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GRUENING. Mr. President, let historians of the future—if any remain—not write that the United States slept while Nasser began the last world war.

EXHIBIT 1

APRIL 10, 1963.

President JOHN F. KENNEDY,
The White House.

MY DEAR MR. PRESIDENT: I recently returned from the Middle East on an official trip for the Senate Committee on Government Operations.

What I saw there disturbed me greatly and, after talking to Mike Feldman, I thought I would pass on to you my observations even ahead of my official report, which will, in the main, deal with our AID program in the countries visited.

I visited Turkey, Iran, Syria, Lebanon, Jordan, Israel, Greece, Tunisia, Libya, and Egypt.

It is my firm conviction that U.S. foreign policy in the Middle East is set on a disaster course just as surely as it was when we thought we could appease Hitler.

I fervently hope that no future historian will be able to write a book concerning this period of U.S. activity in the Middle East entitled "While America Slept."

We propped Nasser up at the time of the Suez crisis—in fact saved him from extinction—and have been his mainstay since. Nasser's prestige in the Middle East declined with the Syria breakaway and continued to slide downward until, when his armies were bogged down in Yemen, we came to his rescue again and recognized the revolutionary government in Yemen. I have no doubt that the revolution in Yemen was Nasser-inspired and Nasser-instigated. The speed and the manner in which Egyptian troops were rushed to Yemen on Russian planes demonstrate that we are dealing with a new Egyptian military force and confirm the reports that it has been completely revamped with the aid of Russian technicians and former German Nazis.

What is hurting U.S. prestige in the other nations in the Middle East and what is hurting the administration's posture here at home with a sizable segment of our population is that Nasser is carrying on this war in Yemen for personal aggrandizement with U.S. money.

It is conservatively estimated that the Yemen adventure is costing Nasser $500,000 per day. At that rate, since the Yemen revolution on September 26, 1962, Nasser has spent over $100 million in waging his war in Yemen. Thus, in 6 months he has spent the equivalent of our economic aid to Egypt for a whole year. Of course, a portion of this is in Public Law 480 grains—but without those grains he would sooner realize the futility of his present predicament and might listen to reason. On the other hand, part of our economic aid is in the form of U.S. dollars for the purchase of goods here in the United States which Nasser needs.

The implications of our early recognition of Yemen—that it was a boost for Nasser and Nasserism—were forcibly called to our attention by officials in many of the countries visited. Officials in Turkey, Jordan, Iran, Syria (former regime) and Lebanon were especially vehement. I do not believe that the precipitate manner in which we recognized Yemen (especially before such a recognition by the United Kingdom) has helped our prestige in this area or served to strengthen the Jordanian or Iranian Governments. Had I written to you earlier, I would have added the Syrian Government to this list, but events have overtaken my report.

One important point concerning the effectiveness of our Foreign Service that strikes one in this area is the fact that very few of our representatives abroad (or, for that matter, working on the Near East desks in Washington in the Department of State) have ever been to Israel. Such a situation is completely unintelligible to me. Our so-called Near East hands are thus representing the interests of the United States in this area without adequate appraisal of the facts. Is it any wonder that after all these years we are no nearer a peaceful solution of the problems of this area?

And finally, Mr. President, Israel itself should hold a special place in U.S. efforts in the Middle East. As the only true democracy in that area, as the one nation which has made determined and successful efforts to raise its economic level, as the one nation in the area that freely and publicly acknowledges that it has received and benefited from U.S. aid, we cannot afford—from the standpoint of our own security—to continue a policy which builds up a Frankenstein monster in that area that, openly, frankly, and persistently announces the order of its next victims—Jordan, Saudi Arabia, and Israel—and whose official radio voices continue to preach assassination of the officials of these countries.

The oft repeated excuses that the Nasser line on this point is softer than it was a year ago are not borne out by the facts. In this connection I must point out that when Hitler published widely his plans in "Mein Kampf" people likewise refused to heed.

We are doing the same thing with Nasser.

Will we again wait too long—until grown strong with our help and independent of that help, he turns and swallows up country after country, including Israel?

One thing which will, I believe, relieve the pressures in this area is for the United States promptly to guarantee the borders of Israel in the same manner in which the borders of Saudi Arabia were guaranteed. We have backed and filled so often in the past with Nasser that we must give him no chance at misunderstanding our purpose and intent. A public guarantee of the borders of Israel by the United States would do much to assuage the fears of Israel—which today, with Nasser's increased trained military force, has much more to fear than ever before—and might also serve Nasser with an excuse to desist from his threats.

I would be glad to come up to talk to you at any time convenient to you.

With all best wishes, I am,

Sincerely yours,

ERNEST GRUENING,
U.S. Senator.

APRIL 12, 1963.

President JOHN F. KENNEDY.

MY DEAR MR. PRESIDENT: This is to supplement my letter to you of April 10, 1963, after my conversation with Mike Feldman, concerning U.S. policy in the Middle East.

In that letter I did not underscore strongly enough the thought that we are supporting an arms race in the Middle East just as surely as though American dollars were used directly to pay for the arms purchased.

Under Public Law 480 we are supplying a vital part of the food needs of the Egyptian people. As a consequence, Nasser is left free to exchange his cotton for Russia's missiles. Because Nasser has missiles, Israel must purchase the Hawk from us, at an expense upward of $25 million and an increase in the size of her standing army trained to use these modern, sophisticated weapons. This $25 million could be spent to a much better purpose on the economic development of Israel just as the $100 million spent so far by Egypt on Nasser's war in Yemen could have been better spent on the economic development of Egypt. Similar comparisons could be made with respect to the other countries aided by us in the Middle East such as Jordan and Iran which feel compelled to step up their own defense budgets.

I make these comments to you with a full awareness of the historical and political background of the tensions in the Middle East. But the time has surely come for the United States to take a firm stand and declare that it will no longer permit its aid dollars to be used for an arms race or for aggressive adventures beyond a nation's own borders. We cannot continue to aid—directly or indirectly—in maintaining or increasing the tensions in the Middle East. As Nasser subverts one country after another, his high-powered radios—also indirectly supported by the United States—blare across the Middle East preaching violence against Jordan, Saudi Arabia, and Israel and actual assassination of their rulers. About 3 weeks ago Nasser's radio was predicting: "But the day will come when those who sought shelter with Husayn (Hussein, King of Jordan) will lament their fate, when they watch the people dragging Husayn in the streets."

I earnestly believe that at least one way to lessen the tension in the Middle East would be through a U.S. declaration that we will guarantee the borders of Israel and Jordan just as we have made similar declarations recently with respect to Saudi Arabia's borders. We should of course not continue to subsidize Nasser's costly military adventures beyond his borders.

But it is essential that our intent to safeguard the borders of Israel, Jordan, and Saudi Irabia is made crystal clear, publicly, not only to Nasser but to the entire world.

With all best wishes, I am,

Cordially yours,

ERNEST GRUENING,
U.S. Senator.

EGYPT IS EMERGING AS A-FORCE—GERMANS WORK FOR NASSER, DEVELOP LIGHT MISSILES THAT KILL BY FALLOUT

FRANKFURT, GERMANY, May 3.—President Nasser apparently has made a breakthrough in his plans to make Egypt a minor nuclear power thanks to the help of the two dozen German scientists who are in his permanent employ.

The breakthrough is in the field of light and easily transportable missiles containing limited quantities of radioactive material. Such missiles would not produce the heat and blast effects of hydrogen bombs, but would have secondary radiation effects, causing countless deaths by radioactive fallout.

Knowledge of this top secret project was originally restricted to a handful of German scientists and Nasser's personal advisers. But the Israeli Government has been informed of all the details, and the Governments of Britain, France, and the United States are aware of at least the general outlines of the project.

At present Nasser is engaged in the following three point nuclear program:

1. Operation Cleopatra: The purpose of this project is to produce nuclear bombs of the Hiroshima type, which are out of date but would be ample to destroy Israel's small and highly concentrated centers of population.

Implementation of this project was held up as a result of the inability of the German scientists to produce an easily transportable bomb or a nuclear warhead light enough to be fitted onto a rocket. But the project probably has not been dropped altogether.

2. Operation Ibis: This is the code name for producing small missiles with limited radioactive fallout. These missiles could be

used in three different ways—as bombs dropped from aircraft, as warheads for rockets or as shells fired by artillery.

There are indications that missiles of this kind have already been produced and are being stockpiled in Egypt.

3. Operation Strontium 90: Nasser reportedly has given serious consideration to the possibility of causing heavy losses to civil populations by exploding small packages of strontium 90 (weighing 2 to 3 pounds) in Israel and countries friendly to it.

Strontium 90 in powder form could be exploded in small containers, which could be fired from mortar or bazooka-type weapons.

Egypt was beginning to buy the relatively cheap strontium 90 in 1962. Shielding material to protect carriers and users of strontium 90 has been prepared in Egypt. The chief effects of strontium 90 would be to contaminate food and water supplies, without the civil population knowing about it or being able to take precautions.

In carrying out these three operations, Nasser has leaned heavily on his German advisers. The key figure in the earlier stages was Wolfgang Pilt, a rocket specialist. Today the main burden of planning is falling on electronics experts.

Some Egyptians have been trained as scientists and radiologists, but without foreign help, Nasser's nuclear-arms program would be severely retarded. The 500 German and other foreign technicians who work at the Heliopolis missile plant are also irreplaceable.

West Germany's role in the channeling of scientific equipment to Egypt is a major one. Free use is made of the Egyptians' diplomatic mailbags. A single consignment of 15 cases of equipment—each weighing between 130 and 170 pounds—was carried to Cairo under diplomatic seal from Munich by United Arab Airlines. Heavier equipment is usually sent by sea, again under diplomatic seal.

Many German firms have sold key equipment to Egypt. The German companies have often traded through agencies such as Intra, of Munich, and Austra, of Villach in Austria, which have acted as Egyptian procurement offices.

It should be stressed that there is nothing illegal about the sale of such equipment. British, American, and Swiss firms have also assisted Nasser's nuclear-arms program, however inadvertently.

Mutual Defense Treaty Between the United States of America and the Republic of China

Treaty signed at Washington, December 2, 1954;

Ratification advised by the Senate of the United States of America February 9, 1955;

Ratified by the President of the United States of America February 11, 1955;

Ratified by the Republic of China February 15, 1955;

Ratifications exchanged at Taipei March 3, 1955;

Proclaimed by the President of the United States of America April 1, 1955;

Entered into force March 3, 1955; and exchange of notes signed at Washington December 10, 1954.

A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

Whereas the Mutual Defense Treaty between the United States of America and the Republic of China was signed at Washington on December 2, 1954 by their respective plenipotentiaries, the original of which treaty in the English and Chinese languages is word for word as follows:

The Parties to this Treaty,

Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all Governments, and desiring to strengthen the fabric of peace in the West Pacific Area,

Recalling with mutual pride the relationship which brought their two peoples together in a common bond of sympathy and mutual ideals to fight side by side against imperialist aggression during the last war,

Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the West Pacific Area, and

Desiring further to strengthen their present efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the West Pacific Area,

Have agreed as follows:

ARTICLE I

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace, security and justice are not endangered and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

ARTICLE II

In order more effectively to achieve the objective of this Treaty, the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack and communist subversive activities directed from without against their territorial integrity and political stability.

ARTICLE III

The Parties undertake to strengthen their free institutions and to cooperate with each other in the development of economic progress and social well-being and to further their individual and collective efforts toward these ends.

ARTICLE IV

The Parties, through their Foreign Ministers or their deputies, will consult together from time to time regarding the implementation of this Treaty.

ARTICLE V

Each Party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

ARTICLE VI

For the purposes of Articles II and V, the terms "territorial" and "territories" shall mean in respect of the Republic of China, Taiwan and the Pescadores; and in respect of the United States of America, the island territories in the West Pacific under its jurisdiction. The provisions of Articles II and V will be applicable to such other territories as may be determined by mutual agreement.

ARTICLE VII

The Government of the Republic of China grants, and the Government of the United States of America accepts, the right to dispose such United States land, air and sea forces in and about Taiwan and the Pescadores as may be required for their defense, as determined by mutual agreement.

ARTICLE VIII

This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of the Parties under the Charter of the United Nations or the responsibility of the United Nations for the maintenance of international peace and security.

ARTICLE IX

This Treaty shall be ratified by the United States of America and the Republic of China in accordance with their respective constitutional processes and will come into force when instruments of ratification thereof have been exchanged by them at Taipei.

ARTICLE X

This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other Party.

In witness whereof the undersigned Plenipotentiaries have signed this Treaty.

Done in duplicate, in the English and Chinese languages, at Washington on this second day of December of the year 1954 corresponding to the 2d day of the 12th month of the 43d year of the Republic of China.

For the United States of America:

JOHN FOSTER DULLES.

For the Republic of China:

GEORGE K C YEH.

Whereas the Senate of the United States of America by their resolution of February 9, 1955, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said treaty;

Whereas the said treaty was ratified by the President of the United States of America on February 11, 1955, in pursuance of the aforesaid advice and consent of the Senate, and was duly ratified also on the part of the Republic of China on February 15, 1955;

Whereas it is provided in article IX of the said treaty that the treaty will come into force when instruments of ratification thereof have been exchanged at Taipei;

Whereas the respective instruments of ratification of the said treaty were duly exchanged at Taipei on March 3, 1955, and a protocol of exchange of instruments of ratification was signed on that date by the respective plenipotentiaries of the United States of America and the Republic of China;

Whereas pursuant to the aforesaid provisions of article IX of the said treaty, the treaty came into force on March 3, 1955:

Now, therefore, be it known that I, Dwight D. Eisenhower, President of the United States of America, do hereby proclaim and make public the said Mutual Defense Treaty between the United States of America and the Republic of China to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after March 3, 1955, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this first day of April in the year of our Lord [SEAL] one thousand nine hundred fifty-five, and of the independence of the United States of America the one hundred and seventy-fifth.

DWIGHT D. EISENHOWER.

By the President:

JOHN FOSTER DULLES,
Secretary of State.

ENGLISH TEXT OF NOTE

DECEMBER 10, 1954.

His Excellency, JOHN FOSTER DULLES,
Secretary of State of the United States of America.

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note of today's date, which reads as follows:

"I have the honor to refer to recent conversations between representatives of our two Governments and to confirm the under-

standings reached as a result of those conversations, as follows:

"The Republic of China effectively controls both the territory described in article VI of the Treaty of Mutual Defense between the Republic of China and the United States of America signed on December 2, 1954, at Washington and other territory. It possesses with respect to all territory now and hereafter under its control the inherent right of self-defense. In view of the obligations of the two parties under the said treaty and of the fact that the use of force from either of these areas by either of the parties affects the other, it is agreed that such use of force will be a matter of joint agreement, subject to action of an emergency character which is clearly an exercise of the inherent right of self-defense. Military elements which are a product of joint effort and contribution by the two parties will not be removed from the territories described in article VI to a degree which would substantially diminish the defensibility of such territories without mutual agreement."

I have the honor to confirm, on behalf of my Government, the understanding set forth in Your Excellency's note under reply.

I avail myself of this opportunity to convey to Your Excellency the assurances of my highest consideration.

GEORCE K C YEH,
Minister for Foreign Affairs of the Republic of China.

[From the New York Times, May 8, 1964]

HOME REAFFIRMS DETERMINATION OF BRITAIN TO DEFEND SOUTH ARABIA AND ADEN

LONDON, May 7.—The Prime Minister, Sir Alec Douglas-Home, told the House of Commons today that Britain would not abandon treaty obligations to defend her friends in the Middle East.

More than 3,000 British troops and British-officered soldiers of the Federation of South Arabia are deployed in the desolate hinterland of Aden, fighting dissident tribesmen and Yemenis from across the frontier. With fresh reports that the guerrilla activities are threateningly close to the base at Aden itself, reinforcements from Britain's strategic reserve in Kenya were flown to the base today and other units in Britain were kept on the alert.

Sir Alec told the House on Monday that the guerrillas were getting military aid from the United Arab Republic. He said today that Britain was doing all she could to show good will to President Gamal Abdel Nasser.

"But the state of affairs in the Middle East does not depend on our good will alone," the Prime Minister added. "There must be some reciprocity. We have seen precious little of this, I must say, up to now."

Conservatives cheered the statement, but George Wigg, a Laborite, asked Sir Alec if he had not whistled another tune in Canada in February when he expressed regret that Britain had not been allowed to deal as she wanted with the United Arab Republic during the 1956 Suez crisis.

In that year Britain and France invaded the Suez Canal Zone following the nationalization of the canal by President Nasser. World pressure, in which the United States had a leading role, forced them to withdraw.

"I was asked about the American attitude to our policies at the time of Suez," Sir Alec replied. "I expressed the opinion that, on the whole, it would have been better if we had been left alone."

"Since the resumption of diplomatic relations, we have made every effort to establish friendly and businesslike relations with the United Arab Republic," he continued.

"President Nasser's recent speeches and declarations have inevitably caused a setback to our efforts, but we will not be diverted, either from our peaceful purposes, or our duty to protect friends to whom we have treaty obligations."

Britain is bound by treaty to protect the Federation of South Arabia, to which the Yemenis customarily refer as "the occupied Arab south," from attack.

Sir Alec has said that President Nasser has committed 40,000 troops to aid the Yemeni republicans in their fight against the ousted royalists.

After more than 18 months of warfare against the deposed Iman and the tribes allied with him, the republicans have not been able to exert their authority over the country.

British officials have suggested that President Nasser found it necessary to press guerrilla activities in South Arabia to divert attention from his failure in Yemen.

[From the New York Times, May 8, 1964]

IRAQ CONDEMNS BRITAIN

(By Sam Pope Brewer)

UNITED NATIONS, N.Y., May 7.—Iraq's representative at the United Nations accused Britain today of waging a colonial war against the people of South Arabia "for the sole purpose of suppressing their desire for freedom."

The delegate, Adnan M. Pachachi, said in an acrimonious exchange with the British representative in the Special Committee on Colonialism that Britain's claim to be supporting local rulers was "a fairy tale." He said his delegation and others would present a resolution tomorrow "to deal with this new emergency."

Cecil E. King of Britain denied that there was any new element in the situation. He quoted a statement made to the committee by R. W. Jackling of Britain last March in which Yemen and the United Arab Republic were accused of agitation among the tribesmen in the Radfan mountain area.

Dr. Pachachi retorted: "We have heard a fairy tale about the Government of the Southern Arabian Federation requesting assistance and then the British Government out of its generosity and its good heart immediately sends a battalion of troops in the most inclement weather in the world, just to help out a trusted friend who was supposed to be in need."

"Now we all know that these so-called requests emanate from London," he added.

[From the New York Times, May 8, 1964]

BRITISH BATTLING TRIBESMEN IN HARSH ARAB LAND—YEMENIS AID REBELS' THREAT TO SECURITY OF BASE AT ADEN

(By Lawrence Fellows)

LONDON, May 7.—In South Arabia, British troops are being increasingly committed to an indecisive war in forbidding country.

Where even the craggy, desolate landscape is an enemy, where a withering sun burns out the clutches on vehicles and forces a British soldier to drink 2 gallons of water a day to stay conscious, Britain is trying to contain rebel tribesmen and Yemenis who slip easily into South Arabia across an open frontier.

The British say they have plenty of evidence that their elusive foes are getting supplies and weapons from the United Arab Republic.

Indeed, President Gamal Abdel Nasser, himself heavily committed to an indecisive war in Yemen, has championed the cause of getting Britain out of the whole of the Arab world. He said so last month on his visit to Sana, and again on his return to Cairo:

"I declare that our primary mission is to expel the English from every part of the Arab homeland—to expel the English and to liquidate their bases."

This prompted R. A. Butler, Britain's Foreign Secretary to suggest to Secretary of State Dean Rusk that the United States suggest that its aid to the United Arab Republic might be reduced if Mr. Nasser continued to harass the British.

Washington rejected that suggestion so sharply that the British are wondering now whether they should prepare for a long, lonely war with President Nasser, or begin to recast their whole unwieldy load of commitments and objectives in the Middle East.

What are Britain's interests in the Middle East? What is the importance to her of Middle Eastern oil? What is being achieved by the British troops and bases in the area?

Britain's main base in the Middle East is at Aden, the tiny colony where 200,000 people thrive mainly on work provided by the oil refineries, by the biggest oil-bunkering facilities in the world, and by a volume of shipping that is exceeded in the British Commonwealth only in London and Liverpool.

Aden is considered vital to Britain's sea route to the Far East. The base is considered necessary to the protection of her oil interests in the Persian Gulf, and as a staging post when trouble flares in the Middle East, east Africa, or even in the Far East. The troops at Aden are needed to meet Britain's obligations to those Arab States she has undertaken by treaty to protect.

These include Muscat and Oman, the seven states of the Trucial Coast, Qatar, Bahrein, Kuwait, and the South Arabian Federation, where 3,000 British troops and British-armed native troops are struggling now to contain the guerrillas.

The South Arabian Federation was set up by the British 2 years ago, and now contains the thriving colony of Aden and 11 sheikdoms, sultanates and emirates, which the British have been protecting in the parched Aden hinterland.

These protectorates cover 112,000 square miles of land so harsh that only 1 percent of it is fit for cultivation. The vast majority of the 660,000 Arabs who inhabit the region make their living on that 1 percent.

The whole of the federation was once part of the Turkish Empire, but in the 17th century the Yemeni Arabs asserted their independence, and early in the next century the Sultan of Lahej established his independence from Yemen. His sultanate included Aden, then a village of 1,000 people.

The East India Co. occupied Aden in 1839, and when the Turks reconquered Yemen in 1872, the British kept their foothold on the peninsula.

STAGING AREAS ESSENTIAL

In 1918, after the Turks were driven from Arabia, the Imam of Yemen claimed the territory in the south, but neither the tribes in that territory nor their British protectors would accept the Imam's authority.

With the military air transport Britain has now, she needs half a dozen places like Aden to reach such areas as Malaysia, and Australia.

In a few years, with longer-range aircraft, Britain will need fewer staging posts. Yet at least one will be needed between Britain and the Far East for a long time. If geography were the only factor, Aden would be ideally placed.

It is also well placed to look after Britain's oil interests. Middle East sources provide about three-fifths of her oil imports. Kuwait alone supplied more than $425 million worth last year.

If Britain needs oil, so does the Middle East need markets. Even President Nasser once remarked:

"The Arabs cannot drink their oil."

[From the New York Times, Apr. 27, 1964]

NASSER SHARPENS ATTACK ON BRITISH MOTIVE IN ADEN

TAIZ, YEMEN, April 26.—President Gamal Abdel Nasser of the United Arab Republic made the strongest attack of his Yemeni tour today on so-called Great Britain for her colonial policies in Aden.

At the same time he called for a new page in relations with Saudi Arabia, which is supporting the ousted Yemeni royalists. He also accused Syria of having broken an Arab agreement banning propaganda attacks among the Arab States.

President Nasser accused Britain of having taken over from Saudi Arabia in smuggling arms to Yemeni royalists.

BRITISH CHARGES RIDICULED

"They want a civil war in Yemen so they can keep their forces in Aden and the occupied south," he said. "I am sure the Yemeni people will not allow so-called Great Britain to remain in Aden."

He ridiculed Britain's charges at the United Nations that his speeches in the last 3 days in Yemen had been a threat to peace and security. He said Britain herself had refused to allow United Nations officials to review the situation in Aden, a British protectorate.

Mr. Nasser said in a voice heavy with sarcasm that Britain was asking for the withdrawal of Egyptian troops "because they want to be alone with you."

"They can do what they want to, we are not leaving," he continued. "We will leave only when the Yemeni people want us to leave and when Yemen is secure."

MEDIATION EFFORT DESCRIBED

In response to cheers from the crowd demanding unity with the United Arab Republic, Mr. Nasser replied:

"You ask for unity and I tell you it already exists, in solidarity. But I must tell you frankly that I cannot accept an agreement on constitutional unity while our armed forces are still here."

In reporting on the Arab meeting last January, Mr. Nasser said Algeria and Iraq had tried to settle the dispute between the United Arab Republic and Saudi Arabia over the 19-month-old war between Yemeni Republicans and royalists.

The Yemen Republic was established September 27, 1962, after a coup d'etat that overthrew the monarchy. In the fighting that followed, Saudi Arabia has supported the royalists and the United Arab Republic has backed the Republicans.

Mr. Nasser characterized the mediation effort as "a mission that is not completed," but added:

"I am ready to open a new page with Saudi Arabia in order to deny opportunity to imperialism."

Referring to Syria, he said that country had broken the Arab agreement in a communique Saturday accusing the United Arab Republic and Iraq of financing recent outbreaks in the Syrian town of Hama.

President Nasser said: "I tell you people of Syria, you do not need money. Revolutionaries are not bought."

[From the Washington Star, Apr. 27, 1964]

NASSER'S DREAM

The news from Syria is murky on the whole, but there is one thing clear about it: It serves as yet another measure of how wishful Egypt's President Nasser is, how much he dreams, when he speaks glowingly of a united Arab world.

No such world is in prospect at this time. As has happened before, the Syrian Government is once again accusing Arabic Iraq and Arabic Egypt of conspiring against it. There certainly have been overt and covert acts to overthrow the Damascus regime, and these acts have been attributed by the Syrian Premier directly to Baghdad and Cairo. This leaves the Middle East in its customary state of uncertainty and tension.

The only possible virtue in the situation is that the Arabs, being divided, will be less inclined to stir up trouble with Israel. To that extent, their dispute must be hailed as offering some promise of peace.

[From the Washington Post, Apr. 27, 1964]

ARAB STATES MOVING AGAINST ISRAEL WITH NEW PALESTINE LIBERATION FRONT

CAIRO, April 26.—The Arab countries have approved the formation of a Palestine Liberation Front designed to rally dispersed refugees to a single organization for "work toward the ultimate goal of liberating the Arab homeland."

A mass rally will be held in Jerusalem, Jordan, on Tuesday to proclaim officially the establishment of the anti-Israeli movement. Arab leaders will send personal delegates as a token of support.

The organization, styled after Algeria's National Liberation Front (FLN), will embody almost an identical structure, ranging from a supreme politburo to armed commando units kept at battle readiness.

All 13 Arab League States have approved the plan and told the Palestine representative to the Arab League, Ahmad El Shukeiry, to begin work on formation of the front.

As with its Algerian model, any Palestinian anywhere in the world automatically becomes a member of the Front. According to his means, he is to pay a membership fee which, along with contributions from Arab States, will finance the organization.

Unlike the FLN, no armed struggle is envisaged for the Front, despite the commando units to be formed. It is to be the supreme Palestinian body acting as representative and spokesman of all Palestinians in exile anywhere. If the Arab-Israeli conflict were to become a hot war, then its commando units would go into action.

The front was first agreed upon during the Arab summit conference in Cairo last January.

Refugee representatives of the rally will form the Front's national council, which will elect a politburo consisting of a president, two vice presidents, a liaison official and a secretary general. The council is to meet once every 2 years, in Jerusalem and Gaza alternately.

During an organizational trip to Gaza, Shukeiry announced that the Liberation Front would open its first camp at Deir Yassin, in the Gaza sector, to recruit and train Palestinians for the Liberation Front brigades. Similar camps will be opened in Jordan, Syria, and Lebanon where the majority of Palestine refugees live.

[From the New York Times, May 6, 1964]

FUGITIVE FORMER NAZI OFFICER IS TRACED TO CAIRO—ZECH-NENNTWICH, CONVICTED OF COMPLICITY IN MURDERS, PREDICTS MORE ESCAPES

HAMBURG, GERMANY, May 5.—Hans Walter Zech-Nenntwich, a convicted Nazi war criminal who escaped April 23 from a Brunswick prison has been traced to Cairo, the West German magazine Der Stern reported tonight.

A spokesman for the magazine said two of its reporters recognized the former SS (Elite Guard) officer as he emerged from a Cairo hotel elevator Sunday.

Zech-Nenntwich fled West Germany just 4 days after he had been sentenced to 4 years in prison for complicity in the murder of Jews in World War II. A warden at the prison has been arrested in the case.

In a tape recording of an interview Zech-Nenntwich gave the two reporters, Der Stern said, the former SS officer insisted that his escape had been arranged by an organization of former officers.

OTHER ESCAPES FORECAST

He was reported to have said that other convicted war criminals soon would be helped to escape.

"I could have left my cell at any time I wanted, even in evening dress," Zech-Nenntwich was quoted as having said. "You will see that others also will disappear."

Der Stern said its reporters had traced Zech-Nenntwich through Greece and Lebanon. He escaped West Germany in a private airplane that landed him at Basel, Switzerland.

The newsmen, the magazine's spokesman added, have given the results of their investigations, including documentary photographs," to the Brunswick police.

West German police officials suspect that a ring of former Nazis was organized years ago to smuggle German war criminals to Africa and South America.

The head of the organization is believed to operate out of Cairo.

The group also is suspected of having close connections with high West German police and justice officials who held posts during the Hitler regime.

A Justice Ministry spokesman has said, however, that the escape of Zech-Nenntwich was "a case of corruption." He insisted that investigations showed "beyond doubt" that no political motives had been involved.

[From the New York Times, May 6, 1964]

NEW LAWS ON NAZIS DEBATED

BONN, May 5.—A West German prosecutor who has spent the last 5 years tracking down Nazi war criminals came out today against an extension of the statute of limitations covering their crimes.

Under current law, Nazi crimes other than murder can be prosecuted until May 8, 1965, 20 years after the Nazi capitulation in World War II. In murder cases the statute applies for 30 years.

The prosecutor, Erwin Schule, who heads the Central Office for the Investigation of Nazi Crimes, said that a special law would be needed to extend the statute of limitations.

"It was special laws that the Nazis operated with and it would be wrong to adopt this method," Mr. Schule said in an interview published in today's edition of the official government bulletin.

"The Federal Republic (West Germany), because it is prosecuting Nazi crimes, must strictly follow the principles of a nation based on law," Mr. Schule added.

Mr. Schule, whose office has completed investigations of 540 crime cases and turned them over to West German courts, said that the statute of limitations was automatically suspended the moment justice officials started investigating a case.

[From the New York Times, May 6, 1964]

DOCTOR DENIES SEEING VICTIMS

LIMBURG, GERMANY, May 5.—Dr. Ernst Wentzler, one of three doctors who certified deformed children for death during the Nazi regime, said today that his decisions had been based on written reports and photographs, not personal examination.

"I personally never saw a single child," he testified at the trial here of Hans Hefelmann, who is accused of responsibility for 73,000 deaths as head of a special section in Hitler's Nazi Party office.

[From the Washington Post, Mar. 27, 1964]

DEFECTOR CONDEMNS YEMEN WAR—EGYPTIAN SAYS HE FLED TO ISRAEL IN PROTEST OF UNFAIR FIGHT

(By Alvin Rosenfield)

JERUSALEM, March 26.—The Egyptian Air Force pilot who defected to Israel in January,

said yesterday that his action was prompted by what he called the "unfair, unequal fight in Yemen."

In a Tel Aviv interview with a pool correspondent, 27-year-old Mahmoud Abbas Hilmi described Egyptian Air Force attacks on Yemeni villages in which he had participated as devastating.

While the Yemenis defended themselves with a few rifles, Hilmi claimed, the Egyptians raided with 89-millimeter rockets and with the intent to destroy their targets. He did not mention the Yemeni royalist claims that Egypt employed poison gas.

Egypt has been supporting the Yemeni Republican regime in its battle with the ousted royalist faction.

The former flight instructor said Soviet crews manned the Antonov-12 transport planes that carried him and other Egyptian fighter pilots to Yemen. The Russians, he said, had not participated in the actual fighting.

Hilmi denied Egyptian reports that his flight to Israel was the result of financial and personal difficulties. He said he had seen 4 months of action in the Yemen war before going back to Egypt last September. When ordered to return to active duty in Yemen, he decided to defect as an act of protest.

The handsome, mustachioed Hilmi said he chose Israel for his refuge because his plane's flight range ruled out Europe and he was apprehensive of the welcome he would receive in an Arab country.

Hilmi said he had feared no mistreatment in Israel, had been shown only friendship, and was pleasantly surprised to learn that the people want to live in peace.

Asked if he did not feel that his defection was a betrayal of his homeland, the young Egyptian replied softly: "It is better than to kill children and women."

[From the New York Times, May, 6, 1964]

TWO BRITONS KILLED IN ADEN SKIRMISH—SIX GUERRILLAS DIE IN FIGHTING ABOVE VALLEY TRADE ROUTE

ADEN, FEDERATION OF SOUTH ARABIA, May 5.—Two British paratroopers were killed and 10 wounded today in a clash with dissident tribesmen 60 miles north of here.

The casualties were suffered when a combined force of Royal Marine Commandos and a paratroop company scrambled down from the rocky ridges they had been holding and forced their way eastward 5 miles or more to root out the insurgent tribesmen.

Guerrilla attacks by tribesmen have been interfering with traffic on one of the main overland trade routes in the federation. The British have charged that tribesmen from over the Yemen border have been making incursions into the federation with substantial military aid from the United Arab Republic.

At least six tribesmen were found dead and one was taken prisoner in the engagement today.

The marines occupied the new heights set as their objective but a parachute company was pinned down in a circular stone village on the lower slopes.

Parachute troops had charged the village early in the day and cleared it but were unable to go farther because of fire from positions held by tribesmen.

The company later fought its way out to occupy nearby ridges.

The higher ridges dominate a wadi, or valley, running northeast from the British base camp and landing strip at Thumair. The Arabs had entrenched themselves either side of this wadi because it has been used for traffic.

Royal Air Force fighter planes have been pounding the tribesmen behind rocks and in caves and gave close support in the clash today. Armored cars, scout cars, and 105-mm. howitzers also bumped eastward along an alternate route.

The operation began with a diversion to the south. Infantrymen then duplicated the move of 45 Royal Marine Commandos scaling the ridges to join the commandos.

As the new troops arrived, the marines and a company of the Third Battalion Parachute Regiment, which was also on the heights, began to descend the rock faces to the east.

The infantry is now established on the peaks. They were supplied by helicopters until the wind prevented it.

Unless the tribesmen counterattack, this phase of the overall operation—the possession of peaks in the area—is over.

ARAB FORCES GIVE HELP

A statement by the headquarters of the Middle East Command said the First and Second Battalions of the Federal Regular Army, under Arab officers, played a significant part in enabling the British forces to advance.

"Their determination and skill in mountain warfare makes them a particularly valuable part of the joint force," the statement said.

An advance party of the headquarters of the 39th Infantry Brigade Group has arrived in Aden from Britain and is expected to be established later at Thumair.

Referring to a report that the U.S. Embassy at Taiz, Yemen, had found no evidence that the heads of two British soldiers had been displayed on stakes, Maj. Gen. J. H. Cubbon, Middle East land forces commander, said today: "Let me say nobody is more delighted than I am to hear this. I can only add the initial report received by me came from usually reliable sources."

He said that the end of the fighting appears to be in sight but that the military situation within Yemen appears to have been rather quiet during the 2 months since he last reported.

Mr. Thant said that in view of the calm along the northern frontier and of political talks that are in progress, he had decided it would be "useful and advisable to extend the mission for another 2 months and I propose to do so."

Saudi Arabia and the United Arab Republic, which pay the costs of the mission, have agreed to 2 months more.

HE NOTES GOAL OF MISSION

Mr. Thant noted that the mission's mandate had been to observe the carrying out of a "disengagement agreement" that called for establishment of a demilitarized zone on the northern frontier of Yemen with Saudi Arabia; a Saudi Arabian pledge to cease providing aid and support to the Yemeni Royalists, and a United Arab Republic agreement "to carry out a phased disengagement of its troops from the country."

The report indicated the first two points had been fulfilled. It said: "Yemeni and United Arab Republic authorities no longer allege that arms are coming in quantity over the northern frontier but now claim that they are being introduced from * * * South Arabia."

Sir Alec Douglas-Home said yesterday in the House of Commons that the Egyptian forces in Yemen had increased from 28,000 to 40,000.

[From the Washington Post, May 12, 1964]

K. TEAMS UP WITH ARABS ON ISRAEL—EGYPTIANS CHEER HIS ATTACK ON PLAN TO DIVERT JORDAN

(By Peter Mansfield)

CAIRO, May 11.—Soviet Premier Khrushchev today played a trump card in his bid for Arab friendship.

Addressing a special session of the Egyptian National Assembly, he demanded that Israel carry out United Nations resolutions on Palestine and strongly opposed Israel's plan to divert the Jordan River waters for irrigation as being contrary to Arab rights.

As Khrushchev said this, toward the end of a 1-hour speech, assembly members rose to give him a standing ovation and President Nasser, sitting behind him, looked delighted.

Khrushchev has for the first time fully accepted the Arab thesis that Israel is an imperialist agent used to perpetuate imperialist influences in the Middle East.

Earlier in his speech, the Soviet Premier spoke at length of the advantages of socialism for the emerging countries. He said most of these newly independent states were now choosing the "noncapitalist way." "I am a Communist as you know," he said, "but we respect other peoples' desire to progress along different paths through socialism."

He praised Egypt's achievements since the 1952 revolution including the 1956 nationalization of the Suez Canal.

But the passage in his speech most likely to endear him to his Egyptian hosts concerned foreign policy.

He supported Nasser's demand for the removal of British and American bases in Aden, Libya, and Cyprus, and the cancellation of remaining agreements between British and Arab shiekdoms. He said complete evacuation of all foreign troops from Arab soil was the best way of reducing world tension.

Khrushchev also affirmed that the U.S.S.R. supported Arab unity as strengthening the Arabs against the imperialists.

As far as Egypt is concerned, Khrushchev has far outdistanced in popularity Chinese Premier Chou En-lai, who came here last December. Apart from this morning's speech, which will undoubtedly have a profound impact throughout the Arab world, his own warm and friendly personality and the simple dignity of his wife have already made a strong impression here.

[From the New York Times, May 12, 1964]

KHRUSHCHEV ASSAILS ISRAEL RIVER PLAN

(By Jay Walz)

CAIRO, May 11.—Premier Khrushchev gave strong Soviet endorsement today to the Arab stand against Israeli diversion of Jordan River waters.

The visiting Soviet leader told applauding legislators that Israel had "robbed Arabs of their own sources of water" by her plan to use the river to irrigate the Negev.

In an hour-long speech this morning before the new National Assembly of the United Arab Republic, Mr. Khrushchev praised the country's "Socialist progress under President Gamal Abdel Nasser and condemned Israel as a 'stooge of the imperialists.' He declared:

"We support the just demands of the Arab countries that Israel should implement the United Nations resolutions on Palestine."

These resolutions provide for repatriation or financial compensation to Palestinians who lost their property or homes in the war that followed the creation of Israel in 1948.

Mr. Khrushchev said the conference of Arab kings and heads of state in Cairo last January made "a great contribution against the stooges of imperialism and against war."

That Arab meeting was called by President Nasser to decide on joint Arab counteraction to Israel's Jordan River plans. The delegates decided not to try to stop Israel by force, but to press Arab projects for using the waters of Jordan tributaries in Arab territories.

Mr. Khrushchev, with Mr. Nasser sitting at his side, congratulated the United Arab Republic on the "long strides" taken since the 1952 revolution.

"This is a short period, but the development is an accomplishment of tens of years," he said. "The imperialists thought the course of life in Egypt would never change, but now the very course of the Nile has changed."

This was a reference to the ceremonies Mr. Khrushchev will attend at Aswan this week, marking completion of the first stage of the Soviet-financed Aswan High Dam. The first stage consisted of digging a diversion canal to take the flow of the Nile while the high dam is erected.

Mr. Khrushchev credited "Arab socialism" with the gains the United Arab Republic has accomplished.

"We Communists are aware of what you have achieved and share your happiness as you follow the path of socialism," he declared. "Socialism gives the maximum welfare to the people."

Developing the theme of "cooperation and peaceful coexistence" that he has stressed since his arrival in Cairo Saturday, Mr. Khrushchev offered indirect criticisms of the Chinese Communists' adherence to ideological formulas.

"We were the first people to hoist the banner of socialism against despots," he declared. "We had success because we followed the path of socialism. Your achievements in socialism have been made in different circumstances and by different forms. We accept this."

Mr. Khrushchev credited Mr. Nasser with being one of the first national leaders to call for total disarmament.

"I appreciate your President's call to end foreign military bases," he said. "They are a great menace to emerging countries. The Soviet Union has always been against these bases and casts a kind eye on the people who are attempting to put an end to them in Cyprus and Aden."

He said the treaty rights Britain had imposed on Cyprus and the southern part of Arabia should be abrogated. "The best solution for peace is withdrawal of all foreign troops completely," he declared.

After his address to the assembly, Mr. Khrushchev took his family and members of his family and members of his party on another sightseeing tour that included a visit to the pyramids.

Tomorrow he will visit a number of factories, including a Soviet-aided pharmaceutical plant, and on Wednesday he will fly to Aswan for the high dam ceremonies.

[From the New York Times, May 12, 1964]

UNITED STATES DISTURBED BY MOSCOW'S OVERTURES TO ALGERIA

(By Hedrick Smith)

WASHINGTON, May 11.—U.S. officials are disturbed by the major effort being made by the Soviet Union for increasing influence in Algeria.

They cite the announcement of new Soviet aid commitments for Algeria and the extremely cordial treatment given to President Ahmed Ben Bella during his recent 13-day trip to the Soviet Union. They see this as evidence of Moscow's decision to shower more attention on Algeria.

While Mr. Ben Bella was in Moscow the Soviet Union granted his country $127.6 million in credit to help build a large metallurgical complex. He also received promises that the Russians would build a technical institute for 2,000 students, send 300 medical workers to Algeria by 1966 and deliver a 19,000-ton oil tanker next year.

Some officials here were disappointed that the Algerian President had supported a number of Soviet positions critical of the United States on such key issues as Cuba, South Vietnam, the seating of Communist China in the United Nations and the situation in Korea.

END OF BLOCKADE ASKED

The final communique signed by President Ben Bella and Premier Khrushchev called for "normalization of the situation in the Caribbean on the basis of lifting the economic blockade and of all forms of pressure against the Cuban Republic."

The two leaders called on the United States to evacuate its naval base at Guantanamo and they protested against "pirate raids on Cuban territory and violations of its airspace."

Mr. Ben Bella refrained from joining the Soviet leader in warning of "catastrophic consequences" if the United States continued its flights over Cuba.

In the communique, President Ben Bella also joined Premier Khrushchev in calling for "the withdrawal of foreign troops from South Korea and for the peaceful reunification of Korea on democratic principles."

The two leaders expressed support for "the people of Vietnam who are demanding an end to foreign interference in the internal affairs of South Vietnam."

Despite Mr. Ben Bella's stand on such issues, U.S. officials expected no important shift in Algerian policy as a result of his visit to Moscow.

It was recalled that the Algerian President previously had taken a number of anti-American stands publicly, including the demand for American withdrawal from the naval base at Guantanamo. The Moscow communique, observers said, was merely a summary of developments over the last few months.

Mr. Ben Bella's public pronouncements, one observer said, "are more an indication of where his thoughts lie than anything else." The Algerian leader, the observer said, is "at home with the Socialists, but that doesn't necessarily mean he'll give up Algeria's nonalinement."

Washington is watching to see whether the Algerian Government moves to nationalize French oil interests in the Sahara. So far the United States has preferred to let France serve as the principal counterbalance to the Soviet Union, Eastern Europe and Communist China.

France supplies Algeria with about $350 million in aid each year. Last fall the Soviet Union extended its first large credit of $100 million to Algeria and Communist China offered $50 million in credits.

The new Soviet aid commitments are viewed here as an effort by Moscow to counteract Peiping's campaign to win more influence in Africa. Soviet officials are believed to be grateful that President Ben Bella would journey to Moscow and help refurbish Moscow's image as a friend of the underdeveloped and revolutionary countries.

Mr. Ben Bella visited the United States soon after coming to power in 1962, but has not been back since.

[From the New York Times, May 12, 1964]

ALGIERS PRESSES OIL DEMANDS

(By Peter Braestrup)

ALGIERS, May 11.—Algeria renewed today her demands for higher oil revenues from an active participation in every phase of French-run production, transport, and sale of Saharan oil.

The demands came as high-level French-Algerian bargaining began on the complex controversy. The outcome is viewed by both sides as a key to future cooperation between the two countries.

Heading the French negotiators was Olivier Wormser, director of economic affairs at the French Foreign Ministry. The Algerians were headed by Bachir Boumaza, Minister of National Economy.

Mr. Boumaza returned here from Moscow last week, following a 13-day tour of the Soviet Union with President Ben Bella.

Western sources commented tonight that the oil talks would provide a test of whether the Socialist regime of President Ben Bella had downgraded nonalinement and close cooperation with France in favor of greater dependence on Moscow. A key factor, these sources said, will be the willingness of both the French and the Algerians to compromise.

The Algerian demands, designed to increase foreign-exchange reserves and end the extraterritoriality of private oil companies, were said to include the following:

A requirement that proceeds of oil sales abroad be banked in Algiers.

A minority share in all foreign oil and related companies.

An increase for the Algerians over their present official 50 percent share of oil profits.

Mr. Wormser was reported to be ready to grant higher royalty payments, but not to concede any basic structural changes by the oil companies, in which the French Government is a major stockholder.

[From the New York Times, May 2, 1964]

BRITISH REBUFFED BY U.S. ON NASSER—PLEA FOR PRESSURE ON CAIRO REJECTED AS IMPRACTICAL

(By Hedrick Smith)

WASHINGTON, May 1.—The United States has rebuffed a British suggestion that Washington threaten to cut back economic aid to the United Arab Republic unless President Gamal Abdel Nasser stops threatening to drive the British out of Aden.

During his recent discussions here with Secretary of State Dean Rusk, the British Foreign Secretary, R. A. Butler, was reported by qualified sources to have tried to line up Washington's support for Britain's Middle Eastern policy.

These sources said the Foreign Secretary even sought support for a resolution in the United Nations condemning President Nasser's implied threat to drive British forces out of Aden with some of the 40,000 Egyptian troops serving in neighboring Yemen.

U.N. MOVE HELD FUTILE

Mr. Rusk and other American officials were reported to have replied that it would be futile to present such a resolution in the United Nations because it would be defeated on the issue of colonialism.

The American position was that Britain could hardly expect members of the African-Asian bloc in the United Nations to oppose Mr. Nasser in a bid to eliminate the last major British military base in the Middle East.

The war of words between the British and Mr. Nasser, and the potential threat of fighting on a larger scale in the Yemen-Aden area, have sharpened since the Egyptian leader visited his troops in Yemen last month.

On April 24, Mr. Nasser was quoted as having told an audience in Yemen: "We swear by God to expel Britain from all parts of the Arab world."

He also accused Britain of smuggling arms to Yemeni Royalists, who are fighting the republican regime, which seized power in 1962 and has been dependent since on the support of thousands of Egyptian troops.

"They want a civil war in Yemen so they can keep their forces in Aden and the occupied south," Mr. Nasser asserted, referring to Yemen's territorial claim to the South Arabian Federation and the crown colony of Aden.

LONDON APPROACH OPPOSED

U.S. officials said that they, like the British, wanted the United Arab Republic to withdraw her troops from Yemen in accordance with United Nations resolutions.

But the administration feels that London's approach would backfire. Officials consider that British moves would simply irritate Mr. Nasser, prolong the Egyptian troops' stay in Yemen, lead to broader actions against the British positions in the south and increase Arab pressure on Britain to relinquish the base in Aden.

For more than a year the United States has been trying to devise a political solution for the smoldering Yemeni civil war by promoting a coalition government embracing Egyptian-backed republican leaders and some of the tribal and political chieftains still loyal to the deposed Imam.

Prospects for such a development brightened in January when President Nasser met with King Saud of Saudi Arabia, the principal international backer of the Yemeni royalists. But since then little progress has been noted.

[From the New York Times, May 2, 1964]

NASSER THREATENS REPRISAL

CAIRO, May 1 (Reuters).—President Nasser accused Britain tonight of asking the United States to impose economic sanctions on the United Arab Republic and warned of possible retaliation against British oil interests in the Middle East.

Mr. Nasser said at a May Day rally that if economic sanctions were imposed on Cairo, "we can impose sanctions on Britain, which gets £500 million ($1.4 billion) net profit every year from Middle East oil."

[From the New York Times, May 2, 1964]

CAIRO ACCUSES BRITISH

CAIRO, May 1.—The newspaper Al Ahram published today what it said were copies of letters providing "material proof" of British aid to the royalists in Yemen.

The letters referred to the establishment of radio transmitters and foreign operators in royalist camps near the Saudi Arabian border and of payments in sterling requested by Imam al-Badr's Foreign Minister. The Imam maintains headquarters in a mountain cave in northern Yemen.

The letters, dated last October and November, were published by Mohammed Hassanein Heikal, the paper's editor, who has just returned from a 6-day visit to Yemen with President Nasser.

Mr. GRUENING. Mr. President, I yield the floor.

DIFFICULT SITUATION OF KANSAS CATTLE INDUSTRY

During the delivery of Mr. STENNIS' speech,

Mr. PEARSON. Mr. President, the senior Senator from Kansas [Mr. CARLSON] has expressed his concern on the Senate floor and as a member of the Committee on Finance on numerous occasions regarding the very difficult situation in which the Kansas cattle industry finds itself as a result of the current high level of beef imports.

On April 28 my colleague presented a statement to the Federal Tariff Commission on behalf of the Kansas livestock industry. The statement by the senior Senator from Kansas takes on added importance because of his longtime concern for foreign trade and his critical position on the Committee on Foreign Relations.

I take this opportunity to congratulate my colleague for his active work on behalf of this major Kansas industry. I ask unanimous consent to have printed at this point in the RECORD an article published in the May 1964 issue of the Kansas Stockman, expressing the appreciation of the Kansas livestock industry for his efforts.

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

BEEF IMPORTS BASIC CAUSE OF LOW CATTLE MARKET—SENATOR CARLSON REPRESENTS KANSAS LIVESTOCK ASSOCIATION AT HEARINGS

Kansas got a break when Senator CARLSON appeared for the Kansas Livestock Association at the Tariff Commission hearing April 28. He is a senior member of the Senate Finance Committee that requested these investigations into the effect of imports on the American cattle and beef industry. The Senator is a recognized authority on foreign trade.

President Johnson selected him as one of two Senators to accompany Mr. Herter at the Trade Conference in Geneva, May 4, 1964. The Senator has frequently pointed out, in discussing the Trade Expansion Act, that there was great danger that agriculture would be traded down the river in these bargaining sessions.

We supplied Senator CARLSON with material including our statement presented to the Tariff Commission last fall, President Bill House's statement before the Senate committee, and other material. The Senator is well posted on our import problem.

IMPORTS 90 PERCENT RESPONSIBLE

Beef is its greatest competitor. In an effort to get cattle producers off the back of Federal Government officials, some department economist or employee, "off the top of his head" made the statement "imports have accounted for only about 15 percent of the total cattle price decline. Imports have served largely to meet unfulfilled needs for low quality processing meat," they have said. "The quantity of lower grades of meat available from domestic production has been insufficient in recent years," they added.

Such statements have received wide publication, and have been repeated by many people. Many, including recognized economists, have followed this same line of thought. These people have either been uninformed, grossly misinformed, or they have an ulterior motive. Facts recorded by the Economic Research Service, USDA, prove that such explanations of the present situation are misleading and in many ways are entirely false. Are we going to lose the war against imports, the No. 1 issue, by trying to sweep the problem under the rug, or by concentrating on possible related issues such as chainstore inquiries, the beef grading system, Government feed grain programs, and others? Even a few recognized leaders in the beef cattle business are either opposing or dragging their feet in the industry's all-out effort to secure some real relief against the basic factor causing their trouble.

BEEF IMPORTS BROKE COW MARKET

Those mentioned above who have tried to free imports of any guilt have never, to our knowledge, even attempted to prove their stand with facts and figures. The accompanying chart showing cow prices 1955 through 1963 fits in with expanded beef import figures so well that if they were not officially recorded one might think they were rigged. First, we must recognize that we can expect some lag from the time import volume starts increasing until the cow market is affected. Likewise, there will be further lag before the demoralized cow and ground beef market affects fat cattle prices.

Average prices paid for cutter and canner cows on the Chicago market. Prices taken from Livestock and Meat Situation published bimonthly by Economic Research Service, U.S. Department of Agriculture:

Year	Yearly average	October	November	December
1955	$10.00	$9.61	$8.55	$8.94
1956	10.68	9.30	8.42	9.60
1957	12.06	12.18	12.52	13.37
1958	16.54	16.85	16.80	16.65
1959	16.27	13.81	12.47	13.63
1960	14.14	12.26	12.78	13.04
1961	14.38	13.48	13.15	13.31
1962	13.99	13.36	12.78	12.41
1963	13.46	12.79	11.89	10.73

The first substantial beef import increase came in 1958. Australian imports, consisting largely of processing beef, made their first big increase in 1959.

Cow prices reached a low in 1955 and 1956 due to heavy liquidation during an extended drought. As cow sales and slaughter returned to normal, prices bounced back and reached a peak in early 1959 and then took a nosedive in late 1959 as excessive imports came to exert their full force on the American market.

JUST ONE ANSWER

Why, in the face of no more than normal cow slaughter and an expanding demand for this type of beef, did cow prices break and continue to weaken, reaching a new low in December 1963? There is just one answer. Packers and beef processors were forced out of the domestic cow market by excessive imports of cheap beef. The December 1963, average price, $10.73, was approximately $6 below December 1958, of $16.65, and $7.72 below the peak cow price in June 1959, of $18.45. With price in line with domestic supply and demand, packers and processors would have been able to secure adequate supplies of domestic beef to meet U.S. expanding requirement. Those who say expanded imports were necessary to meet needs have not offered a fair and complete analysis of facts to substantiate their claims. They simply compare cow slaughter in recent years to the abnormally high forced slaughter in 1955 and 1956. They avoid mention of such facts as greatly depressed cow prices which accompanied the reduction of cows slaughtered. They fail to point out that a reduction in price in the face of reduced supply at a time when consumer demand was expanding is contrary to the law of supply and demand. The demand was satisfied with cheap, low grade imported beef and our domestic markets and industry suffered.

COW LIQUIDATION EQUIVALENT

Cow prices have reached a level which approaches the drought liquidation prices of 1955–56. Excessive imports have been equivalent to heavy cow liquidations but the cows are still on our farms and ranches. Imports are responsible for low domestic cow prices and slaughter and have contributed greatly to the buildup of our cow inventory.

Without imports, our cow market would have been $5 or $7 per hundred higher and cows would have gone to slaughter, not back to the country to raise another calf.

SUPERMARKETS

Beef retailers have done a superb job of merchandising our product. If this were not

true, beef consumption would not be doubled in recent years. Some producers, under the present serious situation, have accused these retailers of making excessive profits, holding down their purchase costs by collusion or other methods, and also holding up retail prices to consumers.

We haven't time or sufficient facts to intelligently discuss pro or con the above three issues. For the sake of argument, let's admit that they have been a factor. If this were true, excessive imports are still the basic contributing factor.

The key to the situation is ground beef, hamburger, and processed meats. This type product makes up a major portion of retail volume poundwise. Competition from low-grade foreign imports forced them out of the domestic market because their storage facilities were full of this imported beef, and the shipping pipeline kept full. These retailers were in a position to buy domestic beef at their own price, or even abandon the domestic market for a period of time.

Imports also gave these retailers a good reason for maintaining relatively high prices on steaks, roasts, and such popular cuts. Foreign beef greatly reduced their potential return from the cheaper cuts making up the finished carcasses. Correspondence from a friend of ours points out these reasons as to why chain stores can be so independent about their buying. He also points out that this entire situation is not understood by Congress, the Department of Agriculture, or even many cattlemen. If you will analyze the entire situation, he adds, "cow liquidation" at an excess rate always breaks the prices of beef, all the way up the line. Foreign beef imports maintain the equivalent of excess cow liquidation pressure on the price of beef.

This friend also points out something which we cannot personally vouch for, but which consumers should recognize. He says this lean dry foreign beef will absorb up to 20 percent more water, or approximately 3.2 ounces more water per pound. This statement we can't vouch for. Our informant also points out that USDA, and perhaps other economists and so-called authorities, are shortsighted. He says they look at foreign beef, which is suitable only for hamburger and soup, and, lacking business experience, have not yet figured out this cow liquidation equivalent factor.

The more we delve into and study this problem the more certain we are that this imported beef is the basic factor which has brought on disastrous prices for our industry. Let's concentrate on the main issue. Stop fighting these skirmishes which may, to a certain extent, be a secondary contributing factor. When we win the main battle these skirmishes should disappear.

IMPORTS EXERT PRESSURE ON FAT CATTLE PRICES

United States increased production of fat cattle added considerable tonnage of grinding beef to our domestic supply of this type product. Twenty-five percent of a choice grade carcass is grinding type beef. The depressed market price of processing beef, caused by large imports of lean, low-grade beef, is a major factor contributing to low fat cattle prices. With 25 to 30 percent of these carcasses selling at greatly reduced price, the balance of the cuts must sell proportionately higher, or the steer price paid by the packer goes down.

Sure, too many cattle feeders held on too long and fed to extremely heavy weights. This not only increased the tonnage of beef but the carcasses were too fat and undesirable.

We admit this can be charged to bad judgment but why did so many continue to feed long after they should have gone to town? The answer is easy. The market broke and the feeders were trying to get by without a loss. They hoped for a bulge in the market. Here again imports were a contributing factor. Imports started the ball rolling that broke the market.

SUMMARY

1. Those who claim large quantities of imported beef were needed to meet our requirement and that only 15 percent of our price decline was due to imports, offer no proof. They avoid vital facts concerned with the total situation.

2. U.S. cow price, if we fail to consider competing imports, followed a trend contrary to the law of supply and demand.

3. Our expanding demand for grinding and processing beef would have given us cow prices of $5 to $7 above the 1962–63 level and would have sent cows to slaughter, not back to the country to raise another calf, had it not been for the flood of imports.

4. Our requirements could have been supplied from domestic cattle.

5. With higher cow prices, more cows would have been culled. If we had increased cow numbers only slightly or none last year instead of 6 percent, we would have a lower cattle inventory and less calves to sell next fall.

6. A substantial portion of all fat beef carcasses go into grinding beef. This portion competes with cheap foreign product, fat cattle prices were definitely lowered.

7. Imports big factor in retailer problems.

WHAT CAN LIVESTOCK PRODUCERS AND OTHER INDUSTRY PEOPLE DO?

1. Write your Congressman and Senators.
2. Write the Secretary of Agriculture.
3. Write the President of the United States.
4. Encourage your local editor to publish some facts.
5. Finally, encourage your beef retailer to use domestic beef exclusively and express your appreciation when he does. After all, domestic beef is better. It's produced under inspection and sanitary conditions without equal.
6. Help with meat promotion—support the National Live Stock and Meat Board—thank your market operator or commission man for making collections—if he isn't cooperating, explain the program and encourage him to initiate this important service.

DANGER OF "BRAIN DRAIN" IN MIDWEST

During the delivery of Mr. STENNIS' speech,

Mr. LAUSCHE. Mr. President, the Goodyear Aerospace Corp. issues a bulletin entitled "The Wingfoot Clan." The issue of May 7 contains an article entitled "To Combat 'Brain Drain, Unite,' Murphy Warns Groups in Midwest." The goal to unite is directed at States in the Midwest. I am sure it includes the State of the distinguished junior Senator from Wisconsin [Mr. NELSON], who is now presiding over the Senate.

Among other things, the article states:

If the Midwest is to retain its leadership in providing consumer and industrial goods, we must unite the facilities and talents of industry, the research institutes, and our universities.

My remarks at this time are directed to the Members of Congress who represent the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, and Iowa. Mr. Murphy, who is a graduate of Ohio State University and is connected with the Goodyear Aerospace Corp., further said:

Seven of the country's top 10 producers of graduates in engineering and science are midwestern universities. But a recent study of persons who received doctorates in the Midwest in 1961 and then entered industry shows that only 10 percent of them stayed in this area.

In other words, the Midwestern States have 7 of the country's 10 leading producers of graduates in engineering and science. Ninety percent of those graduates depart from the Midwest and move on to other States. The consequence is that the Midwestern States are suffering an erosion of their economy that ought to frighten the representatives in Congress of those States. We cannot cope with the problem of combating such erosion on an individual basis. If we are to be given the opportunity to retain the scientists and engineers whom we train and teach, it is essential that there be a unification of the efforts of the eight States which are mentioned in demonstrating, especially to officials of the U.S. Government, the huge number of engineers and scientists who are produced in the Midwestern States.

Mr. President, I ask unanimous consent that the article to which I referred be printed at this point in the RECORD.

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

TO COMBAT "BRAIN DRAIN," UNITE, MURPHY WARNS GROUPS IN MIDWEST

The Midwest is in danger of becoming the "former industrial center of the United States" if it does not vastly increase its research and scientific efforts, a Goodyear Aerospace executive warned last week.

While it produces more than its share of "scientific brains," the Midwest is losing them to research centers along both coasts, Vice President Loren Murphy told delegates to the 11th Annual Conference of Engineers and Architects at Ohio State University.

To stem this outflow of scientific talent, Murphy called for a huge industrial research program by industry and educational institutions of the area.

"If the Midwest is to retain its leadership in providing consumer and industrial goods," he said, "we must unite the facilities and talents of industry, the research institutes, and our universities."

Formed into a single team, they then could "adapt today's scientific breakthroughs into new and improved products for a better way of life."

This type of program will not produce results overnight, he advised. "But it will protect our vested rights in continuing to produce around 75 percent of the country's hard goods. It will keep many more of our scientists here, where they were educated, and will improve our scientific stature."

An Ohio State University graduate in engineering, Murphy noted that the current drain on scientists produced in Midwest universities is tremendous.

"Seven of the country's top 10 producers of graduates in engineering and science are midwestern universities," he reported. "But a recent study of persons who received doctorates in the Midwest in 1961 and then entered industry showed that only 10 percent of them stayed in this area.

"Scientists naturally gravitate to those areas where programs are glamorous and where the most modern research centers ex-

ist," Murphy explained. "The Midwest has missed its share of the Government research programs that foster these centers."

"We cannot compete with the large aerospace and electronic manufacturers by erecting installations similar to theirs. But we can protect established business by increasing our research and scientific efforts."

In order to provide the necessary environment for reversing the present trend, companies do not have to staff themselves with complete groups of specialists covering the whole gamut of scientific knowledge, Murphy advised.

"Private industry, making use of its own laboratories and the facilities of its area universities and research institutes, needs research and development programs containing the fundamentals of basic research, applied science, and scientific applications," he said.

"Consultants, mainly university professors and associates of research institutes, have been very useful to Goodyear Aerospace.

"Midwestern universities should intensify their efforts to expand their research capabilities by obtaining a greater share of Government research and development programs being placed in universities across the country.

"They also should spend more effort in supporting and assisting local industry, particularly through research, in solving industrial problems."

STAND ON CIVIL RIGHTS OF PRESBYTERY OF LONG ISLAND, N.Y.

During the delivery of Mr. STENNIS' speech,

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

Mr. STENNIS. Mr. President, I ask unanimous consent that I may yield to the Senator from New York without losing my right to the floor, without the resumption of my remarks in any way counting as an additional speech, and with the understanding that his remarks may appear prior to my presentation.

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

Mr. KEATING. I thank the Senator.

My able colleague [Mr. JAVITS] and I were honored by a visit from a number of clergymen and laymen representing the Long Island Presbytery who held an adjourned stated meeting in Washington in which resolutions were adopted in support of the civil rights bill.

In my judgment, the support of the clergy and church oriented people of all religious faiths is an important factor—probably right now the most important factor—in what we hope to look forward to as the successful outcome of this debate.

I ask unanimous consent to have inserted at this point in the RECORD a message directed to the senior Senator from New York [Mr. JAVITS] and myself.

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

PRESBYTERY OF LONG ISLAND,
Huntington, Long Island, N.Y.

To the Honorable JACOB K. JAVITS and the Honorable KENNETH B. KEATING:

The Presbytery of Long Island meeting officially in Washington, D.C., on May 12, 1964, expresses to you the Honorable JACOB K. JAVITS and KENNETH B. KEATING, U.S. Senators from the State of New York, its deep appreciation for your vigorous and forthright leadership in behalf of civil rights. It acknowledges with gratitude the cordial welcome which you have extended to members of the Presbytery in this meeting and in visits of Presbytery's Commission on Religion and Race. You have given personal attention wherever possible to letters urging a strong civil rights bill and requesting its passage. We offer you our full encouragement as you continue to press for quick and favorable action. The Presbytery recognizes its own responsibility in its churches and communities to encourage the sympathetic support of civil rights legislation at the local level so that there may be a genuine advance in the provision of equal rights and opportunities for all people.

THOMAS P. STEWART,
Clerk pro tempore.

MAY 12, 1964.

RUMANIAN INDEPENDENCE DAY

During the delivery of Mr. STENNIS' speech,

Mr. SCOTT. Mr. President, in commemorating Rumanian Independence Day on May 10, one often overlooked historical event should not be forgotten.

Princess Ileana of Rumania once asked Communist Ana Pauker why the Rumanians were being subjected to so many inhuman acts. Her reply was that the Communists viewed a newly conquered nation as a field with which a different crop was to be planted; the land had to be completely disheveled and everything burned. Then the new seed was planted.

Therefore—

Ana Pauker said—

we have to terrorize the older generation into silence, so they do not dare to speak to the young ones and to remember, so that the young ones would not have any memory whatsoever of times past; that their minds would be absolutely empty of anything but what the Communist regime wanted to plant in it. And that is why (the Communists) had to use torture imprisonment.

Ana Pauker's statement has been disproved by the Rumanians. Despite the countless acts of unbelievable savagery, Rumanians have continued to cherish their nation's historical values. The field of freedom and independence has been burned but not destroyed.

My fervent hope is that someday soon Rumanians can celebrate their national holiday as fervently inside their borders as it is celebrated outside.

FINAL RATIFICATION OF THE INTERNATIONAL CONVENTION ON THE CONTINENTAL SHELF

During the delivery of Mr. STENNIS' speech,

Mr. BARTLETT. Mr. President, I am pleased, and, in fact, elated to report that the United Kingdom yesterday ratified the International Convention on the Continental Shelf. Under article 11 the convention comes into force on the 30th day following the date of deposit of the 22d instrument of ratification with the Secretary General of the United Nations. This action occurred yesterday and the convention will come into effect on June 10.

The International Convention on the Continental Shelf was one of four conventions adopted in 1958 at the United Nations Conference on the Law of the Sea. The Convention on the High Seas has been ratified by the required number of nations including the United States and became effective last summer. The Convention on the Continental Shelf will be the second of the four conventions to come into force. This will leave the Convention on the Territorial Sea and the Convention on Fishing and Conservation of the Living Resources of the High Seas to be favorably acted upon later. Since the United States has ratified all four I sincerely hope that the State Department will continue to encourage other nations to consider the possibility of ratification of the two remaining conventions.

In essence, the Continental Shelf Convention provides that each coastal nation has exclusive rights to the resources of the Continental Shelf extending beyond the limits of its territorial waters.

The Continental Shelf Convention was endorsed by 63 of the 85 nations present and voting at the 1958 conference. This number is well in excess of the two-thirds vote required for the convention's acceptance. The overwhelmingly favorable vote demonstrated the consensus among nations that the convention's terms are acknowledged international law. The 22 countries that have ratified the convention are: United States, Byelorussia, Colombia, Czechoslovakia, Guatemala, Haiti, Israel, Poland, Portugal, Ukrainian Russia, U.S.S.R., Venezuela, Denmark, Australia, South Africa, Cambodia, Malaysia, Senegal, Rumania, Malagasy Republic, Bulgaria, and the United Kingdom.

The convention, in part, confirms unilateral action taken by our country under the Truman proclamation on the Continental Shelf of 1946, and the Submerged Lands Act and the Outer Continental Shelf Lands Act of 1954.

These acts give to the Federal Government, with certain exceptions, all rights over the mineral resources on the Continental Shelf. These acts at the same time confirm state jurisdiction over the regulation of fishing resources.

The Continental Shelf Convention provides as follows:

The coastal State exercises over the Continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. * * * The natural resources referred to in these articles consist of the mineral and other nonliving resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.

The economic potential of such fauna is considerable. During hearings on my bill, S. 1988, a table was presented in testimony which indicated the value of Continental Shelf species which are covered by the Continental Shelf Convention. According to the Director of the Bureau of Commercial Fisheries, all of these species are "of major significance

to the fishing industry of the United States."

Mr. President, I ask unanimous consent to include in the RECORD a copy of the table indicating the value of oysters, dungeness, and king crabs and clams taken by States in 1961.

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

Catch of oysters, dungeness and king crabs, and clams, by States, 1961

State	Oysters		Crabs				Clams	
			Dungeness		King			
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
	Thousand pounds	*Thousand dollars*	*Thousand pounds*	*Thousand dollars*	*Thousand pounds*	*Thousand dollars*	*Thousand pounds*	*Thousand dollars*
Maine	3	2					7,857	801
Massachusetts	84	100					2,354	1,413
Rhode Island	7	7					2,739	1,008
Connecticut	359	416					420	176
New York	788	1,069					5,170	2,599
New Jersey	1,100	934					28,405	2,434
Delaware	33	18					582	232
Maryland	10,337	7,803					5,220	1,454
Virginia	17,163	13,931					1,864	866
North Carolina	1,209	616					490	196
South Carolina	2,544	1,095					109	38
Georgia	159	47						
Florida	3,327	1,053					19	7
Alabama	509	162						
Mississippi	3,241	753						
Louisiana	10,139	2,849						
Texas	1,096	329						
Alaska			4,591	442	43,412	3,914	391	121
Washington	8,658	1,652	7,109	1,075			682	300
Oregon	329	72	9,288	1,479			26	13
California	1,220	296	11,711	1,981			2	3
Hawaii							(1)	(1)
Total	62,305	33,204	32,699	4,977	43,412	3,914	50,330	11,661

[1] Less than 500 pounds or $500.

NOTE.—Data on the catch of oysters and clams represent weight of meats.

Source: U.S. Department of the Interior, Fish and Wildlife Service, Bureau of Commercial Fisheries, Branch of Statistics, Aug. 27, 1963.

Mr. BARTLETT. Another graphic illustration of the economic importance of Continental Shelf species is the Alaska king crab harvest. A report by the Alaska Department of Fish and Game placed the 1963 king crab harvest at 77 million pounds as compared with 52.8 million in 1962, an increase of almost 50 percent. The report added that 1,200 fishermen in 409 boats participated in the catch for which they were paid $7.7 million. An additional 1,200 persons, the department said, received employment in processing the catch.

Since this Convention will be effective and it will be the law of the land within 30 days, I ask that a copy of the Convention be included in the RECORD at the close of my remarks.

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

CONVENTION ON THE CONTINENTAL SHELF

(Final text adopted by the Conference)

The States parties to this Convention, have agreed as follows:

ARTICLE 1

For the purpose of these articles, the term "Continental Shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

ARTICLE 2

1. The coastal State exercises over the Continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the Continental Shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the Continental Shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the Continental Shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other nonliving resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

ARTICLE 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.

ARTICLE 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 meters around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the Continental Shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the Continental Shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

ARTICLE 6

1. Where the same Continental Shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the Continental Shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same Continental Shelf is adjacent to the territories of two adjacent States, the boundary of the Continental Shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the Continental Shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

ARTICLE 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunneling irrespective of the depth of water above the subsoil.

ARTICLE 8

This Convention shall, until October 31, 1958, be open for signature by all States members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly to become a party to the Convention.

ARTICLE 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 11

1. This Convention shall come into force on the 30th day following the date of deposit of the 22d instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the 22d instrument of ratification or accession, the Convention shall enter into force on the 30th day after deposit by such State of its instruments of ratification or accession.

ARTICLE 12

1. At the time of signature, ratification, or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3, inclusive.

2. Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

ARTICLE 13

1. After the expiration of a period of 5 years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any contracting party by means of a notification in writing addressed to the Secretary-General.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE 14

The Secretary-General of the United Nations shall inform all States members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9, and 10.

(b) Of the date on which this Convention will come into force, in accordance with article 11.

(c) Of requests for revision in accordance with article 13.

(d) Of reservations to this Convention, in accordance with article 12.

ARTICLE 15

The original of this Convention, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Geneva, this 29th day of April one thousand nine hundred and fifty-eight.

Mr. STENNIS. 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. 217 Leg.]

Aiken	Hartke	Nelson
Allott	Hruska	Neuberger
Bartlett	Humphrey	Pearson
Bayh	Inouye	Pell
Bennett	Jackson	Prouty
Boggs	Javits	Ribicoff
Burdick	Jordan, Idaho	Robertson
Cannon	Kuchel	Saltonstall
Carlson	Long, Mo.	Scott
Case	Magnuson	Smith
Church	Mansfield	Stennis
Clark	McGee	Symington
Cooper	McGovern	Thurmond
Dirksen	McIntyre	Walters
Dodd	Metcalf	Williams, N.J.
Douglas	Monroney	Williams, Del.
Fong	Morton	Young, N. Dak.
Gruening	Moss	Young, Ohio
Hart	Muskie	

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

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.

The PRESIDING OFFICER. The question is on agreeing to the amendments (No. 577) offered by the Senator from Louisiana [Mr. LONG] to the amendments offered by the Senator from Georgia [Mr. TALMADGE] for himself and other Senators.

Mr. THURMOND. Mr. President, the debate which has been taking place on the floor of the Senate for these past few days has had a salutary effect across the Nation and particularly in this body. The numerous amendments relating to trial by jury which have been introduced by both proponents and opponents of this so-called civil rights bill is evidence of a general agreement that H.R. 7152, in its present form, requires further discussion and change before the Senate finally works its will on this legislation.

The amendment which has been introduced by the distinguished junior Senator from Georgia [Mr. TALMADGE] for himself and others, including myself, would clarify one of the most glaring weaknesses, not only of this bill, but of present judicial practices in criminal contempt proceedings. It is my firm belief that the Talmadge amendment is the least to which Senators should agree for inclusion in H.R. 7152. The substitute amendment which has been introduced by the distinguished minority leader [Mr. DIRKSEN] on behalf of himself and the majority leader [Mr. MANSFIELD] cannot be sustained on the basis of any logical reasoning or historical precedent.

Mr. President, the Nashville Banner of Nashville, Tenn., for Monday, April 27, 1964, contains a most perceptive editorial on the subject of the Mansfield-Dirksen amendment. This editorial, entitled "Jury Hoax Won't Improve Blackjack Civil Rights Bill," correctly describes this amendment as an "obvious hoax." This editorial reads as follows:

[From the Nashville (Tenn.) Banner, Apr. 27, 1964]

JURY HOAX WON'T IMPROVE BLACKJACK CIVIL RIGHTS BILL

The civil rights bill in its present form is a brazen injustice because it does not give equal consideration to the rights of all men, black or white.

This civil wrong could be twice compounded in the so-called bipartisan weasel-worded concoction about a trial by jury under certain conditions, that is. Here is an obvious hoax, as slick as a greased pig, released in desperation by liberal Republican and Democrat leaders as a sop to an angry citizenship soon to go to the polls. Regardless of this latest maneuver, which is an insult to the intelligence of every free American, the so-called fair employment practices provision of the civil rights measure throws the shadow of jail bars or joblessness across the goals of every diligent man with ambitions for himself and his family.

For the businessman it places a penalty upon success and endangers the value of both product and property, the risk being in direct proportion to the influence of his vote and the size of his campaign contribution.

For the unionman the FEPC makes the long-established rule of seniority a joke. It deadens incentive and could destroy the rewards for enterprise and loyal service.

If the rights bill becomes law, the blackjack enforcement by Bobby Kennedy, Katzenbach & Co., would recognize only the reverse of success—a general retreat to the slave-like lassitude of a common level. Under Kennedy and Katzenbach healthy competition could breed danger and gone forever would be the American concept of advancement according to one's individual ability.

All this would be tragic enough for the thousands of responsible citizens, North and South, East and West, who are backing with every means at their disposal the last ditch fight of Senators from all sections against the civil rights bill.

But now the party whips on both sides of the aisle are adding insult to injury by telling possible business and union labor offenders they just might get a trial by jury. It would depend upon the enormity of their alleged crimes and the attitude of the Federal judge.

This unhappy and uncertain prospect would appear on the horizon only after a long period of harassment during which the long, sticky fingers of Katzenbach and his boys would have poked through the confidential records of business and unions alike. Irreparable damage to production and rightful employment could be done long before the coin is tossed in the gamble on which would depend the empaneling of a jury. Before that time wide areas of both business and organized labor could be nibbled to death by the deputy ducks of the Justice Department.

Consider a current case—under a State not a Federal FEPC. It's the Illinois Fair Employment Practices Commission versus Motorola Inc., one of the larger electronic firms. The chinquapin tyranny in this situation already has gained the attention of the Nation.

Motorola is being hailed before the commission because a Negro applicant for employment failed to pass a company test drawn by the Illinois Institute of Technology

and used as a standard for hiring during the past 15 years.

The colored FEPC inspector accused the firm of racial prejudice and recommended to the commission that Motorola be forced to abandon the long-established examination because the examiner considers it unfair to "culturally deprived and disadvantaged groups." What would have happened if the applicant had been white, and his answers to the questions proved he did not have the ability to perform the electronic task assigned?

Motorola says it will take the case all the way to the Supreme Court. In the meantime, which may stretch into years, the company will seek to maintain the quality of its product while it fights for the right to employ qualified workers regardless of color.

The turmoil and insecurity in which Motorola finds itself and its employees could extend to thousands of business and industrial firms across the United States.

Is the right of trial by jury somewhere ahead for this Illinois manufacturer? Suppose the civil rights bill is passed and the Federal Government takes over? Under the amendment proposed by Senators EVERETT MCKINLEY DIRKSEN, of Illinois, and MIKE MANSFIELD, of Montana, Motorola might conceivably get a hearing before 12 peers if a Federal judge imposes a fine of $300 and imprisonment of more than 45 days. But suppose the court says $250 and 30 days. The jury trial is out and Motorola men go to jail.

Why not stipulate the right of trial by jury straight down the line in the civil rights bill? Is it because Kennedy and Katzenbach fear the will of the people? Would speedy disposition of cases before juries interfere too much with the gestapo techniques at which Kennedy and Katzenbach are so expert?

Chief Justice Earl Warren, the father of school desegregation, says the right of trial by jury is rooted in the Constitution, or so he affirmed when he dissented from a majority opinion of the Supreme Court denying a jury trial to Messrs. Barnett and Johnson of Mississippi. Warren stood with the minority ruling, which held jury trial to be required both by the Federal Constitution and Federal statutes.

Even the American Civil Liberties Union, probably the Nation's oldest civil rights organization, which for at least 39 years has defended Communists and fought for all liberal causes, came to the assistance of former Governor Barnett before the High Court.

As to possibility that a Mississippi jury might guarantee acquittal of Barnett, the ACLU said:

"This may be so, but it is irrelevant to the present issue. Securing convictions is not the only goal of the criminal law. The means by which convictions are obtained has a claim of equal stature."

Not even the American Civil Liberties Union would assume that justice cannot be had in the South. It knows now that an even more serious racial prejudice has raised its head in the North.

The brief continued: "There's a built-in unfairness in permitting a judge, in order to 'vindicate his authority' and who is the aggrieved party, to act as prosecutor, witness, jury, and judge."

There's a built-in unfairness in the civil rights bill, too. With or without the jury hoax amendment, the measure stands now as a document of deceit—an unconstitutional I O U for the payment of a political debt and the purchase of more votes.

The legislation must be redesigned throughout to protect the rights of all—regardless of race or color.

The American people won't buy a custom-built blackjack for the bloodying of their own skulls. And it's too late for the phony bipartisan softsoap of downy-voiced DIRKSEN. The velvet skins of his bubble-blown words already have melted in their own hot air.

Mr. TALMADGE. Mr. President, will the Senator from South Carolina yield at that point?

Mr. THURMOND. Mr. President, I ask unanimous consent that I may be allowed to yield to the able and distinguished Senator from Georgia [Mr. TALMADGE], on the condition that I do not lose my right to the floor, and upon my resuming, it shall not count as another appearance.

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

Mr. TALMADGE. I congratulate the able Senator on reading the fine editorial from the Nashville Banner. I believe it points up and puts in true perspective the issues with which it deals.

The able Senator was an outstanding judge in his own State of South Carolina. Did he ever find anything wrong with the right of trial by jury when he was sitting as a presiding judge?

Mr. THURMOND. Mr. President, in response to the question of the able Senator from Georgia, I do not know of any better system in the world than the right of trial by jury. There may have been some occasional miscarriages in this system down through the years, but in my opinion, any other system would have produced more injustices.

I believe that when a man is tried by 12 of his peers, 12 of his fellow countrymen, he receives the fairest possible trial that anyone could hope for—12 men, even though, perhaps, not highly educated in book learning so to speak, even though they may not have bachelor's, master's, or doctor's degrees, but nonetheless 12 of his fellow countrymen, men from the farm, men from the factory, men from little business, perhaps some from big business—a mixture of all segments of the population—perhaps a barber, a garageman, a truckdriver, all representatives of people of various categories throughout the Nation.

It seems to me that when a man gets a trial with a jury of 12 men like that, he gets a cross section of his fellow men who can judge him more fairly than any one judge in the world; because, after all, they are people who are practical, who use good commonsense and judgment.

Personally, if I were a defendant, I would certainly wish that kind of trial, rather than to be tried before any single judge.

Judges, of course, are human. I have witnessed the trial of cases involving assault and battery. One judge would be extremely heavy with his sentences and another would be extremely light. I have seen some judges mete out strong sentences in the case of homicide and others hand out much lighter sentences. I recall one judge in my State, years ago, who talked in a deep voice, which might indicate that he was going to slap a man down with a heavy prison sentence, perhaps for life, yet the man would get off with a 6-month term. Another judge, who talked in a meek manner and who acted as if he would give the defendant an extremely light sentence would, when he got through, give him 20 or 30 years.

Judges differ in their idiosyncracies. They also differ in their prejudices. Everyone, I presume, has some prejudice. Everyone is affected in some way, because we are all human and we all have our weaknesses. But when a defendant has the benefit of the composite thinking of 12 men, the result of 12 men working together, thinking together, considering togehter, reconciling together, and then finally reaching a decision together, to my way of thinking the accused gets a fair trial, the fairest he can get in any possible way.

My experience on the bench as a judge for 8 years led me to believe that there is no system which can compare, and certainly none which is superior, to the right of trial by jury.

Mr. TALMADGE. Is not the right of trial by jury the greatest guarantee that all 190 million American citizens have against tyranny from whatever quarter it may come?

Mr. THURMOND. I believe it is. I believe that some of those who are proposing the denial of the right of trial by jury, and who favor the pending bill, which denies the right of trial by jury, on the theory that some southern juries would not convict in certain types of cases, are following a procedure and a course which could flare back in their own faces some day and hurt them as much as or more than any other class of people.

Mr. TALMADGE. Is not the right of trial by jury the greatest civil right that all Americans possess?

Mr. THURMOND. The term "civil rights" has been so misinterpreted and misconstrued and misnamed that when it is used some people begin to feel there is something wrong with it.

The first 10 amendments to the Constitution are known as the Bill of Rights. They are the finest civil rights that one could desire. I do not know of any civil rights that are superior to those listed in the first 10 amendments to the Constitution of the United States.

If I had to choose one procedural guarantee, and could not choose more than one, I probably would choose the right of trial by jury. I believe it to be the most precious of all civil rights in the Constitution of the United States. It is the greatest procedural civil right on the books. When I say that, I realize that it is difficult to choose one civil right above another, such as freedom of speech, freedom of religion, the right to petition the Government, the right to prevent the quartering of troops in one's home, and various other rights contained in the Bill of Rights which are essential and vital and valuable. These are substantive civil rights. However, the right of trial by jury when a man is charged with a crime, when his very liberty is at stake, and his very life may be at stake, is the greatest procedural civil right, in my opinion. In such a case I would want 12 of my fellow countrymen to hear my case and render a decision, not 1 judge, who might be biased for one reason or another.

I do not say that a judge would be consciously biased. I am sure that most judges, when they put on the robe and

take the bench, wish to be objective and do what is right. However, human nature being what it is, there might be an unconscious feeling to which vent might be given in the trial of a case, when the judge is the sole jury and sole judge.

Mr. TALMADGE. I agree with the able Senator that the real civil rights are primarily the first 10 amendments of the Constitution of the United States, which are the Bill of Rights. That Bill of Rights is really a prohibition against the exercise of governmental power, is it not?

Mr. THURMOND. The Senator is correct; that is what it is.

Mr. TALMADGE. In other words, it protects the people from the Government.

Mr. THURMOND. That is exactly the purpose of it. It is to protect the people from the Government. Anyone can take up the Bill of Rights, and read any one of them, and see that that is so. The first one, for instance, says that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

In other words, Congress can make no law with respect to these matters. It is a prohibition. It is, as the able Senator says, a protection of the people from the Government, so to speak.

Mr. TALMADGE. This so-called civil rights bill, H.R. 7152, is just about the opposite, is it not, in that on every one of its 55 pages, in every paragraph and title and section, it delegates more power to the Federal Government?

Mr. THURMOND. H.R. 7152, which passed the House and which is now before the Senate, is a concentration of power in the Federal Government. The bill would take away the rights of individual citizens and bring them to the Federal Government in Washington. It would take away the rights of States and brings those rights to Washington. It would shift those rights from the State level to the Federal level, to be exercised by a bureaucracy in the national government.

Mr. TALMADGE. I ask the Senator if title I, the voting rights section, would not deny to each of the 50 States its constitutional right to determine the qualifications of their voters?

Mr. THURMOND. The Senator is eminently correct. The Senator from Georgia is not only one of the ablest lawyers in the State of Georgia and one of the ablest men in the Senate, but he also served as a great and capable Governor of his State for a number of years. He knows history, and he knows government. When he makes the statement that he has made he is as correct as he can be.

Mr. TALMADGE. I am grateful to my friend for his generosity. I ask the Senator if the bill would authorize the Attorney General to file suits against registrars in any State in the Nation and deprive them of a jury trial in the process?

Mr. THURMOND. The Senator is correct. I heartily concur in what he has to say on that point.

Mr. TALMADGE. I ask my able friend if title II, on page 6, dealing with injunctive relief against discrimination in places of public accommodation, would not deny the property owners of America their freedom to operate their private businesses as they saw fit?

Mr. THURMOND. The Senator is again correct in his statement. If a man owns an inn, or a hotel, or motel, or any other establishment providing lodging to transients, or if he owns a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facilities principally involved in the sale of food for consumption on the premises, or if he owns a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment—each being a person's private property—he will not be able to determine to whom he will sell or whom he will serve. He will be required to serve and sell to whomever the Government says he must sell or serve. He would not be allowed to choose his own patrons, although he might wish to advertise his place of business and develop a business for a certain category of business. He would not be allowed to do so, because he must serve everybody, and everybody does not fall into a certain category.

Mr. TALMADGE. Notwithstanding that fact, he would not have his property condemned, and he would not be compensated therefor, would he?

Mr. THURMOND. The Senator is correct. Technically, the Government would not have condemned his property, but it would have exercised control over it. I do not know that there is very much difference whether an individual owns the title to a piece of property, or the Government owns it, as is the situation in a Communist country, when the Government is exercising control over it. A man cannot take his property when he leaves this world. All he can do is exercise control over it. When that control is taken away from him, and when that right of control is destroyed, the situation approaches what exists in a Communist state.

Mr. TALMADGE. The control would be transferred from the owner to the Government. Is that not correct?

Mr. THURMOND. The Senator is absolutely correct.

Mr. TALMADGE. Would it not also authorize the Attorney General to file suit against anyone he saw fit to sue under that title, in any area of the country, and deny him the right of trial by jury?

Mr. THURMOND. That is correct.

Mr. TALMADGE. Is it not also true that the mere threat of a suit against an overwhelming majority of the people affected by that title could in itself bankrupt them?

Mr. THURMOND. It could, because a great many people would find themselves in a cataclysm of circumstances in which that could be the result.

Mr. TALMADGE. They would not have the financial or legal resources to withstand the might and power of the National Government, would they?

Mr. THURMOND. Lending institutions would be reluctant to finance the people unless they felt that the individuals could operate and control their own businesses. That was well illustrated at the airport in Jackson, Miss., in a case with which the Senator is no doubt familiar.

A widow was operating a restaurant at the Jackson Airport. She was told that because planes came into the airport from other States, she was engaged in an interstate operation and that, therefore, segregation was prohibited. So she was ordered to desegregate her restaurant.

Some Negroes entered and wanted to be served. She refused to serve them. She thought that to do so would damage her business. But she received an order that she would have to serve them or else give up the premises.

She had inherited a sum of money—perhaps $20,000—from her husband, who had died, and she invested it in the business. She did not want to lose it; she continued, thinking that she would try to cooperate as best she could, and she agreed to desegregate.

After she desegregated her restaurant, the Negroes did not return with their business to any substantial degree and the white people stopped patronizing her business, so she lost the entire business. She lost $20,000 that she had inherited from her husband and had invested in the business. I understand it was the only property she had.

Mr. TALMADGE. She has not been compensated, has she?

Mr. THURMOND. She has not been compensated by the National Government. She has not been compensated by anyone. She was a poor widow, who was trying to make a living. Instead of going on relief and becoming dependent upon the Federal Government for help, she opened a business and took a risk in running the business. Just as any man takes a risk when he goes into business, that widow took a risk when she went into business. But because of the action of the Federal Government, which gave orders as to how she might exercise control over her property, she was directed to desegregate her patronage, and she lost her investment in the business. That was really nothing less than a confiscation of her property without due process of law or compensation, which in itself, as the able Senator from Georgia knows, is unconstitutional.

Mr. TALMADGE. I ask the Senator if title VI, on page 25 of the bill, would not authorize the Federal Government, whenever it deemed it well to do so, to withdraw all Federal funds from entire cities, entire counties, entire States, or entire regions, and to starve them to death.

Mr. THURMOND. I agree with the statement of the able Senator from Georgia. If title VI is a part of the bill, if the bill passes, one would need practically no other provision in the bill, for title VI could accomplish almost anything.

The right to withhold money or funds from an individual, a group of individuals, a political subdivision, or a State, or from a State itself, if it is involved, is a powerful blackjack, as it has been called during this debate. Title VI is one of the

most dangerous transfers of power to the Federal Government that could possibly be made.

Mr. TALMADGE. It could be used to control elections, could it not?

Mr. THURMOND. There is no doubt about it. Suppose that in one State an election was expected to be close. If some bureaucrat wanted to help the party in power, whichever party it happened to be, he could claim that there was discrimination in one section and could threaten to cut off funds—for example, funds for the school lunch program, social security funds, or funds for veterans. There might be a veteran who had lost both legs and who was receiving certain pension funds. Because it was alleged that discrimination existed somewhere in the program, the funds could be cut off, under the bill, and in that way the people affected could be brought to realize the great power of the Federal Government and what it could do to them.

Then someone could whisper to them, "If you will get out and work for a certain party, perhaps we will not give you trouble; perhaps things will be all right."

Under coercion, under duress, under threat, direct or indirect, the election in a State could be caused to be thrown, especially if it were a State in which the election might be close.

Mr. TALMADGE. Could not the following example be possible under title VI: Assume that two persons, a Methodist and a Baptist, applied for a job in the Highway Department of South Carolina, and the Baptist received the job. Suppose that an official in Washington decided that the Methodist, instead of the Baptist, should have received the job. Could not the Federal agency make a determination that discrimination had occurred in the use of Federal funds, and could not the Federal highway funds for the entire State of South Carolina be withheld?

Mr. THURMOND. Under the wording of the bill, I believe such action could be taken.

Mr. TALMADGE. Would not that also be true of the other 49 States in the Nation?

Mr. THURMOND. That is my opinion.

Mr. TALMADGE. I ask the Senator to turn to page 27 of the bill, title VII, the equal employment opportunity title. Would not that title authorize the Federal Government to police the hiring practices, assignments to jobs, promotion practices, and discharge practices of every business in America that employs 25 or more persons?

Mr. THURMOND. It certainly would.

Mr. TALMADGE. Can the Senator from South Carolina think of anything more extreme or more totalitarian than to give such power to the National Government?

Mr. THURMOND. When a man cannot select his own employees in his own private business, we shall have lost freedom in America. If a man cannot hire the people who he thinks could best promote his business, we shall be taking away one of his basic rights under the Constitution.

Mr. TALMADGE. In addition to depriving an employer of his rights, would not this title also deny labor unions their right of collective bargaining?

Mr. THURMOND. It would.

Mr. TALMADGE. I agree with the able Senator.

Mr. THURMOND. I hope the labor unions will wake up to what is happening and see what the bill will do to them. I am not too sure that the labor union officials fully understand the ramifications of the bill and what could result if the bill were enacted and the law enforced.

Mr. TALMADGE. The Senator from South Carolina and I have had a colloquy about some of the most extreme provisions of the bill, but not by any means all of them. Does the Senator see anything in any of the titles that will enlarge the liberty and freedom of any or all of the citizens?

Mr. THURMOND. I have read the bill through several times, word for word. I have not merely scanned it, but I have carefully studied it. There is not a line in the bill that would promote the freedom or liberty of the people of the country.

Mr. TALMADGE. Is it not a straitjacket to enable the National Government to exercise its police power in every area of private human life, from the cradle to the grave?

Mr. THURMOND. In my judgment, the purpose of the bill, even though some of its proponents may not have had it in mind—somewhere, someone who helped to write it or suggest it had in mind bringing more power to the Central Government, and did so under the guise of a civil rights bill, acting on the theory that it would help a minority in this country.

Mr. TALMADGE. I believe it was Toynbee who said that of the 21 great civilizations that had perished, 19 lost their liberty from within, not by invasion or destruction from without. Is not that correct?

Mr. THURMOND. That was Toynbee's conclusion. Almost all of them lost their liberty in that way, as Toynbee said. History will reveal that to be the case.

Mr. TALMADGE. Did not Macaulay, in the famous letter he wrote in 1857, say that the American people eventually would lose their liberty not by destruction from without, as the Roman Empire was destroyed, but by destruction from within, caused by organized pressure groups, in the latter half of the 20th century?

Mr. THURMOND. That was his prediction; and it seems that if we lose our freedom, if we lose the type of government we now have, if we destroy the framework of Government which has given us more freedom than any Government has ever given any people, our Nation will follow the course predicted by Macaulay.

Mr. TALMADGE. Is not the entire bill a blueprint for the loss of freedom by all the people, wherever they may be in America?

Mr. THURMOND. If I were to sit down and deliberately prepare a piece of proposed legislation to be enacted by Congress to accomplish such a purpose, I do not believe I could prepare legislation that would accomplish that result any better than this piece of proposed legislation would accomplish it.

Mr. TALMADGE. I agree with the able Senator.

I congratulate him on the outstanding effort he is making to preserve the constitutional liberty and freedom of all the American people.

Mr. THURMOND. I thank the Senator from Georgia; and I congratulate him on the great service he is rendering the country during this debate. I especially commend him for his penetrating questions, which have helped to analyze the bill and to bring out the fallacies and the important points the public should know about this measure.

Mr. CLARK. Mr. President, will the Senator from South Carolina yield for a question?

Mr. THURMOND. Mr. President, I shall be pleased to yield to the able and distinguished Senator from Pennsylvania on the same conditions as those on which I yielded to the able Senator from Georgia.

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

Mr. CLARK. It is true, is it not—I raise this question in connection with the discussion of jury trials which the Senator from Georgia and the Senator from South Carolina indulged themselves in a few moments ago—that under the State laws of both South Carolina and Georgia, a jury trial is denied a defendant who is brought into court for criminal contempt by a judge?

Mr. THURMOND. In reply to the question of the able Senator from Pennsylvania, I will say that that is not the case under the South Carolina case law. Last week, I made an address during which I cited an early case on that very point, in connection with criminal contempt.

Mr. CLARK. I would not wish to question a former judge of the State of South Carolina and a Member of this body for whom I have the most profound regard; but my information is that no Southern State grants a satisfactory trial by jury in criminal contempt cases under State law, regardless of what early decisions may indicate.

Mr. THURMOND. I shall be glad to furnish the able Senator from Pennsylvania the name of that case, so he can read it.

Mr. CLARK. Mr. President, will the Senator from South Carolina yield further to me?

Mr. THURMOND. Mr. President, I shall be pleased to yield further to the Senator from Pennsylvania, on the same conditions.

Mr. CLARK. Does not the Senator from South Carolina agree that in the entire history of our Federal Republic, a jury trial in criminal contempt cases has never been permitted in the Federal courts, until enactment of the Civil Rights Act of 1957, which granted a limited right of jury trial in certain special cases?

Mr. THURMOND. During consideration of the Civil Rights Act of 1957, as the Senator may remember, I made a long speech on that bill. Some persons thought perhaps I would speak on other

facets of it; but the facet on which I spoke was the right of trial by jury. The Civil Rights Act of 1957 provided that if the punishment for contempt were more than 45 days confinement or more than $300 fine, the defendant would receive a jury trial; but that if the punishment were 45 days or less or if the fine were $300 or less, he would not receive a jury trial. In my opinion, such legislation is unconstitutional. But so far as I know, there had not been on the statute books of any jurisdiction legislation which provided that a defendant would not receive a jury trial under any circumstances.

Mr. CLARK. Mr. President, will the Senator from South Carolina yield further to me?

Mr. THURMOND. Yes; on the same conditions.

Mr. CLARK. Then I take it the Senator from South Carolina agrees with me that prior to 1957 there was absolutely no right to a jury trial in criminal contempt cases in Federal courts.

Mr. THURMOND. The judge exercised that right; that is true. But the mere fact that such a policy was followed does not mean that it was in accordance with the Constitution, and does not mean that it was proper. Furthermore, there was then no legislation on the subject.

But now the able Senator from Pennsylvania is attempting to have placed on the statute books of the land legislation on this very point; and the proposed legislation would deny the right of trial by jury.

Mr. CLARK. Mr. President, will the Senator from South Carolina yield further?

Mr. THURMOND. I am pleased to yield for a question

Mr. CLARK. To be sure that we understand each other, let me say that I understand that the Senator from South Carolina agrees with me that prior to 1957, there was neither statute nor judicial custom under which a defendant in the Federal courts had the right to demand a jury trial in a criminal contempt case.

Mr. THURMOND. I did not deny that was the case; but I said there was no law on the subject; and in my opinion, any procedure to the contrary, if followed in the courts, was improper. So we should be seeking to correct any course which was contrary to the Constitution, and not undertaking to proceed further on a course contra the Constitution. Of course, jury trials in labor cases were provided for in the Clayton Act and even more so in the Norris-La Guardia Act.

Mr. CLARK. Mr. President, will the Senator from South Carolina yield further to me?

Mr. THURMOND. I yield.

Mr. CLARK. Does the Senator from South Carolina agree with me that since the 1957 act was passed not one jury has been impaneled in a criminal contempt case in the Federal courts?

Mr. THURMOND. I do not know of all the cases that have been tried, so I cannot answer the Senator's question on that point. It is my understanding that only two cases have been brought under the 1957 act. Possibly he has obtained some information in regard to it; perhaps the Civil Rights Commission has compiled some evidence in regard to it. But in that case, I hope the Civil Rights Commission has been more accurate than it has been in connection with other matters.

Mr. CLARK. Let me say that I have been advised by the Attorney General that no jury has been impaneled in a criminal contempt case under the 1957 act, since it was passed; and, therefore, in the entire history of the Republic, from the day when the Constitution was ratified, to the enactment of the Judicature Act, there has never been in the Federal courts a criminal contempt case in which there was a trial by jury; nor, I take it, has there been any effective right of trial by jury in a criminal contempt case in the States of the Old Confederacy, with the possible exception of South Carolina. The Senator from South Carolina knows more about the law and the procedure in that State than I do; so I shall await with interest his citing of the South Carolina case to which he referred earlier in our colloquy.

I thank him for yielding.

Mr. THURMOND. I thank the Senator from Pennsylvania.

Let me say that even though no jury was impaneled, if the judge decided to impose a punishment of 45 days or less in jail, or to impose a fine of $300 or less, and if the punishment fell into either of those two categories, under that act the defendant had no right to a trial by jury. That might be the case under the pending measure; and if the Dirksen-Mansfield amendment were enacted into law, possibly 90 percent of the cases would fall into that category, because the judge might say, "I will sentence the defendant to 30 days in jail or to a fine of $300; and therefore his case will be tried without a jury. Perhaps in that way he will be taught a lesson." So perhaps the judge would limit the punishment or the fine to that extent.

But suppose a man were brought to trial on a dozen different allegations by some bureaucrat, and suppose he had a separate trial on each of them. In that event, he could be sentenced a dozen times to pay a fine of $300—a fine of $300 on each of the dozen cases—without a trial by a jury.

Mr. CLARK. Mr. President, will the Senator from South Carolina yield further to me?

Mr. THURMOND. I am pleased to yield, on the same conditions.

Mr. CLARK. The Senator is a very able lawyer and he was a distinguished judge in his State. I am sure that he would agree with me that when the difficult question of contempt arises, which it rarely does, in a civil contempt proceeding, the normal procedure is to impose either a fine or a jail sentence or both, without a jury—for there is never a jury in a civil contempt case—and the criminal contempt procedure is highly unusual, punitive, and has never been exercised yet under the Civil Rights Act of 1957. Therefore, in my opinion—I would not expect my friend to agree—all this talk for the first time about sacred freedom involved in a jury trial in criminal contempt cases is really rather irrelevant, besides the point, and is raising a question which, to my way of thinking, is of very little importance in connection with the bill.

Mr. THURMOND. In the past there has not been on the statute books of the land such unreasonable, impractical, unconscionable, and unconstitutional legislation as is embodied in the so-called civil rights bill. There has not been the necessity perhaps to use the contempt procedure, but the bill before the Senate would permit the use of contempt procedures to punish those who violate its provisions and who are charged with a crime.

The purpose of civil contempt is to bring about compliance with an order of the court.

Mr. CLARK. The Senator is correct.

Mr. THURMOND. The purpose of criminal contempt, however, is to punish a man after he has violated an order.

Mr. CLARK. The Senator is correct.

Mr. THURMOND. Ordinarily, if a contempt is committed in the presence of the court or in the vicinity of the court, where it would interfere with the operation of the court, the judge would have discretion and should be allowed to retain that. But where the contempt action would be pure punishment, and where the judge would be the prosecutor, the judge, and the jury, in my judgment that is going entirely too far. That is the remedy provided in the bill. The Senator can imagine the great amount of litigation that would grow out of the bill, whereas the litigation of other cases involving contempt would be practically nil, as the Senator has said. There has been little in the past. But the bill is calculated to generate a great amount of litigation. I predict that it will do so if the measure is ever placed on the statute books.

Mr. CLARK. Mr. President, will the Senator yield further?

Mr. THURMOND. I am pleased to yield on the same conditions.

Mr. CLARK. Ever since the 9th of March the able Senator from South Carolina and his determined colleagues from the South have been arguing about what a very unwise, unsound, and unfair bill this is. Those of us who support it as a just, wise, moderate, and reasonable bill have attempted at somewhat less length to rebut the views of our friends from the South. I do not believe at this late date—I think the 53d day of the debate on the bill—the Senator from South Carolina will change the mind of the Senator from Pennsylvania or vice versa. I thank the Senator for yielding. I shall not interrupt further.

Mr. TALMADGE. Mr. President, will the able Senator from South Carolina yield at that point?

Mr. THURMOND. I am pleased to yield to the distinguished able Senator from Georgia on the same conditions upon which I have previously yielded.

Mr. TALMADGE. I should like to point out that the distinguished Senator from Pennsylvania has said that a jury

trial has never been granted in a criminal contempt case.

Mr. CLARK. In the Federal courts.

Mr. TALMADGE. I point out that the Norris-La Guardia Act, and also the Clayton Act, both provide for jury trials in criminal contempt cases. The Congress of the United States, in its wisdom, saw fit to provide for jury trials in criminal contempt cases in both instances. Subsequently, in the Landrum-Griffin Act, which I believe was passed by the Senate in 1960, if my memory serves me correctly, the Senate, by a unanimous vote, without any rollcall, adopted an amendment which provided for the right of jury trial in criminal contempt cases.

The late lamented President of the United States, John F. Kennedy, was the Senator in charge of the bill, and he accepted the amendment which was offered by the distinguished senior Senator from North Carolina. Congress has on at least three occasions provided for jury trials in criminal contempt procedures.

Mr. CLARK. Mr. President, will the Senator yield so that I may reply?

Mr. THURMOND. I am pleased to yield to the Senator from Pennsylvania, under the same conditions stated.

Mr. CLARK. I point out that a good many times during the course of the debate, which started on March 9, the alleged analogy of the Norris-La Guardia Act and the Clayton Antitrust Act has been raised by our friends from the South as a precedent to indicate that their present effort to insert a jury trial provision in criminal contempt cases was merely following out precedents heretofore in effect under Federal law. The answer to that has been made a number of times by proponents of the bill. The analogy is inexact. I believe it is inaccurate. I do not think any useful purpose would be served by going over that ground for perhaps the fifth or sixth times.

Mr. TALMADGE. Mr. President, will the able Senator from South Carolina yield at that point in order that I might propound a question to the distinguished Senator from Pennsylvania?

Mr. THURMOND. Let me first respond to the statement that the Senator just made, and then I shall be pleased to yield to the distinguished Senator from Georgia. I remind the able Senator from Pennsylvania that, in addition to the Civil Rights Act of 1957, which he said provided for the right of trial by jury, that act provided only split-level jury trials, so to speak, in certain cases.

Mr. CLARK. The Senator is correct.

Mr. THURMOND. It provided no right for jury trials where the punishment was imprisonment for 45 days or less or a fine of $300 or less. So it was not a complete jury trial statute, so to speak. But I invite the Senator's attention to the fact that the Clayton Act of 1914 is very much in point. Section 21 of that act reads as follows:

SEC. 21. 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.

SEC. 22. 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.

In other words, under the Clayton Act, upon demand of the accused, a defendant could get a jury trial. I remind Senators that section 11 of the Norris-La Guardia Act of 1932 provides:

SEC. 11. 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 * * *.

In other words, section 11 of the Norris-La Guardia Act provides that 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.

I should also like to point out that the statute does not limit the right of jury trial to merely criminal contempts, but also includes civil contempts. I would remind the Senator that the Landrum-Griffin Act of 1959, section 608, reads as follows:

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.

So it is clearly seen that a person charged with contempt under the Clayton Act of 1914, or under the Norris-La Guardia Act of 1932, or under the Landrum-Griffin Act of 1959 is entitled to a jury trial.

Does the Senator believe that when in labor cases a person who violates an order of the court and is in contempt of court in a labor matter can get a trial by jury, but one who violates the law and is in contempt in a civil rights matter should not get a jury trial?

Mr. CLARK. I assume the Senator would like me to reply to the question. I may say that I find I now have my relief. Therefore, with due respect to the Senator, I beg his indulgence if I do not remain too long. I remind him that the problems under the Clayton Antitrust Act and under the Norris-La Guardia Act are quite different in their scope, the evil against which the laws are directed, and the procedure necessary to enforce the laws, from the standpoint of granting to a citizen of the United States his rights, without regard to his race, creed, or color, guaranteed to him by the 14th amendment almost 100 years ago. It is difficult for me to follow the logic and reasoning of those who contend that either the La Guardia-Norris Act, the Clayton Antitrust Act, or the Landrum-Griffin Act could be used as a precedent for imposing now, for the first time, in a criminal contempt case in a Federal court, a jury trial, where, for the first time, a judge would be denied the right to enforce his own decree, which had been violated by an individual charged with and found guilty of having infringed the constitutional rights of a citizen of the United States.

I do not want to leave without giving my friend the opportunity to have the last word, so I shall wait patiently until he has it.

Mr. THURMOND. The unions, of course, insisted on a jury trial in the event one should be charged with contempt in a labor case. I am hoping the unions will become as zealous in civil rights cases, and do the same thing. I hope public opinion in this country will crystallize to such an extent that the public will demand jury trials in civil rights cases, just as Congress enacted jury trial rights in labor cases. The Senator must feel down in his heart that, if a man is to be given a jury trial for violations of law or for criminal contempt in labor cases, a man should be given a jury trial for contempt in civil rights cases.

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

Mr. THURMOND. I yield to the Senator from Alabama under the same conditions as I yielded to the Senator from Georgia.

Mr. SPARKMAN. I hope the Senator from Pennsylvania will delay his departure from the Chamber for one moment.

Mr. CLARK. My dinner waits.

Mr. SPARKMAN. I was a little late getting back from mine. Perhaps the two will overlap.

I am sure the Senator from Pennsylvania would not now advocate repealing the trial-by-jury provision in the Norris-La Guardia Act or in the Clayton Antitrust Act.

Mr. CLARK. No; but I would advocate repealing it in the Civil Rights Act of 1957. I did not vote for it in the first place.

Mr. SPARKMAN. The Senator from Pennsylvania has said there never has been a right of trial by jury in a criminal contempt case in a Federal court. It seems to me rather strange that only a couple of weeks ago four Justices of the Supreme Court would hold that Governor Barnett, of Mississippi, was entitled to a trial by jury. By the way, they were the four outstanding liberals on the Supreme Court. The same court undoubtedly would have advocated the right of trial by jury in the Norris-La Guardia Act.

I wish to add a thought for the Senator from Pennsylvania to turn over in his mind. He says there is no analogy. I believe there is a complete analogy. A group of people, people who wanted to

organize, wanted to write this protection into the Norris-La Guardia Act, and in the Clayton Act, too; and they were given protection from the tyranny of courts, protection from injunction and criminal contempt. The same thing is true in this case, when American citizens will be accused of crime. As a matter of fact, the Constitution provides that all persons accused of crime shall be tried by jury.

Mr. CLARK. If the Senator will yield, I regret my inability to agree with my distinguished colleague.

Mr. THURMOND. Before the Senator from Pennsylvania leaves the Chamber, I have the name of the case in the South Carolina decision on criminal contempt. The law on indirect criminal contempt in South Carolina was settled at the early date of January 1796, in the case of Lining against Bentham. This case has stood as the prevailing case law in South Carolina since that time, and has neither been overruled nor modified.

Mr. CLARK. If the Senator will excuse me, I shall leave. I shall make my reply later.

Mr. THURMOND. I feel that, although the Senator is a good lawyer, he should be informed of this case.

Mr. MILLER. Mr. President, will the Senator yield for a question?

Mr. THURMOND. I had yielded to the Senator from Alabama. I think he should complete his questions.

Mr. SPARKMAN. I shall be pleased to wait.

Mr. THURMOND. Mr. President, I ask unanimous consent that I may yield to the able Senator from Iowa on the same conditions on which I yielded to the able Senator from Georgia.

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

Mr. MILLER. I regret that the dinner of the Senator from Pennsylvania apparently is becoming overcooked, because I did want to make a point with respect to what he just said about there being no comparison between the Norris-La Guardia Act, the Landrum-Griffin Act, and the bill now under consideration.

It seems to me that we ought to bear in mind that the purpose of criminal contempt procedure is not primarily to enforce any particular law. That is what civil contempt procedure is for. The purpose of criminal contempt procedure is to maintain the integrity of the courts and of the law.

Whether the Landrum-Griffin Act or the Norris-La Guardia Act or the Civil Rights Act is involved seems to me to be missing the point that the function of criminal contempt procedure is to enable a court to preserve its dignity, integrity, and effectiveness through punishment for failure to obey an order of the court.

So far as civil contempt procedure is concerned, that is the remedy for getting the job done, whether it involves a Civil Rights Act violation or a violation of a labor law, a tax law, or any other law. The judge has the power, under civil contempt procedure, to tell the defendant he must remain in jail until he carries out the order of the court.

Some persons miss the distinction between the two types of contempt, civil and criminal contempt.

I regret that the Senator from Pennsylvania is not present to respond. I hope he will have an opportunity to check the RECORD tomorrow morning, and that we may have a response from him on that point.

I thank the Senator from South Carolina for yielding.

Mr. THURMOND. I am pleased to have been able to yield to the distinguished Senator from Iowa. Just before the Senator came into the Chamber, I attempted to explain the difference between civil contempt and criminal contempt and brought out the same points the Senator has mentioned. However, I am pleased to join him on that point and to substantiate the remarks he has made.

Mr. MILLER. Mr. President, will the Senator from South Carolina yield for a further question?

Mr. THURMOND. I am glad to yield under the same conditions as before.

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

Mr. MILLER. I take it that the point of the Senator from South Carolina is that the function of criminal contempt is not to enforce a particular act of law but to maintain the integrity of the court?

Mr. THURMOND. What I said was that the purpose of civil contempt procedures is to bring about compliance with the order of the court. The purpose of criminal contempt procedures is to punish for a crime for violation of an order.

Mr. MILLER. Regardless of what order relating to any particular act is involved?

Mr. THURMOND. I also stated, with regard to contempt, that the judge should retain the power to punish when an act is committed in the presence of the court, or an officer of the court, who disobeys the order of the court, or when the act is committed within the vicinity of the court, which would interfere with the operation of the court.

Mr. MILLER. I thank the Senator from South Carolina.

Mr. THURMOND. Mr. President, I have previously discussed some of the history surrounding the present Federal judicial practice in criminal contempt cases.

This history reveals that an "historical error" has resulted in present practices being what they are. The procedure in the area of indirect criminal contempt has over the years steadily departed from the dictates of article III, section 2 of the Constitution which reads in part:

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

And the fifth and sixth amendments to the Constitution which state, respectively:

AMENDMENT [V]

> 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; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT [VI]

> 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 defence.

It is clear that the sanctity of the right to a trial by jury was foremost in the minds of the framers of the Constitution. At this point, it behooves us to consider more carefully the history of jury trial, without particular limitation to cases of either direct or indirect criminal contempt. The Library of Congress has prepared a history and an outline of origins and efforts to abrogate trial by jury. I quote from that article:

TRIAL BY JURY: OUTLINE OF ORIGINS AND EFFORTS TO ABROGATE

A. ENGLISH ORIGINS OF TRIAL BY JURY

Modern scholars agree that trial by jury as we know it today had its origins in medieval England in the first century and a half of Norman rule when William the Conqueror and his heirs sought to strengthen their hold upon the foreign land which they had conquered.

1. The Anglo-Saxon system of justice which William discovered in England at the time of the conquest had elements that foreshadowed the use of juries. The courts were presided over by a reeve (sheriff), and 12 senior thanes (lords) usually acted as the judges. According to a law of Aethelred (c. 981), they "swear on the relic that is given to them in hand, that they will accuse no innocent man, nor conceal any crime." The customary method of asserting innocence was for the accused to bring forward 12 compurgators, who would swear together on his sound character and good reputation. These two elements, combined with a reliance upon sworn witnesses and neighbors and upon openness in all dealings presented the legal background upon which the Normans built a formalized procedure.

2. The earliest clear use of the jury is found in the sworn inquest, originally a Frankish or perhaps even Roman practice whereby the ruler sent out his agents to question people throughout the kingdom on any matter or government or administration which interested him. William the Conqueror instructed his agents to summon a number of reliable, knowledgeable men in "every shire and hundred," put them on oath to tell the truth, and then ask about land holdings, property, previous tax assessments, and similar matters. These sworn inquests provided the material for the Domesday Book, which recorded the names and properties of all landholders. One of the most famous of these inquests was held during William's reign on Pennenden Heath where Lanfranc, Archbishop of Canterbury, reclaimed the lands which had been taken from the archbishopric by William's ruthless half-brother, Odo of Bayeux. For 3 days all the important men of the county were heard, swearing that Lanfranc was the lawful holder of the lands in dispute.

3. The function of the jury as essentially a local factfinding board continued through the reign of Henry II in the inquest on sheriffs to inform the King about the conscientiousness of his representatives and through the reign of Richard I in the assessment by local juries of the Saladin tithe of 1188, the first tax on income and personal

property, needed to finance Richard's crusade.

4. The scope of the jury was greatly expanded by Henry II as a means of indicting those who had violated the King's peace by robbery, thievery, murder, arson, or counterfeiting. In these assizes, the itinerant justices were assigned definite schedules and areas in which they were to try in the King's name all men accused by their neighbors of these misdeeds. Henry II also initiated three new actions whereby the decisions of a jury would determine whether anyone had been wrongfully ousted from possession (as distinct from title), and if so, would immediately reinstate him.

5. Thus the jury was originally developed not to give a verdict but to supply evidence on oath, as witnesses do today. Insofar as this evidence amounted to an indictment, the juries were parallel to modern grand juries. Until the 13th century, the indictment by jury was followed by a trial by ordeal, battle, or compurgation (in which the accused endeavored to produce as many men as possible to swear to his innocence). Only as the men came to doubt the validity of ordeals, as the church refused to preside over the ordeals which thus could not be said to reflect God's will, and as men became willing to accept the opinion of a second, deciding jury (which might contain the same personnel as the indicting jury), did trial by jury become universal. Ironically, however, all men were still thought to be entitled to God's verdict through ordeal rather than to be forced to rely upon a mere human decision, and trial by battle was not formally abolished in England until the 19th century.

6. Trial by jury was always a privilege offered only by the king in his courts. The feudal lords were not permitted to offer jury trials but were themselves the judges in their own courts. As a result, since many cases involved alleged malpractices by the lords, litigants relied more and more on the king's courts with their relatively impartial juries. This increased appeal to the royal courts, caused almost entirely by the innovation of jury trials, was perhaps the greatest single factor in the development of a strong central administration in England, an administration which, moreover, was never wholly dependent upon the feudal classes for its services nor ever wholly divorced from the middle classes who helped to administer its justice.

B. MAGNA CARTA AND TRIAL BY JURY

Clause 39 of Magna Carta provided: "No freeman shall be taken or [and] imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him, except by the lawful judgment of his peers or [and] by the law of the land." Modern scholars are agreed that this did not refer specifically to trial by jury at that time. Rather it was intended to put an end to rapacious King John's habit of taking hostages, levying exorbitant fines, and imprisoning nobles without even consulting his own council of barons. But both in its immediate effect and in its later interpretation, the clause did contribute to the idea that every man was entitled to a legal hearing before any penalty, detention, or dispossession.

C. ATTAINT OF JURORS AND STAR CHAMBER

1. The greatest threat to jury trial in the Middle Ages was the decreasing strength of the kings who controlled the royal justice. For whenever a weak king came to the throne, the feudal nobles did not hesitate to bribe or threaten jurors flagrantly. Many kings, often handicapped by the need of noble support for foreign wars, had not the power to check these mighty barons.

2. The process of attaint, originally devised to provide extra protection to the defendant, constituted one royal weapon against the corruption of justice. It was really an extension of the original concept of the jury as a panel of witnesses rather than judges. When the jury gave a verdict that seemed to contradict the known facts, the jurors themselves could be tried or attainted for perjury, convicted, and imprisoned. This practice, although originally intended to remedy abuses, lent itself very easily to further abuse, since the feudal lords were also able to attaint juries who decided against them. The result was that jurors occupied a very precarious position and that litigation often dragged on for as much as half a century. Actions for attaint were not finally prohibited until the famous Bushell case of 1670 when a judge attempted to imprison a whole jury for a verdict with which he disagreed. By that time, juries were clearly recognized as decisionmaking rather than evidence-giving bodies and, therefore, the charge of perjury was no longer applicable. Actually, with the coming of the strong Tudor and Stuart governments the lengthy process of attaint had fallen into disuse.

3. The Tudor and Stuart method of insuring fair juries was more direct, but perhaps also more repugnant to our own ideas of justice. The Court of Star Chamber, which had gradually developed from the King's privy council and was comprised of certain privy councilors, bishops, and judges, was in 1487 given specific jurisdiction to hear and settle in closed session any disputes, legal, judicial, administrative, in which the interest of the King was involved. Originally the Star Chamber performed a useful task, settling disputes between and punishing important barons who might otherwise have escaped through common law loopholes, looking into cases of alleged jury corruption, handling many administration matters equitably and efficiently, and in general reinforcing rather than competing with the other branches of royal justice.

4. But, as with many other institutions founded in the best of faith and very well equipped to handle certain immediate problems, the Star Chamber tried to extend its potentially unlimited power into fields where it should never have gone. Under Charles I the bishops on the court undertook to punish religious writers with whom they differed, to try to enforce a censorship on all printed matter, and to mete out cruel and unusual punishments for minor political offenses. The Star Chamber had clearly outlived its usefulnesst as a method of controlling rebellious barons and was becoming an instrument for religious and political persecution. The Star Chamber with its denial of the trial by jury which Englishmen had come to feel was their right constituted one of the main grievances against Charles I, and was an important element in his fall. One of the first acts of the Parliamentary Party after it had gained the upper hand was to abolish the Star Chamber in 1641, and to assert the right of every Englishman to a fair and open judgment by his peers.

5. Nevertheless, unscrupulous judges continued to use the threat of attaint and fines against jurors with whose verdicts they disagreed. In the famous trial of William Penn, the Quaker, in 1670, the judge and court officials threatened the jurors with starvation, fines, and other punishments if they did not declare the defendant guilty of speaking at an unlawful (that is, Quaker) meeting. When the jury absolutely refused to alter their verdict, the judge had them all taken to Newgate Prison, where they remained until the court of common pleas declared their commitment illegal.

6. Another instance of the power which judges could wield over juries fearing punishment themselves is shown by the bloody circuit of Judge Jeffries in 1688. Jeffries headed an ecclesiastical commission which set out to punish all nonconformist sympathizers of Monmouth's rebellion. He browbeat and threatened juries ruthlessly, with the result that over 300 people were killed and over 800 sold into slavery. This abuse of the right to a fair jury trial was an important contributory cause of the glorious revolution, which deposed James and his heirs from the throne forever.

D. TRIAL BY JURY IN ENGLAND DURING THE FRENCH WARS

During and after the French Revolution a panicked fear of revolutionary elements led to repressive censorship and severe curtailment of civil liberties in England. But fortunately there were also men like Charles James Fox who continued to place faith in the people and who eventually won several important victories for the principle of trial by jury.

1. In 1793 Parliament passed an act suspending habeas corpus for a year in certain cases. This act, renewed several times, abrogated the ancient privilege conferred by the writ, and therefore in effect denied the accused the right to a jury trial before detainment. Although most of the upper classes accepted this as necessary protection against revolutionaries, Charles James Fox never ceased to protest this invasion of civil liberties and the denial of trial by jury. Fox himself was expelled from the Privy Council in 1798 for proposing the toast "Our sovereign—the people." But within a decade, the crisis abated, his words were heeded, and habeas corpus and the right to trial by jury were restored, never again to be suspended in England.

2. Fox himself was responsible for the extension of the scope of jury trials in libel cases. Since the libel laws represented the principal restriction upon freedom of speech in England, it had been customary for the judge in a libel case to decide himself whether a given publication was a libel and leave to the jury only the question of whether the accused had actually been responsible for its publication. Juries resented their inability to answer what usually was the most controversial question of the case, and in the case of the dean of St. Asaph the jurors deliberately declared a man innocent of publication simply because they did not consider the material libelous. In 1792 Fox was responsible for a new libel law which extended the power of juries to decide the whole question, as to law as well as fact. In principle, it was a victory for democracy and trial by jury, although in practice the juries tended to be less tolerant in their interpretations of libel than the judges had been.

E. TRIAL BY JURY IN MODERN ENGLAND

Since the beginning of the 19th century, there has been no threat to the right of trial by jury in criminal cases. The grand or indicting jury was eliminated in some instances by the 1873 Judicature Act and almost entirely abolished by the 1933 Administration of Justice Act. In civil cases jury trial was no longer considered necessary as a rule, so that today less than 10 percent of civil cases in England are tried by jury. These changes, which came about during the 19th and 20th century judicial reforms, were made in the interests of economy, efficiency, and equity for all. On the whole, they have accomplished their purpose and have not been criticized. But the growth of so-called administrative law, that is, of legal decisions made by various boards or commissions upon disputes to which they themselves are a party, like income tax, community planning, and education, has led to widespread demands for a comprehensive administrative code, with more provision for appeals, and perhaps even some juries. Although nothing has yet been done, it is clear that the absence of jury trials in this ever-increasing

area poses many threats to property, if not actually to life and liberty.

F. TRIAL BY JURY IN COLONIAL AMERICA

Although the same conditions on the whole held in colonial America as in 18th-century England with respect to the administration of justice and trial by jury, the attitude of the colonists was from the first different. Being in no position to fear feudal exactions or exploitations, the colonists looked upon the King not as their protector but rather as himself the potential aggressor upon their rights. It was in this spirit that they protested every effort to limit trial by jury as an act of royal tyranny.

1. In 1696 Parliament had reorganized the admiralty courts so that they would be better able to cope with the flagrant smuggling in and out of all the Colonies which was the American reaction to the Navigation Acts. The admiralty courts, which were not a part of the traditional common-law system, did not provide for trial by jury, and as a result English or English-appointed judges frequently sentenced colonial merchants and seamen arbitrarily. The more effective the courts became, the more the colonists resented them, and the more they came to insist upon trial by jury as a fundamental right.

2. The Stamp Act of 1764, offensive enough in its imposition of taxation without representation, added insult to injury by providing that all violations were to be tried in the admiralty courts. Americans, who looked upon trial by jury as one of the fundamental rights to which all men were entitled, did not accept the British view that Parliament was completely sovereign and could constitutionally pass any measure it chose. In American eyes, the Stamp Act was, among other things, a clear deprivation of the right to trial by jury. The reaction against it was so strong, as exemplified by nullifications by various legislatures, the Virginia resolutions proposed by Patrick Henry, the Stamp Act Congress, and, above all, by a boycott of all English merchandise, that within 2 years the Stamp Act was repealed.

3. The final British effort to tamper with the traditional jury trial in the Colonies came with the Act for the Impartial Administration of Justice, one of the intolerable acts, passed in 1774 as a retaliatory measure after the Boston Tea Party. This act provided that certain offenders were to be transported to England. This repudiation of the colonists' own right to judge their fellow citizens was one of the last acts which made reconciliation with England almost impossible and thus provoked the war for American independence.

G. JURY TRIAL IN THE CONSTITUTION

Although there was no controversy or conflict involved in the establishment of trial by jury in article III, section 2, of the Constitution, there was some discussion of the need to provide jury trials in civil cases. The colonists appreciated the fact that even in civil matters, the protection of a jury would be needed against extensions of power comparable to that of the admiralty courts, 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 attached 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. Wisely they guaranteed not trial by jury, but the right to trial by jury, with the result that in many cases defendants may choose to dispense with juries in the interests of speed or economy, but in none of the above circumstances can they be forced to undergo a Federal trial without a jury.

H. TRIAL BY JURY AND THE ALIEN AND SEDITION LAWS

Devotion to the principle of trial by jury was so deeply embedded in the minds of the colonists that even when the panic over the French Revolution hit America and the alien and sedition laws were passed, trial by jury was guaranteed to any citizen accused of seditious activity. Aliens, however, were subject to deportation without trial if the President judged them dangerous to the country, even as in some instances they are today.

1. But even though the letter of jury trial was maintained, and even though Claiborne of Tennessee insisted that the jury be allowed a general verdict, as the Fox's libel law, in effect the spirit of jury trial was consistently violated. For example, in the trial of the Democrat James T. Callender, a critic of the Federalist administration, Supreme Court Justice Samuel Chase was patently unfair, and permitted a jury to sit in which there was but one single member who was not an ardent Federalist. There were also attempts to discredit Congressmen who criticized the Government, like Matthew Lyon of Vermont. His triumphant reelection showed the unpopularity of the law. The defeat and ultimate failure of the Federalist Party in the following elections was a further indication that Americans had come to repudiate all partisan or political abuses of the principle of trial by jury.

I. TRIAL BY JURY IN WARTIME

The greatest pressures upon trial by jury in America have, with few exceptions, come in periods of wartime. It is clear, however, that on the whole trial by jury has come to be more respected with time and, perhaps also, with the fact that more recent wars have been far removed from the American scene.

1. During the Revolutionary War when there was real fighting over most of the Colonies, it is undeniable that many Loyalists were tarred, feathered, ridden out of town on rails, deprived of property, and even life with no semblance of jury trials. Tories were usually first regulated by local groups, then by the military power and, finally, by the State legislatures and Congress. Even after the war they often had to give proofs of loyalty and might still be arbitrarily banished or dispossessed. In general, however, although jury trial was ignored, the opinion of the majority prevailed, and once satisfied that the Loyalists had repented and that independence was achieved, the majority was not especially cruel or bloodthirsty.

2. During the War of 1812, the issue of trial by jury could be said to have arisen in that the British Navy seized American sailors for use on their own ships, allowing no trial or jury verdict of any sort. Although in accordance with British nationality laws, these acts, which were responsible in no small measure for the Anglo-American war, were in effect a violation of the rights of an American citizen to trial by jury or at least the benefit of habeas corpus, before detention. After the fall of Napoleon and the end of the war, the practice was stopped.

3. During the War Between the States, Lincoln unhesitatingly adopted the view that military necessity overrode civil liberties and pressed Congress to pass acts permitting the suspension of habeas corpus and permitting arbitrary arrests for suspicion of seditious activity. But despite his insistence that in theory military courts could sit and that suspects could be detained at will, in practice these measures, largely preventive, were leniently enforced. A total of perhaps 25,000 persons was arrested, briefly detained, and then released without charges. In February 1862, a wholesale pardon of political prisoners was issued. In the celebrated case of Vallandigham, a Democrat opposing the continuation of the war who was denied habeas corpus and tried by military tribunal, the Supreme Court refused to take cognizance of the military records—in theory, a great check to civil justice—but in practice Vallandigham's punishment was only a banishment to the Confederacy. When he did return to the North, despite the sentence, to rail against Lincoln, he was not further molested. The equally well-known case, ex parte Milligan, is the only instance in which the Supreme Court actually denied the jurisdiction of the military to try a man suspected of plotting a hostile military expedition. As Judge David Davis wrote "Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration. * * * Martial law can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction." Milligan was released and won a suit for damages. On the whole, then, although the precedent established for martial law in wartime was dangerous, the actual administration of the emergency legislation was moderate. No one met death or even served out a full sentence of imprisonment and fine under these treason laws.

4. During the First World War, there was no suspension of habeas corpus or military trials without juries. Espionage and sedition laws were passed, covering a wide field of activities and potentially limiting freedom of speech and of the press very seriously. But these cases were all tried by juries. In fact, there was an emphasis upon leaving all settlements to popular feeling. There were no efforts of any sort to influence and mitigate the full force of indignation against offenders. As a result, the principle of trial by jury was reinforced, although the contrast between Debs' 10-year sentence for pacifism and Vallandigham's brief banishment for real sedition may indicate that popular juries are often more severe in periods of crisis than is an apparently arbitrary executive.

5. During the Second World War, the most conspicuous violation of the right to trial by jury was the deportation of the American citizens of Japanese origin from the west coast. A preventive measure devised in good faith by the President as a military necessity in case of Japanese invasion, the deportation was upheld as constitutional by the Supreme Court. In Ex parte Endo, however, the Court held that a Japanese-American citizen whose loyalty had been proven could not be detained. The Supreme Court did not, however, uphold the lengthy imposition of martial law in Hawaii. There has been criticism of these opinions from both sides. In the difficult cases where a line must be drawn between individual right and military necessity, perhaps the last word is that of Justice Jackson: "The chief restraint upon those who command the physical forces of the country, in the future as in the past, must be their responsibility to the political judgments of their contemporaries and to the moral judgments of history." [1]

J. TRIAL BY JURY IN PEACETIME

With the exception of the Reconstruction era, trial by jury has been a cherished right in the United States in peacetime. Occasionally it has been neglected or abused in moments of political, religious, economic, or racial stress, but more moderate elements have always reappeared to affirm its spirit as well as its letter.

1. The Reconstruction era provides the most flagrant example in our history of a peacetime suspension of the right to trial by jury through the establishment of military government in areas where fighting had clearly ended. The excesses of the military governors and of the carpetbaggers and

[1] Rossiter, Clinton. "Constitutional Dictatorship," p. 284.

scalawags who surrounded them are well known. Deliberate repudiation of all the principles upon which the Constitution was conceived, the Reconstruction acts are today condemned by most historians. And, indeed, within a quarter of a century the men who were responsible for this transgression upon trial by jury and upon almost every other civil right had been repudiated by the whole Nation.

2. Mob violence has been the main source of peacetime violations of the right to trial by jury. Examples of this may be found from all parts of the country and almost all periods of its history: anti-Masonic riots in New York and Pennsylvania in the late 1820's; Know-Nothing riots in the whole Catholic belt between Boston and New Orleans in the middle of the 19th century; Mormon massacres and deportation from Missouri in the 1830's; the enforcement of the Algerine laws in Rhode Island in the 1840's; lynchings in the South and elsewhere; mobbing of abolitionists in the North; race riots in Illinois and Washington, D.C., as well as elsewhere; persecutions of blasphemers, anarchists, radical social reformers, birth control advocates, suffragettes, Asiatics; and innumerable other cases where mere unpopularity has given rise to a deprivation of the constitutional rights of every citizen to trial by jury.

3. The right to trial by jury has been legislatively denied to certain groups, like Indians, who are still in some areas denied citizenship, and aliens, who may be deported for certain offenses after only administrative hearings.

K. TRIAL BY JURY IN LABOR DISPUTES (CONTEMPT OF COURT PROCEEDINGS)

From the end of the American Civil War when labor unions were just beginning to be recognized until well into the 20th century, the frequency and violence of industrial strikes led to an increasing use of court injunctions to restore order. These injunctions were freely granted at the request of management to prevent strikes, which at that time were unions' only effective weapon; violations of the injunctions, that is, continuation of a strike after the court order to enjoin from it, were severely punished as contempt of court by the very judges who had issued the injunctions. Congress eventually saw the need to make special provision for jury trials in this kind of contempt cases, but these special provisions have been considerably altered within the past 50 years.

1. The first question that is involved here is that of the courts' power to punish cases of contempt. This power, which has always been held to be quite distinct from the right to trial by jury in criminal and civil cases, has nevertheless occasionally appeared to infringe upon that right. Inherent in English common law and practice, the power "to punish by fine or imprisonment at the discretion of said courts, all contempts of authority in any cause or hearing of the same" was conferred upon all U.S. courts by the Judiciary Act of 1789. In 1831, however, when a Federal district judge imprisoned and disbarred a lawyer for criticizing his opinions, Congress passed a declaratory act to limit the wide scope of contempt powers. Only in those cases where the offenders were in the court itself or near enough to obstruct justice or were attempting to influence or coerce the direct participants in the trial could a judge punish for contempt. The controlling decision under that law states: "The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." *Ex parte Robinson,* 19 Wall. 505, 510 (1874). There is thus no right to trial by jury in contempt cases except where specific legislation provides for it (as in injunctions over labor disputes) because contempts are neither crimes in the sense of the Constitution nor criminal prosecutions in the sense of the sixth amendment.

2. The most notorious contempt penalty in a labor injunction case occurred as a result of the Pullman Palace Car Co. strike in 1894 where President Cleveland permitted Attorney General Olney to get a blanket injunction against the obstruction of the railways and delay of the mail. Eugene Debs violated the injunction and was given a 6-month sentence for contempt of court. Governor of Illinois John P. Altgeld and lawyer Clarence Darrow made strenuous objections to this partisan use of the court's injunction and contempt powers.

3. As a result of this and other biased decisions, the Clayton Antitrust Act of 1914 was passed which included the provision that indirect contempt actions (that is, out of court) which were also crimes under State or Federal law were subject to trial before juries. But when a series of Supreme Court decisions still protected management's right to make yellow-dog contracts and ignored labor's right to organize, there arose demands for stronger legislation.

4. The Norris-La Guardia Anti-Injunction Act of 1932 strictly limited the causes for which the courts could give injunctions in labor disputes. And in the few cases for which injunctions might be allowed and contempt-of-court charges might still arise the accused was to "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 right was not to apply to contempt committed in or near the court which interfered with the administration of justice. The overall result of the bill, with its restrictions on the granting of injunctions and provision for trial by jury in cases of violations, was virtually to eliminate the issuing of injunctions to management in labor disputes.

5. In 1947, however, the Supreme Court held in the case of the *United States* v. *United Mine Workers* that the restrictions placed upon injunctions in the Norris-La Guardia Act did not apply where the United States was the party seeking injunctions. Therefore, the heavy fine that had been laid upon the union by a lower court judge was upheld, although reduced in amount.

6. Also, in 1947 Congress passed the Taft-Hartley Act, with the aim of protecting employees, employers, and the rights of the public. The Taft-Hartley Act bypassed the Norris-La Guardia provisions completely by lodging the power to the injunction petitions with the reconstituted National Labor Relations Board—in fact, even making such petitions mandatory after unfair practices by labor or management were reported and by creating special machinery for rapid settlement of strikes which "might imperil the national health or safety." The result was, for all practical purposes, to nullify the trial-by-jury provision in the earlier act.

7. In 1948 the codification of the laws resulted in the rewording of the Norris-La Guardia Act as section 3692 of the Criminal Code. That provides: "In all cases of contempt arising under the laws of the United States governing the issuance of injunction or restraining orders in any case involved in or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial in the district in which the contempt is committed." Whether this should be construed as overruling the Taft-Hartley Act in cases of criminal contempt is a matter for legal debate. Apparently none of the cases arising under the Taft-Hartley Act has been based upon this line of argument, possibly because the courts retain their right to punish directly and remedially for civil contempts. Thus, there has as yet been no testing of a right to trial by jury in criminal-contempt actions arising upon violation of injunctions granted to NLRB or the U.S. Government under the present labor law.

L. CONCLUSION

Trial by jury, although originating in England as a means of extending royal knowledge and power, 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, from time to time denied, but never seriously attacked as a principle. In the words of Alexis de Tocqueville:

"It [the jury] imbues all classes with a respect for the thing judged and with the notion of right. If these two elements be removed, the love of independence becomes a mere destructive passion. It teaches men to practice equity; every man learns to judge his neighbor as he himself would be judged. * * * The jury teaches every man not to recoil before the responsibility of his own actions and impresses him with that manly confidence without which no political virtue can exist. It invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge toward society and the part which they take in its government. By obliging men to turn their attention to other affairs than their own, it rubs off that private selfishness which is the rust of society. * * * Thus the jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it how to rule well."

Mr. SPARKMAN. Mr. President, before the Senator leaves that point, will he yield?

Mr. THURMOND. I am pleased to yield to the able and distinguished Senator from Alabama with the understanding that I do not lose my right to the floor, and that upon resuming, such resumption shall not constitute another appearance.

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

Mr. SPARKMAN. I restrained myself from breaking into the Senator's discussion until he had finished what I consider to be a wonderful treatise on the development, concept, and practice of jury trials.

Mr. THURMOND. I thank the able Senator.

Mr. SPARKMAN. It was a most able presentation.

At the conclusion, the Senator quoted De Tocqueville. Did he not?

Mr. THURMOND. Yes.

Mr. SPARKMAN. The Senator will recall that De Tocqueville, after making his study of the United States and our system of government, stated, in effect, when he wrote his book, that one of the really distinguishing characteristics of the American Government was its insistence upon trial by jury. Does the Senator remember that?

Mr. THURMOND. That is correct.

Mr. SPARKMAN. That was one of the many elements in the life of America that impressed him most. It was not the only such element, but it was one of them.

Mr. THURMOND. He highlighted it to a great extent.

Mr. SPARKMAN. He did. The exposure he gave clearly indicates it. The right of trial by jury is not something that broke out of the blue, all at once, but it developed over the centuries. Is that not true?

Mr. THURMOND. That is true.

Mr. SPARKMAN. It was more or less a neighborhood development. Instead of having some kind of trial by battle or trial by ordeal or trial by combat, or whatever it might be, it was decided to let the neighbors come in and testify in behalf of the contestants. The simple rule that developed was that the one who happened to have the greater number of witnesses in his behalf won. In other words, originally the decision was more or less placed on a numerical basis.

Mr. THURMOND. That is true. The right of trial by jury had its origin in medieval England, in the first half century of Norman rule, when William the Conqueror sought to strengthen his hold upon the foreign lands which had been conquered.

Mr. SPARKMAN. That is true. The Senator brought out the fact that the office which we know now as that of sheriff developed originally from the office of shire reeve. He was the one to maintain order and discipline. He was the one to go out and bring witnesses together in case of a contest between any two persons. Out of that practice developed what we might call the beginnings of the jury system.

As the Senator has correctly stated, it was really the forerunner of the grand jury. It represented more or less a presentment, a presentation of the facts, upon which a case should be decided.

Then, if I followed the Senator correctly—and I believe this is borne out historically—over a matter of a couple of centuries there came into full development what might be called the petit jury. I believe that the grand jury came first, and later there developed the system of the petit jury, as we know it today.

Mr. THURMOND. The trial jury.

Mr. SPARKMAN. The trial jury. Is that not correct?

Mr. THURMOND. The Senator is eminently correct.

Mr. SPARKMAN. There grew up a system that contained in it a guarantee of the right of any citizen accused of crime, and even under certain circumstances, in what we call, today, civil cases, to have a trial by a jury of his peers. Is that not correct?

Mr. THURMOND. That is correct.

Mr. SPARKMAN. It became established as a part of the English common law. Is that not correct?

Mr. THURMOND. It became a vital part of the administration of justice in England.

Mr. SPARKMAN. Does the Senator recall that the Continental Congress, in one of its earliest sessions, probably its first session, petitioned or put out a complaint against the English Government and claimed that citizens were being haled into court and tried without benefit of a jury of their peers?

Mr. THURMOND. That is correct. The denial of the right of trial by jury was one of the moving forces that brought on the Revolutionary War.

That was given as one of the grievances in the Declaration of Independence—that in many instances the colonists had been denied the right to a trial by jury.

Mr. SPARKMAN. That is true. Not only had they been denied a trial by jury, but they had been forced to stand trial in places away from their homes.

Mr. THURMOND. In many cases, in military courts as well.

Mr. SPARKMAN. Yes.

Mr. THURMOND. They were taken to other places, as the able Senator has said, and tried away from their homes, or colonies, or home States, as we would say today.

Mr. SPARKMAN. The Senator is correct. The Senator has his Constitution handily placed at his side. I should like to inquire whether he recalls whether the right to a trial by jury is found in article III, or perhaps in the sixth amendment.

Mr. THURMOND. The sixth amendment. The provision is as follows:

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

Mr. SPARKMAN. I wonder if it would not be well to keep in mind that it is not just merely the right to a trial by jury that is involved, but several other things as well.

Mr. THURMOND. The Senator is correct.

Mr. SPARKMAN. In all criminal prosecutions——

Mr. THURMOND. Those are safeguards when a man is charged with a crime. As the able Senator states, a number of safeguards are referred to in the sixth amendment.

Mr. SPARKMAN. The language is not, "in some criminal prosecutions," but "in all criminal prosecutions." Is that not true?

Mr. THURMOND. The Senator is correct—"in all criminal prosecutions."

Mr. SPARKMAN. The language is all inclusive.

Mr. THURMOND. The Senator is correct.

Mr. SPARKMAN. It provides that "the accused shall enjoy the right to a speedy and public trial."

Mr. THURMOND. It provides "the accused shall enjoy the right to a speedy and public trial."

It does not say immediately, it says, "the accused shall."

Mr. SPARKMAN. Most of the judges who invoke criminal contempt proceedings give the accused a speedy trial, do they not?

Mr. THURMOND. The Senator is correct. The defendant gets a speedy trial.

Mr. SPARKMAN. Usually the judge hales the man before him at once, sometimes in open court, and sometimes in chambers; is that not correct?

Mr. THURMOND. The Senator is correct. It is generally done in short order.

Mr. SPARKMAN. Usually the judge is close to the happening of the events or conditions, whatever they were, which made him believe that a person should be held to be in contempt of court. He is not necessarily angry.

Mr. THURMOND. In many cases he is a witness. That is the way the judge obtains the evidence that the accused is guilty of contempt.

Mr. SPARKMAN. The Senator is correct. Of all the safeguards, the one the defendant usually gets in a case of criminal contempt is a speedy trial, if it can be called a trial.

> 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.

Under the provisions of the bill the defendant would not be entitled to that safeguard, would he?

Mr. THURMOND. He would not.

Mr. SPARKMAN. Take the next one. I did not finish reading that.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation.

Mr. THURMOND. The indictment must be brought.

Mr. SPARKMAN. The judge can impose the contempt penalties. Has the Senator from South Carolina ever seen a judge who would go to any trouble to specify the offense? My experience has been that he usually hales a man before him and says, "I am going to hold you in contempt of court."

Mr. THURMOND. The proceedings are usually what might be called star chamber proceedings.

Mr. SPARKMAN. Summary proceedings.

Mr. THURMOND. Yes; expressed in one way, it is certainly a summary proceeding.

Mr. SPARKMAN. It is a summary proceeding. Listen to this: To be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor.

Mr. THURMOND. First, there must be an indictment, as the able Senator has said. He has the right "to be informed of the nature and cause of the accusation."

Mr. SPARKMAN. The Senator is correct.

Mr. THURMOND. The indictment would have to spell out the time the crime was committed, the place where the crime was committed, and against whom it was committed—all of the issues and the elements that go to make up a crime.

Mr. SPARKMAN. Yes. There cannot be a vague general description. There must be discrimination. The particulars must be specified.

Mr. THURMOND. The Senator is correct. There must be a violation of a criminal statute; and a criminal statute is strictly construed. The rule of law is that a criminal statute should be strictly construed. One cannot embrace or imagine any other thing. For a man to be indicted for a crime under law, the

crime must be specified in strict terms. He must be charged in accordance with that crime. Then the case goes to a grand jury for determination of any probable cause, and if the grand jury does not hand down an indictment, the case is thrown out and the accused is not even tried.

That is a safeguard for him. That enables many persons of good reputation to avoid going through an expensive trial.

Mr. SPARKMAN. That is altogether different. This is a part of the general jury system which has developed.

Mr. THURMOND. The Senator is correct; that is a part of the general jury system. This particular section of the Constitution reads:

> And to be informed of the nature and cause of the accusation.

That refers to the indictment. The indictment must be returned by the grand jury. It will not bring out an indictment unless there is probable cause. Once it is determined that there is probable cause against the accused, he is indicted. The grand jury does not determine his guilt or innocence but only whether there is probable cause. If there is, a true bill is returned.

Mr. SPARKMAN. A true bill, or an indictment, or a presentment—whatever it may be called. Is it not also true that in the indictment or presentment it is not sufficient cause merely to charge the defendant with a crime or to bring a charge, even in the military, if a man is subjected to a court-martial without a trial by jury? There must be a charge, and there must be specifications; is that not correct?

Mr. THURMOND. The Senator is correct.

Mr. SPARKMAN. The specifications must be clear enough in detail so that the person will know what he is charged with, when it happened, and where it happened; is that not correct?

Mr. THURMOND. The Senator is correct. There are two essential elements to a crime. First, there must be intent to commit the crime, and second, there must be an act committed in furtherance of that intent. Those two things must be shown.

Mr. SPARKMAN. The Constitution of the United States guarantees that.

Mr. THURMOND. That is guaranteed by the Constitution of the United States.

Mr. SPARKMAN. I shall discuss the rest of the elements, one by one. In the provisions of this bill, is there any guarantee of the accused being properly charged? I believe the Constitution says—

> To be informed of the nature and cause of the accusation.

Is that provided for in the bill?

Mr. THURMOND. There is nothing in the bill which provides for it. This bill would substitute the summary proceedings of contempt actions, which, historically, were quite limited in scope. Primarily, contempt proceedings were applied to matters that took place in the presence of the court.

Mr. SPARKMAN. There is no question about that.

Mr. THURMOND. There is no question about that.

Mr. SPARKMAN. It infringes upon the rights and power of the court.

Mr. THURMOND. Although that is a broad power.

Mr. SPARKMAN. It is.

Mr. THURMOND. It is a broad power which enables a judge to use his own judgment to determine whether a man has committed contempt in his presence.

Mr. SPARKMAN. Or if it was committed in the vicinity of the court in such a manner as to impose upon or hamper the operation of the court.

Mr. THURMOND. Or if an officer of the court fails to carry out an order of the court. Those are generally three bases——

Mr. SPARKMAN. They are not in issue here.

Mr. THURMOND. The Senator is correct; but generally speaking two involve offenses committed directly in the presence of the court; and the other involves offenses directly affecting the court.

Mr. SPARKMAN. Yes.

Mr. THURMOND. The third involves an offense so closely affected that it must be included if the judge is to have the power to maintain the dignity and respect for the court.

Mr. SPARKMAN. The Senator is correct. Let me go to the next safeguard and ask the Senator if it is respected in this bill. The Constitution provides that the accused shall—

> Be informed of the nature and cause of the accusation; to be confronted with the witness against him.

Are witnesses called in a contempt case?

Mr. THURMOND. They could be called.

Mr. SPARKMAN. The judge is usually the witness.

Mr. THURMOND. If it is a case of direct contempt, the judge is the witness himself. He is the prosecutor, the witness, the judge, and the jury.

Mr. SPARKMAN. It is also provided that he shall have compulsory process for obtaining witnesses in his favor, and shall have the privilege of assistance of counsel for his defense. Does the Senator know whether those rights are guaranteed in the provisions of the bill?

Mr. THURMOND. I believe that as a matter of law he would have the right to have counsel even if the bill were passed.

Mr. SPARKMAN. As a matter of law he is entitled to all those rights, because they are in the Constitution.

Mr. THURMOND. Yes; they are constitutional rights, which should be preserved. In an effort to placate certain minorities the bill is drawn in such a way that it would deprive people of the right of trial by jury. Statements have been made to the effect that southern juries might not convict under certain circumstances. In the first place, it is untrue. In the second place, such a presumption indicts a whole section of the country. In the third place, it is unconstitutional. In the fourth place, it is very unwise to say that no jury would convict, because no one knows that juries will not convict.

I have seen the trial of two similar cases in which the jury convicted in one case, and did not convict in the other. I remember trying a case in Georgetown County in South Carolina many years ago. They involved defendants who were tried for rape. In the first case the man received a sentence of death, with no recommendation of mercy. That meant capital punishment. The second case was probably a more aggravated case, because the man climbed up the side of a woman's house, took out a knife, ripped out a screen, jumped into the house, and there committed the rape. In that case, however, the jury recommended mercy, which meant that capital punishment was not imposed.

I was the judge who tried both cases. In one case I had to sentence the man to death, and in the other case I imposed a term of a number of years in jail.

I was puzzled by the outcome of those two cases. I could not understand why the jury gave the death sentence in one case and not in the other. I later learned some of the factors which entered into those verdicts. The jury took those factors into consideration and did what people in the community considered was justice under the circumstances, as I was told. Juries are composed of practical people, who arrive at a verdict. As a rule their decision is as fair and equitable and just as it is possible to obtain. The jury system is certainly much fairer and more accurate and not influenced by the heat of the moment, as can be the case more often when a judge sees an act committed in his presence. In such a situation he is the prosecutor, the judge, and the jury. A situation like that could involve emotion and deep feeling. On the other hand, when a jury considers a case, it retires to the jury room and takes minutes and hours, and sometimes even a day or two until it arrives at a decision. No one can ask for a fairer trial. A judge might be objective or not objective in a particular case. A jury, on the other hand, might consider all the facts, and take an entirely different view than the judge would take.

As I said earlier in the evening, even though a judge might wish to be fair—and I am sure that most judges wish to be fair—human nature is human nature, after all; and some factors may enter into a case which might influence a judge in one way, and in an entirely different way if the judge had an opportunity to discuss those factors with someone else. Jurors discuss those points. They go into all the ramifications of the case, which is something one man cannot do, no matter how smart he is.

Mr. SPARKMAN. The Senator has described the way a jury reacts. This is simply a matter of taking into account the human element.

Mr. THURMOND. Juries generally have reasons for what they do. No two cases are exactly alike.

Mr. SPARKMAN. The Senator mentioned two cases which were tried before

him. I am reminded of a situation which occurred in the District of Columbia a few years ago. The Senator may recall it. Two or more persons were involved in a murder. The first one who was tried had participated in it, but had not done the actual shooting. The jury, for some reason or other, gave him the death penalty. The next one who was tried was the man who had done the actual shooting. The jury recommended mercy in his case, and he was sentenced to a number of years in jail.

Mr. THURMOND. They gave death to the one who was an accessory before the fact, I presume.

Mr. SPARKMAN. Yes. They recommended mercy to the one who had done the actual shooting, who had actually committed the crime. I remember that the situation puzzled quite a number of people in Washington for some time. I believe the situation finally cleared up. The sentence of the one who had been sentenced to death was commuted to life imprisonment, I believe. It seems to me that is what was done. Two juries, or two judges, may decide a case differently.

Mr. THURMOND. The Supreme Court decided the Barnett case by a decision of 5 to 4, so even judges disagree on points of law.

Mr. SPARKMAN. I have in mind another case which arose in my State. A person was accused of a capital offense. I believe it was murder. He was tried. The jury recommended clemency. As a result he was given a life sentence. He appealed the verdict. The Supreme Court reversed the decision and sent the case back for a new trial. On the new trial the jury found him guilty without a recommendation of mercy. He was executed. There was a situation in which two juries acted differently in exactly the same case. The defendant paid a rather harsh penalty. Perhaps the jury did not think it was as harsh as giving him life imprisonment. Nevertheless, he was executed as a result of the sentence in the second trial.

Therefore, the human element enters into these things, just as it does in the case of judges. That was the situation, as the Senator has mentioned, 2 weeks or so ago in the Barnett decision by the Supreme Court, when the Court decided that case by a margin of 5 to 4, holding that the man who was accused of criminal contempt was entitled to a trial by jury, four justices held that way. Five took the other view and said he was not entitled to a trial by jury if the penalty was held to what would be imposed in a trivial case.

The Senator may recall that that question had been certified to the Supreme Court by the Fifth Circuit Court of Appeals. It was certified to the Supreme Court because of a tie vote in the circuit court—4 to 4. So if one takes into consideration the votes of all the judges on the 2 courts—the 8 who voted on the circuit court and the 9 who voted on the Supreme Court—a total of 17 judges voted, and the decision was ultimately reached on a 9-to-8 basis.

Who can say that those who contend that a person is entitled to the right of trial by jury in criminal contempt cases are wrong when 8 out of 17 judges said it was right, and 9 said it was not right, provided the penalty was not more than that in a trivial case?

Mr. THURMOND. The common principle of law is that if there is doubt, a defendant must be acquitted. A person cannot be convicted unless he is found guilty beyond a reasonable doubt. Had that principle been applied here, the defendants would have prevailed.

Mr. SPARKMAN. That is correct; but it does not hold true when one is talking about appellate courts.

To return to the jury system, I was speaking about the first meeting of the Continental Congress, which adopted the principle that the United States—and the States were actually still colonies at that time—should enjoy the benefits of the English common law. The jury system was well developed, I believe the Senator said a while ago, as a part of the English common law. Is that not correct?

Mr. THURMOND. The common law was followed not only in England, but in the States.

Mr. SPARKMAN. The colonies petitioned for the right to enjoy the benefits of the English common law. Is it not true that when the colonies became independent States, they adopted the English common law?

Mr. THURMOND. They did; and each of the States after the American Revolution was just as independent as Great Britain or France, or any other country. Each State was an independent nation. My State of South Carolina had two presidents. Each State had all the powers of any country in the world.

Mr. SPARKMAN. While my State was not one of the original 13—I believe it was the 20th State to enter the Union—at one time it existed as a republic.

Mr. THURMOND. Alabama became the 22d State.

Mr. SPARKMAN. Have the common law States ever done anything to rid themselves of the common law?

Mr. THURMOND. No; the common law still applies, unless a statute has been enacted to contravene the common law.

Mr. SPARKMAN. But practically all States have both statutory law and common law, and the jury system is an inherent part of each type of law, is it not? Certainly the jury system is a part of the common law; and statutory law has established it throughout the States.

Mr. THURMOND. Throughout the history of the country.

Mr. SPARKMAN. As I recall the dissertation the Senator gave on the continuity of the jury system, he stated that in the Constitutional Convention a discussion was had concerning the adoption of provisions for jury trials, and that a trial by jury was not provided for in the Constitution, except as it appears in article III, section 2. The reason was that it was believed that all the States adequately provided for jury trials, and that offenses requiring jury trials would be State offenses. Is that not correct?

Mr. THURMOND. That was the interpretation.

Mr. SPARKMAN. That was included in the Madison Notes, as the Senator may remember.

Mr. THURMOND. Yes. The States did not contemplate that the Federal Government would take power away from the States when the States joined the Union. When the powers of Congress were listed in article I, section 8, they were to be the only powers the Federal Government was to have after the United States had become a separate government.

Mr. SPARKMAN. The Senator may recall that Madison in his notes indicated that the provision in article III, section 2, grew out of a feeling that there ought to be a provision for the trial of offenses committed in territories outside the States; and that was the primary purpose of section 2 of article III.

Mr. THURMOND. That is correct. As the Senator said, the States assumed that unless the written Constitution, which they had agreed to, had preempted a certain field of activity, that field of activity was to be reserved to the States.

Mr. SPARKMAN. And it was, was it not?

Mr. THURMOND. That was the intention.

Mr. SPARKMAN. That was the intention. Not only was it the intention of the writers of the Constitution but in the 10th amendment it was restated.

Mr. THURMOND. It was restated in the 10th amendment; and the first 10 amendments to the Constitution constitute the Bill of Rights.

When the Bill of Rights was adopted, it was thought that all the powers included in the first 10 amendments, such as freedom of speech, freedom of religion, right of trial by jury, right to petition the Government, and the rest of the powers enumerated, were preserved to the States. By virtue of their not having included when the Constitution was written, some of the members of the State conventions raised the point and said they wanted to be certain that those individual rights would be preserved. They were really rights reserved to the citizens. So they were asked to sign the Constitution upon the assurance that a bill of rights would be submitted later; and it was. Congress submitted a bill of rights, and it was adopted in 1791 and became a part of the Constitution.

The sixth amendment was included in the Bill of Rights to make certain that there would be no possible question about the right of trial by jury. Although the original Constitution, article III, section 2, provided the right of trial by jury, that right was included in the sixth amendment in words to this effect:

> 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 drafters of the Constitution were trying to nail down the right of trial by

jury. So when certain delegates to the Convention were convinced that there would be a bill of rights, they agreed to sign the Constitution. I believe that all but three did so. But they did not do so until it had been promised that a bill or rights would be submitted to the Constitution; although in drafting the Constitution, as I stated, those who worked on it interpreted it as reserving all those rights to the people, because in the Constitution they were not delegated to the Union.

Mr. SPARKMAN. There was no federal government to which to grant any rights.

Mr. THURMOND. There was no federal union as yet; the Union was being established at that time.

Mr. SPARKMAN. There was a grant of power from the several States to the Federal Government. The Federal Government had nothing to give to the States.

Mr. THURMOND. There was no power in the Federal Government yet. The Federal Government was being established by the writing of the Constitution; and the Constitution provided that a central government would be formed, that the Union would come into being, and that it would be born. Nine of the States—nine of the original Colonies—ratified the Constitution. All the States were represented at the convention except Rhode Island. Rhode Island was in the hands of radicals, and sent no deputies to the Philadelphia Convention.

Mr. SPARKMAN. The first 10 amendments which the Senator mentioned are truly a bill of rights. Is it not significant to the Senator that 3 of the 10 amendments are devoted to jury trials?

Mr. THURMOND. Three out of ten. The Senator is eminently correct. Of course, the fifth amendment refers to the grand jury.

Mr. SPARKMAN. Yes; to the grand jury. The sixth and seventh amendments refer to what we call the petit jury; but all of them are a part of the jury system.

Mr. THURMOND. The Senator is correct. The seventh amendment refers to civil suits, where the value in controversy exceeds $20, and in such suits the amendment provides that "the right of trial by jury shall be preserved."

As the Senator says, it is all a part of the jury system.

I commend the able Senator from Alabama for the penetrating questions he has asked. They have tended to analyze the bill, to bring out some of its defects, and to show the American people that the bill is not in accord with the Constitution of the United States, and that, in fact, it conflicts with the Constitution of the United States, and that if the bill were passed—although I hope it never will be—and if it were tested, and if the Supreme Court of the United States would follow the Constitution and the precedents, the Court would declare the bill unconstitutional.

Mr. SPARKMAN. Mr. President, will the Senator from South Carolina yield further to me?

The PRESIDING OFFICER. (Mr. McGEE in the chair). Does the Senator from South Carolina yield further to the Senator from Alabama?

Mr. THURMOND. Yes, on the same conditions on which I previously yielded. I ask unanimous consent to that effect.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SPARKMAN. Earlier in the evening there was an exchange between the Senator from Pennsylvania [Mr. CLARK] and the Senator from Georgia [Mr. TALMADGE] and also there were some interjections by the Senator from South Carolina, regarding the statements made by the Senator from Pennsylavnia that it was time the Senate voted on the bill. The implication was that, merely by our trying to explain the bill or, rather, these bills—for there are 11 of them, are there not?

Mr. THURMOND. There are 11 different titles in the bill, and each one would be sufficient to be a separate law unto itself.

Mr. SPARKMAN. Yes. Certainly seven of them could well be separate laws of different types, could they not?

Mr. THURMOND. Yes, and all seven of them are very vicious.

Mr. SPARKMAN. The Senator from South Carolina has been reading the newspaper reports about some sort of package of 70 different amendments, has he not?

Mr. THURMOND. I have read something about such a proposal.

Mr. SPARKMAN. The Senator from South Carolina is not privy to those plans, is he?

Mr. THURMOND. No, I am not being taken into the confidence of those who are espousing this vicious and unconstitutional piece of proposed legislation.

Mr. SPARKMAN. I can assure the Senator from South Carolina that the same is true of the Senator from Alabama.

But I pay a good deal of attention to the reports about the plan to trot out a new bill, some day, although it is still being kept under wraps. But I understand that those who are interested in it are working assiduously to develop 70 different amendments to it.

Does the Senator from South Carolina recall that when the bill was first taken up by the Senate, we were told we would have to take the bill exactly in the form in which it had been passed by the House, without the crossing of a single "t" or the dotting of a single "i"—in short, without one change in the bill as it had been passed by the House of Representatives?

Mr. THURMOND. Yes. It was said then that we had to accept the bill in toto as it had been passed by the House of Representatives, without even having time to inform the American people what a vicious and unconstitutional bill it is.

Mr. SPARKMAN. As a matter of fact, the Senate had nothing to do with the drafting of the original bill, did it?

Mr. THURMOND. Not a thing; the Senate had nothing whatever to do with the preparation of the bill. But, in fact, the bill as it came to us from the House of Representatives was hardly considered by the House, except in connection with a vote on the question of "take it or leave it."

Mr. SPARKMAN. In many respects it is not the bill the administration sent to Congress, is it? Does it not contain provisions which the administration said it did not want?

Mr. THURMOND. Originally that was the case.

Mr. SPARKMAN. But now some are talking about 70 different amendments to the bill, are they not?

Mr. THURMOND. I think what has happened is that during this debate, the fallacies, the myths, the unreasonableness, the impracticality, and the unconstitutionality of the bill have been brought to the attention of the public; and now the public are demanding that the bill not be passed. I have talked with a great many Senators about the bill, and their mail is running very heavily against it.

Mr. SPARKMAN. Is it not rather apparent that those who feel that they are responsible for getting the bill through the Senate feel that probably the public does not want the bill as it is now written?

Mr. THURMOND. I think there is no question that a great many of them are convinced that the public does not want the bill. But some of them have committed themselves to vote for the bill; some of them have told me that. I have a feeling that if they had not committed themselves to do so, they would not vote for the bill. Even so, I am not sure that all of them will vote for this bill, because when they obtain more facts about it and when they study it and when they learn what is in it, I am afraid that a great many of them announced themselves in favor of the bill before they had read it, and certainly before they had analyzed it and given it careful study. Certainly all Senators should study the bill carefully, both in fairness to themselves and in fairness to their constituents and in fairness to all the American people. So, Senators should reappraise their position; and if then they feel that the bill is not a wise one, they should vote against it.

Mr. SPARKMAN. Does not the Senator from South Carolina feel that the tie vote on the Morton amendment was quite significant?

Mr. THURMOND. Certainly it was very significant. Furthermore, if that vote had come 30 days or perhaps 45 days earlier, the probability is that the Morton amendment would have been defeated by a very wide margin. But after the American people have learned that the bill does not provide for trial by jury and does not protect the right of trial by jury in the way that right is protected in connection with labor cases and in the way it is provided by the Constitution, they have protested. Many Senators tell me that they are receiving heavy mail against the bill; and it is disturbing them terribly.

Mr. SPARKMAN. Does the Senator from South Carolina agree that whereas the proponents are constantly saying that those who take the position he and I take are conducting a filibuster, the

proponents know they are not ready for a vote on the bill, because they have 70 amendments which are still unresolved?

Mr. THURMOND. Yes. If they felt they were ready to have the Senate vote on the bill, they would do everything in their power to get a vote on it as quickly as possible. But the truth is that today they do not have sufficient votes to apply cloture on the bill. Of course, it is a good thing for the American people that the proponents do not have enough votes to apply cloture on the bill, because if cloture were to be ordered, the American people would suffer, and the bill in its present form would bring tyranny upon them.

Mr. SPARKMAN. I thank the Senator from South Carolina for his courtesy in yielding for my questions.

Mr. THURMOND. I thank the Senator from Alabama for his questions, which have added enlightenment.

Mr. MILLER. Mr. President, will the Senator from South Carolina yield to me?

Mr. THURMOND. I am pleased to yield to the able and distinguished Senator from Iowa on the condition that I shall not lose my right to the floor, and that upon resuming, such resumption will not constitute another appearance. I ask unanimous consent that I may do so.

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

Mr. MILLER. I thank the Senator from South Carolina. I merely wish to make an observation, and it is not intended to embarrass either the Senator from South Carolina or the Senator from Alabama. But I think it well for the RECORD to show at this point, following what has been said in the colloquy between the two Senators, that the President of the United States has thus far indicated no disposition to accept any bill other than the bill exactly as passed by the House. I think that is unfortunate. I think the President should say that he would like to have a strong, meaningful, sound, workable piece of legislation, but by persisting in talking about having the bill exactly as passed by the House, I regret that there seems to be some disposition on the part of some Members of the Senate to resent it, and this may well have caused some additional delay in the consideration of the bill. I think it well to point out that the President has taken that position. I am quite sure that the two Senators do not agree with it. Nevertheless, I think the RECORD should show that that is what has happened; and because of the President's great power and control over many Senators, that attitude probably has slowed down consideration of the bill, or at least slowed down reaching the point of decision on the bill.

Mr. THURMOND. I realize that the President has recommended the bill. On the other hand, it is the duty of the Congress to legislate. Under our tripartite system of Government the Congress makes the law, so to speak. The executive branch, headed by the President, administers the law. The judicial branch, headed by the Supreme Court, adjudicates cases, and controversies arising under the law. Our duty is to legislate. Our duty is to weigh and consider the proposed legislation. It would be my hope that Congress, in its wisdom—and it has the right to do so—would see fit not to pass the bill at all. But in the event that it should enact the proposed legislation, it would be my hope that it would be substantially altered, and that most of its vicious parts should be removed. On the other hand, if the President thinks the bill is too weak, I would suggest that the President veto it.

Mr. MILLER. The Senator knows that the Senator from Iowa thoroughly agrees with what he has said about the separation of the Federal powers between the executive, legislative, and judicial branches. I venture to say that if there is any one thing that has been brought to my attention during my 3½ years' service in the Senate more than anything else it is the absolute essentiality of the separation of powers in order to preserve the American system of government.

Mr. THURMOND. I fully realize the able Senator's concern along this line. I know of his feeling. He is an able lawyer. He understands government. He knows the history of our Government. I am sure that he shares the deep concern which I and a number of other Senators feel.

Mr. MILLER. That concern has been deepened by the situation, which has existed during the past 3½ years, in which both the executive and the legislative branches of the Federal Government have been in control of the same political party, and in which, particularly in the Senate, the Executive has wielded a great amount of influence. Granted that, theoretically, the two branches should be separate, distinct, and as independent as possible, it is pretty difficult to have that condition realized in practice when the President of the United States is the leader of the Democratic Party, and the Democratic Party is in control of the Senate by a margin of 2 to 1. There are many ways of exercising executive influence over the legislative branch, and those ways have been used probably about as extensively as at any time in the history of the country.

So I come back to my original proposition that, in the setting in which we are now operating, dealing with the actualities, I regret that the Chief Executive has seen fit to persist in saying that he wants the bill exactly as passed by the House. I presume that the President has read the bill. As a highly esteemed Member of the Senate for many years, he well knows how the Senate operates. He would know by looking at the bill that there are some obvious errors in the bill. For example, it is labeled "Civil Rights Act of 1963." It is a little bit late to call it "1963."

As I recall, in the bill there is a provision which would require a rather comprehensive report to be made by the Secretary of Labor by July 1, 1964.

At the rate we are going we shall be doing very well to have a piece of legislation on the books by July 1, 1964; so the Secretary of Labor will not have much time to prepare that report. Quite obviously the date should be "July 1, 1965."

The House went through the throes of what is known as the sex amendment. After a great deal of squabbling, it added the word "sex" in various parts of the title pertaining to Equal Employment Opportunities. Yet, for some strange reason, the House forgot to put "sex" in the heart of that title, the enforcement paragraph, and so the section is meaningless now.

Those are errors of omission or oversight which a careful reading of the bill would disclose. There are others.

Mr. THURMOND. I know that the Senator from Iowa has an eagle eye. He is a meticulous and a careful person. He is a very astute lawyer. I am sure that he has caught a great many technical and other defects in the bill. I am sure they will be brought to light.

The provisions to which the Senator has referred are defects, but the main objection that I have to the bill is that it would shift powers. Knowing the feeling of the able Senator from Iowa in respect to a powerful centralized Government in Washington, I know that when he gives the subject deep consideration, he will not favor the shifting of power from the State level to the National level and the shifting of power from the individual citizen of our country to the national level. At the national level that power would be concentrated. In my judgment, it is entirely too much power for any Government agency or all of the Government agencies to exercise. It would be a great mistake if we ever should pass the bill.

Mr. DODD. Mr. President, will the Senator yield to me?

Mr. MILLER. May I first respond to the Senator from South Carolina?

Mr. THURMOND. I shall yield to the Senator from Connecticut in a moment.

Mr. MILLER. The Senator from Iowa wishes to see a meaningful civil rights bill passed. I regret that probably my good friend from South Carolina and I will disagree on what constitutes a "meaningful" civil rights bill. But the point is, whether we agree or disagree on many areas of the bill, the bill has omissions and obvious errors on its face; and it has some inconsistent provisions. I believe it is doing a disservice to rapid action on the bill for the President of the United States to continue to say that he wants the bill exactly as passed by the House. I hope that he will see fit publicly to state that he wants to see a sound, workable piece of legislation. If he does, it will make things a great deal easier in order for us to come to some kind of workable agreement on the proposed legislation. That is the point that I wish to make following the colloquy between the Senator from Alabama and the Senator from South Carolina.

I thank my friend from South Carolina.

Mr. THURMOND. It is the hope of the Senator from South Carolina that, if the Senate passes a bill—which I hope it will not—it will be in accordance with the Constitution, and if he does not approve, the President of the United

States may feel constrained to veto it, as he has the power to do.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that I may yield to the distinguished and able Senator from Connecticut with the same understanding under which I yielded to the able Senator from Iowa.

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

Mr. THURMOND. And with the authority to him to propound questions to the Senator from Iowa if he sees fit.

Mr. DODD. That is the purpose of my request to the Senator from South Carolina.

I came into the Chamber only in the past few minutes. I wanted to ask the Senator from Iowa if he would be for the bill if the date he complains about were changed and if there were inserted in the title the word "sex" and other minor difficulties he finds in the bill were corrected. Would he vote for it then?

Mr. MILLER. Let me answer the question this way——

Mr. DODD. Answer it that way. I should like to know.

Mr. MILLER. If the Senator from Connecticut will give the Senator from Iowa an opportunity to answer, I hope I may be able to satisfy his question. The Senator from Connecticut knows that the answer to the question "Are you for a bill?" is not an easy one to answer. No one knows what the bill is going to look like until it is finally amended and is before the Senate for a vote on a rollcall.

Mr. DODD. I am quite aware of that. I am aware that there could be important differences. But if the difference is a change in date and title, the Senator does not seriously suggest that is a reason for voting against the bill; does he?

Mr. MILLER. No; the Senator from Connecticut did not hear what the Senator from Iowa said before the Senator from Connecticut entered the Chamber.

Mr. DODD. I did not.

Mr. MILLER. What the Senator from Iowa said was this: If a person would look at the bill with more than a casual glance, he would see some obvious errors in the bill.

Mr. DODD. I am sure of that. We see it in every bill that comes before the Senate.

Mr. MILLER. That being so, I do not think it helps the situation for the President of the United States, or for anyone else, for that matter, to say to the Senate, "I want the bill just as it passed the House."

Mr. DODD. The Senator knows the President is speaking of the bill in general. I have said, "I want to see the bill passed as it came from the House." But if the Senator is going to be picayunish and say the date is wrong, the title is wrong, this is wrong, or that is wrong, he knows as well as I do that the President was not speaking of those things. He was speaking of the general intent and purpose of the bill.

Mr. MILLER. The Senator from Connecticut apparently misses the point, because what I said was that all the President had to do to get the "show on the road" was to say, "I want a good, sound piece of legislation," instead of saying, "I want the bill exactly as it was passed by the House."

Mr. DODD. I say that for the Senator to peck at the bill and say the date is wrong or the title is wrong and to say that he does not want to vote for it as it was passed by the House for that reason is very petty. The President is bigger than that, and he should not and does not say that sort of thing.

Mr. MILLER. What I have said was said in good faith. I will not take second place to the Senator from Connecticut in my desire for a meaningful civil rights bill. My views on that are of long standing. I have said in good faith that if the President of the United States persists in saying that he wants the bill exactly as it passed the House, instead of saying he wants to get the "show on the road" and get a good, sound piece of legislation, he is going to get nothing but further delay, and I think it has been held up long enough.

Mr. DODD. I have no more to add to what I said earlier. I think such an attitude is picayunish. I do not think we are contributing much to the general debate when we find this kind of fault with the bill. This is the style of lawyers troubling themselves over a minor technicality in a lawsuit. It seems to me we ought to look at the general intent of the bill. To tag the President with making too sweeping a request does not seem to me to be reasonable. Knowing the Senator from Iowa as I do, with his usual reasonableness on all other matters, I find it difficult to understand his objections to the bill on that ground.

Mr. MILLER. The Senator from Connecticut and the Senator from Iowa agree on a great many things. I am a little surprised that the Senator from Connecticut talks about picayunishness in this connection. The Senator from Iowa can point out plenty of inconsistencies, quite apart from an obvious error. The Senator from Connecticut is well aware of them, because he does his homework, too. For example, if we want to get into substance, in title III of the bill, desegregation of public facilities, in section 302, on page 13, is the "intervention provision," which reads:

> Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action.

No standards whatsoever are provided. The Attorney General could decide he wanted to intervene, or he could decide he did not want to intervene. It would be up to him. Yet, in the same title, in the preceding paragraph, are standards by which he could bring about desegregation in public facilities. How can one be more inconsistent than that?

Mr. DODD. I will tell the Senator how. These are two different things. The Senator knows it very well. What is suggested in the provision to which the Senator has referred is that the United States can intervene in a dispute. What standards are required to intervene in a dispute of this kind? What does one have to know?

Mr. MILLER. The Senator from Iowa suggests minimal standards as set forth on the previous page, with respect to public facilities; namely——

Mr. DODD. That is something else.

Mr. MILLER. That language provides that whenever the person concerned is—

> Unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

There is nothing wrong with that. I am sure the Senator from Connecticut agrees with that. I do, too. Why is such language not in the "intervention section"?

Mr. DODD. The Senator does not distinguish between the two. He is a good lawyer.

Mr. MILLER. They are closely connected; in fact, they are in the same title.

Mr. DODD. I find it hard to believe that the Senator is serious.

Mr. MILLER. I am deadly serious.

Mr. DODD. There is a distinction between the lawsuits required in the sections referred to by the Senator. I do not believe they are the same. I do not believe he thinks so, either.

Mr. MILLER. If the Senator does not think they are, does he suggest that there be no standards for the "intervention section?"

Mr. DODD. Surely. The standards are only that the Attorney General must believe that the interests of the United States are involved, in order to intervene. He does it every day. We do not set up standards. The Attorney General is constantly intervening in litigation; when he believes the interests of the United States are paramount he intervenes. We do not set up standards. We say, "When you think the interests of the United States are at stake, intervene."

Mr. MILLER. It does not say that.

Mr. DODD. It does not have to say that, because it is inherent in the power of the Attorney General.

Mr. MILLER. It is inherent in the power of the Attorney General, but the way this provision is worded the Attorney General could intervene if he thought the interests of the Virgin Islands were affected.

Mr. DODD. What is wrong with that?

Mr. MILLER. The Senator from Connecticut knows this is not good drafting of legislation.

Mr. DODD. I do not say that at all. But I do not say that the bill has been perfectly drafted. I say it has been well drafted. My objection to the position of my friend from Iowa is that he is castigating the President because the President has urged that the bill be passed in substantially the form it came from the House. I said I was not so concerned about the defects as the Senator from

Iowa describes them. I say they are minor. They do not amount to much. They can all be clarified in conference between the two bodies. There is nothing important about them. Every piece of legislation that goes to the Senate comes in with some defects of title, of date, or of other minor difficulty.

Mr. MILLER. Let me say to my friend from Connecticut that I certainly part company with him if he believes that failure to establish standards for the Attorney General to follow in intervening in any other kind of suit involving deprivation of the rights under the 14th amendment is meaningless and picayunish. I believe the Senator from Connecticut knows much better than that.

Mr. DODD. I hope the Senator will not part company with me permanently over our differences here, because I have high regard for him, as he well knows; but I believe that in his excitement—perhaps his partisan excitement—over this issue, he went too far in charging the President with a lack of concern about the formation of——

Mr. MILLER. I said nothing about lack of concern.

Mr. DODD. Not directly, but implied.

Mr. MILLER. Not implied, either. I have not attempted to castigate anyone but I have deplored the fact that this legislation has been moving along so slowly and that persistence of some people, including the President, in calling for passage of the bill exactly as passed by the House has contributed to the delay. It looks as though it will be a long time before it is enacted. I believe that it could be moved along much faster.

Mr. DODD. It surely could, if Senators on the other side of the aisle would vote to cut off the debate pretty soon.

Mr. MILLER. Let me say to the Senator from Connecticut that I have not said anything about partisan politics in connection with this debate, and I do not intend to do so. I am very sorry that the Senator has brought this into discussion, because the subject of this legislation should be outside the arena of partisan politics. It is not a question of whether Republicans or Democrats, or anyone else, vote for cloture or for amendments. This is something all of us should join together in working out and the Senator from Connecticut knows that as well.

Mr. DODD. I hope we shall have the Senator's help in the crucial hour.

Mr. THURMOND. Mr. President, I hope the Senate will not have his help, and will not have the help of any other Senator. This quibbling over whether the objection of the Senator from Iowa is based on technicalities or is based on substance is of little concern. The main thing is that the substance of the bill is dangerous. That is the reason why I am against it. So far as the wording in the bill is concerned, some of that will have to be changed if the bill should be enacted. But the substance of the bill, as we have stated before, should not be supported by any American, in my opinion. Whether he is white or black, whether he is liberal or conservative, whether he is for integration or segregation, he should oppose the bill, because the bill is in direct contravention to the Constitution of the United States.

The bill would shift power from the State level to the national level. It would shift power away from the individual citizen to the national level. The bill would bring about a concentration of power in the Federal Government which I believe would be very dangerous.

Again I say, the reason why people down through history have suffered so much is that too much power has been placed in one segment of government, whether in a king, or in a politbureau, as in Russia today—anywhere too much power is placed in government, tyranny results to the people.

If this bill should be enacted the way it is now written, and should it be enforced, tyranny would result.

Tyranny would result because bureaucrats would abuse the power which would be taken away from the States and individual citizens and concentrated in the National Government. Bureaucrats will administer the power. Power goes to people's heads. We must have a rule of law, not a rule of men. If this bill should be enacted, the bill is so prepared, and the verbiage is such that we will have a rule of men in determining what is discrimination, because there is no definition in the bill as to what discrimination is.

Therefore, a man—a human being, a person—will have to say what is discrimination in each case. That means rule by man, rather than rule of law.

Now, Mr. President, to continue on the subject of trial by jury, the laws and practices of the various States of the Union vary in connection with the degree to which a jury trial is afforded to a defendant. It is interesting to note that in the State of Minnesota, if a defendant does not receive a jury trial in the magistrate's court when charged with a violation of a municipal ordinance, he is afforded one on appeal. On this particular point, there is an interesting article in the November 1962 issue of the Minnesota Law Review entitled "Right to a Jury Trial for Persons Accused of an Ordinance Violation." This article indicates the value which the people of Minnesota place on the jury system. It reads as follows:

"In a northern Minnesota community a county attorney briefed a JP on a pending case. The JP had just one question—'Do I have to listen to the defendant's side of the case?'"

This attitude is certainly inconsistent with one of the aims of the American judicial system—protecting the defendant in a judicial proceeding from injustice. Surrounding the defendant with "strict procedural safeguards is our main assurance that there will be equal justice under the law." The American judicial system may be described as one that gives priority to the defendant, as distinguished from a system that gives priority to the interest of society in having its police regulations enforced. Although criminal law must necessarily be concerned with the needs of society, this concern should not be allowed to subvert the needs and interests of the accused. Protecting the rights of the defendant with procedural safeguards is important not only when he is charged with the most heinous felony, but also when he is accused of violating only a municipal ordinance.

Municipal ordinances treat a multitude of subjects and circumscribe human conduct more than any other area of the law. Thus, the cities, rather than the Federal or State governments, exert the greatest direct influence over the everyday life of the individual. The vast control that the municipality exerts over its citizens is especially emphasized today because of the rapid shift in the concentration of population from rural to urban areas. The extent to which individuals are subjected to municipal ordinances underscores the need to provide persons accused of violating these ordinances with adequate procedural safeguards.

One important procedural safeguard that has recently been reexamined by both the Minnesota Supreme Court and the Minnesota legislature is the right to trial by jury. By virtue of court decision and legislative mandate, the accused ordinance violator has been guaranteed the right to trial by jury either at the municipal court or justice of the peace level or upon appeal to the district court. These decisions and statutes have, however, given rise to some confusion as to the exact scope of this right. The purpose of this note is to clarify existing Minnesota law regarding the right of a person accused of violating a municipal ordinance to a trial by jury.

I. NATURE OF A MUNICIPAL ORDINANCE VIOLATION

In determining the procedural safeguards to which a municipal ordinance violator is entitled, courts have generally deemed it necessary to ascertain whether proceedings under such an ordinance are of a civil or criminal nature. These determinations have not been consistent; however, a majority of the State courts have regarded such proceedings as civil actions. This attempt to label such a proceeding as either civil or criminal is actually irrelevant to the issue of procedural safeguards because it focuses on the effect of the defendant's act upon the community rather than on the effect of the prosecution upon the defendant.

Whether such a proceeding is regarded as civil or criminal, a person accused of violating a municipal ordinance in Minnesota does not have a constitutional right to a jury trial in the municipal court. If the proceeding is regarded as civil, the defendant does not have a right to a jury trial under the Minnesota constitution. While article 1, section 4, does provide that the right of trial by jury shall remain inviolate, and shall extend to all cases at law, it has been construed as merely confirming and securing that right as it was understood at common law prior to the adoption of the State constitution. Since the common law did not afford the right to jury trial to persons accused of violating a municipal ordinance, a defendant cannot invoke this constitutional guarantee. Nor is the defendant entitled to a jury trial under the Minnesota constitution if the proceeding is regarded as criminal. Article 1, section 6, declares that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury." This provision has been applied only to "prosecutions for offenses essentially criminal under the general laws of the State. The violation of a municipal ordinance is not regarded as a crime against the public law, but merely as a violation of a regulation made for the benefit of the inhabitants of a particular place. To deny the defendant a jury trial on the basis of such reasoning does not seem to be in accord with the desire to protect the defendant from injustice since he needs this protection whether the prosecuting authority is the State or a municipality.

II. THE HOBEN UNIFORMITY DOCTRINE

Although no constitutional right to trial by jury for violation of a municipal ordinance exists, in some States this right is expressly granted by statute. In Minnesota, however, the Municipal Court Act provides that persons charged with violation of a municipal

ordinance shall be tried in municipal court without a jury. Notwithstanding this provision, the Minnesota Supreme Court, in *State* v. *Hoben,* held that a person charged with the violation of a municipal ordinance that prohibited driving while intoxicated was entitled to a jury trial in the municipal court. The court observed that the Highway Traffic Regulation Act also prohibited driving while intoxicated and further provided that "when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense. The court reasoned that because the penalties prescribed by the local ordinance and State statute were to be identical, the procedures to be followed must also be identical. Thus, where a State statute requires that any municipal ordinance covering the same subject must provide for identical penalties and where a person violating the State statute is entitled to a jury trial, the rule for uniformity in the treatment of defendants applies to also give a person charged under such a municipal ordinance a right to a jury trial.

Whether, as a condition for the application of this uniformity doctrine, the State statute had to expressly declare that any local ordinance regulating the same subject should provide identical penalties was uncertain after the Hoben case. This confusion probably arose because *City of Canon City* v. *Merris* was cited with approval in Hoben. In the Merris case, a Colorado criminal statute and a municipal ordinance prohibited the same conduct, but the State statute did not contain an express provision for uniform penalties. The court, nevertheless, held that defendants under both the municipal ordinance and the State statute should be entitled to uniform treatment. The right to procedural safeguards did not depend upon which level of the government chose to prosecute, but rather upon the possible effects and consequences of the prosecution on the defendant. In *State ex rel. Sheahan* v. *Mulally,* however, the Minnesota court stated that the Hoben doctrine was "limited specifically to highway traffic regulations." The effect of this limitation is to make the technical requirement of an express provision in the State statute for uniform penalties an essential part of the uniformity doctrine. This requirement should be unnecessary. Uniformity of treatment may be considered an implied limitation upon all statutes and municipal ordinances because the legislature would not intend to make basic civil rights contingent upon an arbitrary choice of forum. As the court said in Hoben:

"It would be a strange anomaly for the legislature to define a crime, specify punishment therefor, provide that its application shall be uniform throughout the State, and then permit a municipality to prosecute that crime as a civil offense. Basic civil rights of the defendant would then depend upon the arbitrary choice of the prosecutive authorities as to the court in which action against him would be instituted."

It would seem to be equally anomalous for the legislature, even without expressly providing for uniformity, to define an offense with the intent that there should be nonuniform treatment throughout the State.

III. RIGHT TO JURY TRIAL UPON APPEAL TO DISTRICT COURT

A person convicted of an ordinance violation in a municipal court presently has a right to appeal. The procedure for this appeal from most municipal courts is governed by the Municipal Court Act; appeals from cities of the first class (Minneapolis, St. Paul, and Duluth), however, are governed by a separate Municipal Court Act. The appeal does not, by itself, give rise to a right to a jury trial. In 1959, the Minnesota Legislature enacted a statute providing that a person who appeals a conviction from the municipal court to the district court "shall have the right to a jury trial." At the same session in which the legislature enacted this statute, it enacted a separate statute providing that a defendant who appeals from the St. Paul municipal court to the district court "shall be entitled to a trial de novo therein, with or without a jury." The legislature did not enact a separate provision providing for a jury trial on appeals from either the Minneapolis or Duluth municipal courts. The fact that a separate statute was enacted to apply only to St. Paul created confusion over whether the 1959 statute applied to all cities of the first class; if it did not so apply, then persons convicted of violating a municipal ordinance in either Minneapolis or Duluth would not be entitled to a jury trial on appeal. However, *State ex rel. Mattheisen* v. *District Court* held that the 1959 statute did apply to cities of the first class because that section is unqualified and authorizes appeals to the district court from a conviction of an ordinance violation in any court. The legislative history of the statute strongly supports the court's reasoning.

The fact that under the uniformity doctrine of the Hoben case a person charged with violating a municipal ordinance was entitled to a jury trial in the municipal court and the fact that the 1959 statute guaranteed a jury trial if that defendant appealed to the district court created the possibility that such defendant could receive two jury trials. This issue was raised in *State ex rel. Pidgeon* v. *Hall,* where the defendant was charged with a violation of a municipal traffic regulation and was given a jury trial in the municipal court under the Hoben uniformity rule. After being convicted the defendant appealed to the district court and was denied a second jury trial. The Minnesota Supreme Court held that under "the statutory law in existence at the time the present case arose" the defendant was entitled to a second jury trial upon appeal to the district court. The court observed, however, that the relevant appeal provisions had been amended since the case arose, and thus "after July 1, 1961, a person charged with the violation of a municipal ordinance is entitled to but one jury trial."

IV. CHOICE OF FORUM FOR JURY TRIAL

A related problem is whether a defendant entitled to a jury trial in a municipal court under the Hoben doctrine may waive that right and thereafter assert his statutory right to a trial by jury upon appeal to the district court. This question was recently answered by the Minnesota court in *State* v. *Friswold.* There the court concluded that the waiver did not affect the defendant's statutory right to obtain a jury trial on appeal to a district court. The case arose under the appeal provision as it read in 1959, and under this provision, as interpreted in the Pidgeon case, the accused ordinance violator was entitled to two jury trials if his case was encompassed by the Hoben rule. Thus, the issue actually decided in Friswold was that an accused municipal ordinance violator may waive the first of the two jury trials to which he was entitled without affecting his right to obtain the second.

Under the present appeal provision, a person appealing from a conviction of an ordinance violation has a right to a jury trial in the district court only if "he was not tried by jury in the municipal court." Whether under this provision the defendant may waive his right to a jury trial under the Hoben doctrine in the municipal court and subsequently assert his right to a jury trial on appeal is unclear. Dicta in the Pidgeon case suggests that under this statute, the availability of a jury trial in a municipal court may preclude a jury trial upon appeal. The court stated that "a person charged with the violation of a municipal ordinance is entitled to but one jury trial. If he has been afforded a jury trial in the municipal court and is convicted, he may appeal to the district court but his trial in that court will then be to the court without a jury.

A literal reading of the statute, however, indicates that the legislature intended that the defendant should have a choice between a jury trial in the municipal court and a jury trial upon appeal to the district court. The only qualification to obtaining a jury trial upon appeal seems to be that the appellant was not tried by jury in the municipal court. If the defendant has waived a jury trial in the municipal court he was not in fact tried by a jury in that court and would thus be able to claim such a right under this statute. Furthermore, the legislature by enacting the appeal provision, which gave the accused a right to a jury trial in the district court rather than in the municipal court, may have thought that only with a jury trial in the district court could the accused ordinance violator receive a fair determination of his guilt. The rights of a defendant in a municipal court may not be adequately protected if the municipal court judge or justice of the peace is either incompetent or fraudulent or if the proceedings are subject to local prejudice.

Allowing the defendant to waive a jury trial in municipal court and subsequently demand a jury trial upon appeal to the district court arguably may afford the defendant an unfair advantage. After hearing the prosecution's case in the municipal court, the defendant may rest his case without disclosing the nature of his defense. An ordinance prosecution is analogous to a criminal proceeding, because one of the parties is the State. Since "a criminal case is of necessity an unequal contest, because the parties are of unequal strength" and the State is the stronger party, the defendant's use of such a "discovery device" would not seem objectionable in an ordinance prosecution. Professor Louisell has observed that "viewing the matter simply as one of balancing the scales in an adversary system * * * it is hard to believe that in the generality of drunk driving cases, for example, discovery for defendant unduly handicaps the prosecution. To the contrary, the latter's increasing facilities for scientific aids seem to necessitate criminal discovery for a fair trial, particularly as to data pertaining to scientific tests."

In any event, the cost of an appeal to the district court may deter a majority of defendants from waiving their right to a jury trial in municipal court in order to acquire knowledge of the prosecution's case.

Granting the accused ordinance violator a jury trial in district court after he has waived his right to jury trial in municipal court has also been criticized because it affords this defendant greater procedural rights than are available to a person charged with a similar violation under a State statute. A defendant charged under a State statute has a right to a jury trial only in the court where he is originally charged, while the defendant charged under a municipal ordinance would be able to choose between the municipal court and the district court for his jury trial. Such a disparity does not contravene the "uniformity doctrine" of the Hoben case, however, since that doctrine is designed to provide municipal ordinance violators with minimal procedural safeguards and is not meant to deny them additional safeguards:

"Ordinance and statute violations have historically been classified and treated separately, both by the legislature and by the courts. We do not perceive how the fact that an ordinance violator may receive two jury trials conflicts with the uniformity requirement of the Hoben case. This decision was made to insure to traffic ordinance violators basic constitutional and statutory safe-

guards equivalent to those afforded to traffic statute violators. It did not hold that such ordinance violators and such statute violators must be afforded identical treatment beyond these basic rights. The intent of the legislature in enacting section 169.03, as declared in the Hoben case, was to make uniform and equal procedures relating to these basic rights and not to require that the legislature treat each class equally or limit preferential treatment beyond these rights."

If strict uniformity of treatment is desirable, the better solution would seem to be to accord the statute violator more rights than to accord the ordinance violator fewer rights.

V. EFFECT OF JURY TRIALS ON THE COURTS

Mr. SPARKMAN. Mr. President, before the Senator moves to the next subject, will he yield to me, or would he rather finish his treatment of the subject he is about to discuss?

The PRESIDING OFFICER (Mr. McGEE in the chair). Does the Senator from South Carolina yield to the Senator from Alabama?

Mr. THURMOND. I should like to finish this subject and yield in a few minutes, if that is agreeable.

I continue to read:

The summary enforcement of municipal ordinances has enabled the courts to efficiently dispose of the great number of cases arising under such ordinances. To grant persons accused of an ordinance violation the right to a jury trial, instead of the more common summary proceedings, does add to the congestion in court calendars. For example, prior to Hoben the delay in the Minneapolis municipal court calendar was approximately 3 months, while after the Hoben case the delay was nearly 2 years. In order to relieve this congestion, lawyers, judges, and other officials responsible for the efficient administration of the courts, have directed their efforts toward obtaining additional judges and instituting more efficient modes of pleading and presentation of facts instead of eliminating the right of an ordinance violator to a jury trial.

The use of summary proceedings rather than jury trials for the enforcement of municipal ordinances depends, in part, upon economics. The cost of a jury trial has been estimated to be three to eight times more than that of any other mode of trial. This added cost must be weighed against the needs of the defendant. If the interests of the individual defendant charged with an ordinance violation were insignificant, a jury trial would not be warranted. Each defendant's rights are significant, however, to the individual involved.

"Each case concerns the liberty or property of some individual. Each case, regardless of amount, can be as important to its parties as any in the history of jurisprudence. Let us not forget that amount of money involved in a case is not always a true measure of its importance."

The consequences to the defendant convicted in a municipal ordinance violation proceeding would seem to justify the added cost of a jury trial. The penalties upon conviction may include a fine, imprisonment, and such other consequences as the loss of a license that may be essential to the defendant's livelihood. Even if a person is not convicted, he may need a jury trial to combat the collateral effects of being charged with the violation of a public law.

"The accused, whether guilty or not, is in immediate trouble. * * * He may lose his job, or be suspended from it, pending trial. His reputation is under an immediate cloud. His family relationships may be irretrievably altered. If he happens to be in a profession where good reputation is peculiarly indispensible, he may suffer grievously, though completely innocent. * * * A defendant, in short, is in a bad spot, merely by virtue of being one, and needs every possible opportunity to establish his innocense, as soon, as publicly, and as decisively as possible."

Opponents of jury trials in municipal courts sometimes contend that the jury is likely to be too lenient with the offenders. Continued acquittals by juries would seem to imply lack of public disapproval of the defendant's act. Our system of justice seeks to punish those acts that contravene the purposes of society; apparent approval of the defendant's conduct would suggest that such conduct does not contravene the mores of our society and, therefore, should not be prosecuted.

A further argument against this use of the jury trial might be premised upon a lack of faith in the ability of a jury to determine the guilt or innocence of a defendant. An attack upon the competency of the jury system, though, should be directed to the legislature, not the courts. The legislature's answer to such an argument is expressed in the statute interpreted in Hoben, which affords a defendant the right to a jury trial in the municipal court, and in another statute that specifically grants that right upon appeal to the district court if the defendant did not receive a jury trial in the municipal court.

CONCLUSION

In Minnesota, the right of persons accused of violating a municipal ordinance to a jury trial in the municipal court is dependent upon three conditions: (1) a State statute must prohibit the same conduct as prohibited by the municipal ordinance; (2) the State statute must contain a provision requiring any municipal ordinance covering the same subject to provide for identical penalties as the statute; (3) a person charged with violating that statute must be entitled to a jury trial in the court where he is charged. If a person is convicted of violating any municipal ordinance, he is entitled to a jury trial upon appeal to the district court if he was not tried by a jury in the municipal court. This right is justified by the desire to protect the interests of the defendant from the arbitrary procedures that are often present in a summary proceeding. Although this use of the jury trial has greatly increased the congestion in municipal court calendars, the addition of more judges and the instigation of more efficient modes of pleading seem to be more reasonable solutions to the problem than the denial to the alleged ordinance violator of the right to trial by jury.

Mr. SPARKMAN. Mr. President——

Mr. THURMOND. Mr. President, I ask unanimous consent that I may yield to the able and distinguished Senator from Alabama, with the understanding that I shall not thereby lose my right to the floor, and with the further understanding that when I resume my remarks, they will not be counted as a second speech by me.

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

Mr. SPARKMAN. Mr. President, the Senator from South Carolina, in his excellent presentation in regard to the importance of the right of trial by jury and the guarantee of that right under various conditions, including under municipal ordinances and trials in various courts, has referred to the fact that it may be an optional right. In other words, a defendant may ask for a jury trial or may not request a jury trial. That frequently happens, does it not?

Mr. THURMOND. That is correct. The Constitution guarantees the right of trial by jury; but that does not mean that a defendant must have a jury trial forced on him. It merely means that if he wishes to have a jury trial, he has a right to request one.

Mr. SPARKMAN. As a result of the experience of the Senator from South Carolina, both as a lawyer and as a judge, is he not familiar with the fact that nearly all State laws provide a method by which the defendants in certain classes of cases can waive the right of trial by jury?

Mr. THURMOND. That is true.

Mr. SPARKMAN. Usually there is a jury trial in capital cases, is there not?

Mr. THURMOND. In South Carolina, there must be a jury trial in capital cases.

Mr. SPARKMAN. That is also true in Alabama, and I believe it is also true in most States.

Mr. THURMOND. Yes.

Mr. SPARKMAN. But for lesser offenses, nearly all States have laws which provide for waiver of trial by jury if the defendant sees fit to do so; but that question has to be determined solely by the defendant, does it not?

Mr. THURMOND. That is correct. If he is willing to waive it, the case can be tried before a judge. That is true in most jurisdictions, and it is true in my State.

Mr. SPARKMAN. Yes. In my State the defendant has the right of trial by jury in all criminal cases, and, in fact, also in all civil cases. He may waive a jury trial, or he may ask for a jury trial. In some types of cases he is allowed 30 days in which to request a jury trial; and if he does not request a jury trial within that period of time, he is deemed to have waived it. I am sure the Senator from South Carolina is familiar with such laws in various States, under various conditions.

Mr. THURMOND. Yes. Also in the Federal courts there is such a rule; namely, that a demand for a jury trial must be made within a certain time limit. That is generally stated in the pleadings.

Mr. SPARKMAN. Yes, usually it is included when the answer is made or when the pleadings are filed.

Mr. THURMOND. Yes.

Mr. SPARKMAN. There is usually a little footnote, "Defendant demands trial by a jury."

Mr. THURMOND. Yes.

Mr. SPARKMAN. The pending question is on agreeing to the amendment submitted by the Senator from Florida [Mr. SMATHERS], I believe, and the amendment was called up by the Senator from Louisiana [Mr. LONG]. Does not that amendment follow the same pattern, in its provisions? It provides for a jury trial upon request by the defendant, does it not?

Mr. THURMOND. Yes; and in such case, there would be a jury trial.

Mr. SPARKMAN. That is what I mean. In other words, it would be optional.

Mr. THURMOND. Yes.

Mr. SPARKMAN. If I correctly understand the amendment, I believe that

if the defendant requested a jury trial, he would subject himself to the possibility of having a heavier penalty imposed upon him than the penalty the court, when trying him without a jury, could impose. Is that correct?

Mr. THURMOND. That is correct. In other words, if a defendant requested a trial by jury, under the Smathers amendment he could be given heavier punishment than if he did not request a trial by jury.

Mr. SPARKMAN. The defendant would run a risk.

Mr. THURMOND. I do not like that portion of the amendment.

Mr. SPARKMAN. I am not asking the Senator to pass judgment on the amendment at the present time. I am merely calling attention to the fact that the amendment follows generally the pattern of most State jurisdictions in making the choice optional with the defendant. The main difference is that the defendant could suffer a higher penalty if he exercised his right to a jury trial than he would if the judge should try his case and assess the penalty. That situation does not prevail in the usual State court. There the limits of the penalty would be the same regardless. Is that not correct?

Mr. THURMOND. That is true. The Smathers amendment provides that in case the defendant requests a trial by jury, the fine to be paid shall not exceed the sum of $1,000 or imprisonment shall not exceed the term of 6 months.

Mr. SPARKMAN. That is a higher penalty.

Mr. THURMOND. The penalty could be a $1,000 fine or imprisonment for 6 months, whereas if the defendant were tried before a judge without a jury, the maximum would be a $300 fine or imprisonment for 30 days.

Mr. SPARKMAN. That would be true under the Mansfield-Dirksen amendment.

Mr. THURMOND. Under the Mansfield-Dirksen amendment, if the punishment were imprisonment for 30 days or less or a fine of $300 or less, the defendant would not get a jury trial. The Mansfield-Dirksen amendment that provides for no trial by jury carries the same punishment as the provision of the Smathers amendment if the defendant should waive his right to a trial by jury.

Mr. SPARKMAN. That is what I mean. The Senator also said that some people might object to juries on the ground that the defendant would not be convicted. I wonder if the Senator is familiar with the very strong arguments made by one of the great liberals of all time in the Senate—Senator Norris, of Nebraska.

Mr. THURMOND. I recall reading his statement. It was a very fine statement.

Mr. SPARKMAN. He said:

> 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.

Mr. THURMOND. He favored jury trials in civil contempts.

Mr. SPARKMAN. He said in any case.

Mr. THURMOND. I am not too sure but that in certain types of civil contempt perhaps the defendant should have a jury trial. Certainly if he is to be incarcerated for a certain period of time, he would be deprived of his liberty. The rule under which we have operated is that in civil contempt cases a defendant can purge himself by complying with the court's order.

Mr. SPARKMAN. Yes.

Mr. THURMOND. The Washington Star published a fine editorial on that point a week before last.

Mr. SPARKMAN. Yes. I saw the editorial. I believe the editorial was quoted today. Was it quoted by the Senator from South Carolina?

Mr. THURMOND. It was not I who quoted it today.

Mr. SPARKMAN. Earlier today the editorial was quoted.

Mr. THURMOND. The Washington Star took the position that when a defendant is incarcerated because of what might be called civil contempt or criminal contempt, he is in prison and is deprived of his liberty as much as though he had been put in prison for some other reason.

Mr. SPARKMAN. Whether it be called civil or criminal contempt.

Mr. THURMOND. That is correct. The subject really deserves study by the Congress to determine what, if any, changes should be made in the matter of civil contempt.

Mr. SPARKMAN. That suggests what I know must be the opinion of the Senator and mine, too. We are becoming careless in drifting away from jury trials in this country. Is there not a tendency to do that?

Mr. THURMOND. There is a tendency on the part of people always not to protect their liberties as they should. That is the reason why we must be on guard. So many of our great national leaders have cautioned the American people that eternal vigilance is the price of liberty.

That has been the caution given by many of our leaders and students of history. People become indifferent and apathetic. In a great many cases they do not bother to vote. Some elections are won by one vote. Thomas Jefferson was elected President of the United States by a margin of one electoral vote. One vote or a few votes has turned many elections. And yet many good people do not bother to vote. They become apathetic. That is an illustration of the importance of people performing their duties as citizens and meeting their responsibilities as citizens.

Mr. SPARKMAN. And being on the alert at all times.

Mr. THURMOND. And being on the alert to protect their liberty. Merely because our forefathers fought for and achieved liberty and brought it to our country does not mean that it was gained permanently.

Mr. SPARKMAN. It is not to be taken for granted.

Mr. THURMOND. Today assaults are being made on the liberties of the people. Assaults are being made to deprive people of a little more of their liberty each day. There is a chipping away. The people do not realize the loss as much as they would if, through one fell swoop, all their liberties were taken away at once. The loss of liberty that is achieved by chipping away the rights of the people would not occur if the people were confronted with the possibility that their liberties would be taken away suddenly. When liberties are taken away a little each year, the people do not realize and appreciate the importance of it. The more we deprive people of their liberty and chip away their freedom, the more we are headed toward a strong centralized government and a police state. A strong powerful centralized government means total power. Total power means a police state.

Mr. SPARKMAN. I was quoting from Senator Norris. I like to quote from him. I like to quote from other great liberals who have stood in the Senate and defended the freedoms and the rights of individuals.

Senator Norris was a great individualist, a great liberal and a great debater. I believe he was one of the greatest debaters I have ever seen. I did not have the pleasure of serving in the Senate with him, but he was serving in the Senate while I served in the House.

I used to come over quite often when he would be debating. He pursued his way easily, calmly, firmly, and positively, regardless of what the odds were against him. Often he would be the only advocate of a certain measure. He always sat toward the rear of the Republican side of the Chamber and fought to the very end for the principles in which he believed.

A few minutes ago I quoted Senator Norris' statement that he believed a man was entitled to the right of trial by jury in every case, everywhere, and in every court, all the time, with no exceptions whatsoever. He made it as inclusive as it could be.

I should like to quote him a little further.

He said:

> 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 in court and heard jury trials knows that juries make mistakes, as all other human beings do, and they sometimes render verdicts which seem almost obnoxious. But it is the best system I know of. I would not have it abolished, and when I see how juries will really do justice when a biased and prejudiced judge is trying to lead them astray, I am confirmed in my opinion that after all our jury system is one which the American people, who believe in liberty and justice, will not dare to surrender. I like to have trial by jury preserved in all kinds of cases where there is a dispute of fact.

The Senator from South Carolina would have no difficulty in agreeing with that statement by this great, all-time liberal of the Senate, would he?

Mr. THURMOND. I would not.

Mr. SPARKMAN. I mention the great liberals. I recall a great liberal Senator from the State of the distinguished Senator from Wisconsin [Mr. PROXMIRE], who is present tonight. Senator La Follette, the elder, was the kind of tenacious de-

bater I referred to in characterizing Senator Norris. His son, young Bob La Follette, with whom I served, advocated the same principles. I do not have a quotation from him, but I have another quotation from Senator Thomas J. Walsh. Senator Walsh led the investigation into Teapot Dome.

Mr. THURMOND. He presided over the Democratic Convention in 1932 in Chicago, when Franklin Roosevelt was nominated to be President. I was a delegate at that convention.

Mr. SPARKMAN. Roosevelt designated him to be Attorney General. He died before the appointment; therefore, he did not serve. Senator Walsh said:

> There is not an argument that can be advanced or thought of in opposition to a trial by jury in contempt cases that is not equally an argument against the jury system as we now know it.

The Senator would agree with that statement, would he not?

Mr. THURMOND. I would.

Mr. SPARKMAN. In other words, he was saying that an attack on trial by jury in contempt cases was an attack upon the jury system as a whole. Does the Senator agree with that statement?

Mr. THURMOND. I do. I heard someone say that in Washington, D.C., a great many criminals are turned loose; that juries will not convict them. It is said, "There is a big Negro population in Washington. A large number of Negroes serve on juries, and they do not want to convict Negroes." I have heard that statement made. That is no excuse for not having jury trials in the city of Washington. There may be an isolated case, here and there, in which the public feels a jury should have convicted or should not have convicted; but, taking the jury system year in and year out, it is the best system that has been devised by man in government so far.

Mr. SPARKMAN. Senator Norris said that. He said, "It is the best government I know of, and I would not be without it."

I should like to quote from another Senator who served in the Senate, a great legal mind. I have referred to Senator Norris and to Senator Walsh, both great legal minds and men of high principle. I wish to quote now from a man of high principle. I do not suppose one could call him a liberal. He was a great conservative, but he possessed a profound legal mind, and exerted great influence in the Senate. I refer to Senator Reed, of Missouri. Senator Reed said:

> The legislative branch of the Government may make grievous errors. The Executive may even undertake the exercise of tyrannical power. But so long as the temple of justice stands open, so long as the courts have the courage to declare the rights of citizens as they are preserved in the law, and so long as a man has a right to be tried by a jury of his peers, no nation will ever be really enslaved.

Does the Senator agree with that statement?

Mr. THURMOND. Jury trial is the foundation stone of our Government.

Mr. SPARKMAN. Does not the Senator believe that the manner in which jury trials would be taken away by the provisions of the bill is an attack upon not merely the right of trial by jury in these particular provisions, but an attack upon the jury system of the United States, the temple of justice, the right of a man to be tried by a jury of his peers? As Senator Reed said, so long as the temple of justice is maintained, so long as the courts have courage to conduct their affairs rightly, and so long as a man has a right to a trial by a jury of his peers, we may be certain that the Nation will never be enslaved.

Mr. THURMOND. We have always considered the jury to be an essential and vital part of the court, which it is. I remember that from the time when I was a child I attended court. My father was a lawyer. I suppose that I heard as many cases tried by the time I had finished high school as any other person of that age. To me it was entrancing to hear a case. The finest drama in the world is to be found in the courtroom. There is no more interesting occupation one can pursue than to be a trial judge and hear cases tried, if he likes that kind of work, or to be a trial lawyer and participate in cases. That is even more interesting. Back in those days we would not have thought—I certainly would not have—that anyone would have dared to suggest that Congress enact a law and put it on the books of the land and fail to include a provision to give a jury trial to those charged with a crime, under the guise of criminal contempt.

Mr. SPARKMAN. I agree. I think we are in good company when we include the three men from whom I quoted—Senator Norris, Senator Walsh, and Senator Reed.

Mr. THURMOND. The Senator from Alabama has called upon some of the great statesmen of the past, two of whom were genuine liberals. It is amazing to me that almost all the so-called liberals in the Senate today favor the pending bill. Perhaps not all of them do, but almost all of them favor the bill as it stands, without the jury trial provision.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. THURMOND. I do not understand it. I believe the Senator from Wisconsin, who has just asked me to yield, has the reputation of being a liberal, but he has tempered a great deal since he has come to the Senate. He has reappraised his position considerably.

Mr. SPARKMAN. Reevaluated it.

Mr. THURMOND. I have been much heartened over the change that has come over him. He is voting for economy in many programs. His change of heart may cause him to be reelected without any trouble.

Mr. President, I ask unanimous consent that I may yield to the able and distinguished Senator from Wisconsin without losing my right to the floor and with the understanding that upon resuming, my resuming will not count as another appearance on my part.

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

Mr. PROXMIRE. Let me ask the distinguished Senator from Alabama and the distinguished Senator from South Carolina a question. They both indicated this. I heard the Senator from Alabama say it distinctly. The Senator from South Carolina did not contradict him. Do I correctly understand Senators to argue that there is anything in the bill that would take away from an American citizen the right of trial by jury?

Mr. THURMOND. The bill would put on the statute books of this country a law providing for judges to punish people for crimes without jury trials.

I shall be glad to take up each provision and each title and point out the details, if the Senator so desires.

Mr. PROXMIRE. The Senator from South Carolina understands very well that until 1957 there had been no provision for a jury trial in contempt cases.

Mr. THURMOND. In 1957——

Mr. PROXMIRE. In the 1957 civil rights bill there was a provision for a trial by jury if the punishment for the crime exceeded 45 days' imprisonment or a $300 fine. The Mansfield-Dirksen amendment—which I am sure will be supported not only by the leadership, but by virtually all proponents of the bill—would also provide a new right. It would not take anything away. It would provide a new trial by jury right in contempt cases, even more limited than the 1957 civil rights bill; that is, 30 days or $300 fine. So all the argument to the effect that liberals, such as Senator Norris and others would have been against the bill, it seems to me does not stand up, because I am convinced that as the bill will be constituted shortly, if we ever get to vote on it, it will provide a new right to trial by jury in contempt cases, which has not been provided in the past, with a single exception.

Mr. THURMOND. The so-called civil rights bill of 1957 contained what is commonly known as the split-level jury trial provision, that if the punishment were more than 45 days' imprisonment or a fine of $300, a man would get a trial by jury; otherwise he would not. I do not believe that is constitutional. The Supreme Court recently rendered a decision in the Barnett case in a 5-to-4 split decision, which is as close as one can get. One Justice could change his mind and it could go the other way.

Lawyers differ on that point. But the Constitution is so plain on the question that it seems to me those who propose this bill should certainly put in the bill a provision that if a man is charged with criminal contempt, he should have the right to a trial by jury, same as in the case of a man charged with any other crime. I am not in favor of the bill. I believe the whole bill is unreasonable and unconstitutional in other ways which I could point out; but if the bill is to be passed the least the proponents could do would be to include such a provision.

Mr. PROXMIRE. The Mansfield-Dirksen amendment provides what seems to me a logical and sensible compromise. It provides a trial by jury in the event that the punishment is substantial; that is, if it exceeds 30 days or $300. It is an advance over the 1957 act. It is a right not provided heretofore. Nothing in English jurisprudence or American jurisprudence provides for trial by jury in a contempt case. There is nothing in the Constitution which requires trial by jury

in a contempt case. It is clear that if the courts are to maintain order, if their orders are to be respected, it must have that power. As the distinguished minority leader said so eloquently on the floor of the Senate when he argued for this provision, the one power which the court must have is the contempt power. To deprive them of that kind of power in a tripartite government—the judicial, the legislative, and the executive—would truly weaken it. The court would lose not only the real force it has, but it would become impotent and perhaps contemptible.

Mr. THURMOND. I agree with the able Senator that the court should have the power to punish for contempt in certain respects. The court should have the right to punish for contempt committed in the presence of the court. The court should have the right to punish for contempt within the vicinity of the court, where there is anything occurring which interferes with the operation of the court. The court should have the right to punish for contempt where an officer of the court refuses to carry out a writ or an order of the court.

Those three grounds, I believe, are really all a judge should have in criminal contempt. I referred a moment ago to a fine editorial in the Washington Evening Star opposing punishment in civil contempt cases without a trial by jury. Civil contempt procedure simply means bringing about compliance with the orders of the court. A judge would have the right to take the steps necessary to bring about compliance with the court's order. It has generally been considered that that could be done without a trial by jury. But on the matter of criminal contempt, the situation varies in State courts. I cited a decision from my State, a very early decision, Lining against Bentham, 1796, which holds that in indirect criminal contempts, a jury trial should be given.

Mr. PROXMIRE. That is rather exceptional. Almost all the States, including the Southern States, do not provide for trial by jury. It is explicitly provided that no trial by jury is granted in contempt cases. The Senator from Illinois had an excellent analysis of the laws in virtually all the States, particularly with emphasis on the Southern States; and he showed in State after State, such as Mississippi, Alabama, and Arkansas, that there is no provision for a trial by jury in contempt cases; and this power of the court is respected.

Mr. THURMOND. I said in another part of my address before the Senator came into the Chamber that I had previously discussed some of the history pertaining to present Federal judicial practice in criminal contempt cases. As I said earlier, this history reveals an historical error that has resulted in present practices being what they are. The procedure in the area of indirect criminal contempt—that is, the criminal contempt is not committed in the presence of the court—has over the years steadily departed from the dictates of article III, section 2, of the Constitution.

Of course, the Senator is familiar with what that is, and I was developing that situation. In other words, that the historical error back there should not be followed ad infinitum where it is clear what the Constitution intended, and what would be more consistent with the demands of justice.

Mr. PROXMIRE. Of course, it is apparent that many Senators feel it was not a historical error. A majority of the Supreme Court in the Barnett case did not consider it to be a historical error. What I am trying to maintain is that we are trying to argue for a very moderate bill, as limited as it can be, and still get the job done. This bill would rely 99 percent on conciliation, instead of having a bureaucracy with the power to move in and deny or act in these cases of discrimination, we know what some agencies can do. The way they can do it in Wisconsin, for example, is to require that the plaintiff who claims he is being discriminated against must go to court and prove it in court. The burden of proof is upon him. The only enforcement procedure in the entire act—virtually no penalties are in the bill. The only enforcement procedure is to rely on the sure and steady, reasoned action of a Federal court to provide that discrimination shall cease, and then to provide a moderate penalty. On the basis of the 1957 act, which has been in effect for 7 years, penalties have been so modest and limited that there has never been one sufficiently large enough to require even a jury trial.

Mr. THURMOND. What objection would the Senator have——

Mr. PROXMIRE. This is a very limited approach.

Mr. THURMOND. What objection would the Senator have to a trial by jury in indirect criminal contempt?

Mr. PROXMIRE. What is happening—this would take the teeth out of the bill, there would be nothing left. There would be no way one could enforce it——

Mr. THURMOND. That is what I wished to ask the Senator.

Mr. PROXMIRE. The only provision for getting any action, for making an act of discrimination cease, the only enforcement power, if the Mansfield-Dirksen amendment should pass—and I shall vote for it—I believe would be a moderate and reasonable approach, with a penalty limited to 30 days and $300 fines.

Mr. THURMOND. If a man is charged with discrimination, instead of citing him for contempt, why not cite him under the law and try him before a jury?

Mr. PROXMIRE. There is no question, if the judge feels under the circumstances that the penalty should be sufficiently big, that that will be done.

Mr. THURMOND. Should the judge have the power to make that decision? The only law that Congress has enacted with respect to granting jury trials in contempt cases has been in labor cases. I cite the Clayton Act of 1914 which gave a trial by jury; the Norris-La Guardia Act of 1932, which gave a trial by jury; the Landrum-Griffin Act of 1959, which gave a trial by jury; and the Civil Rights Act of 1957, which gave a partial trial by jury, or a split-level trial by jury. Congress must have had some reason for providing a trial by jury in those cases. Why should not a trial by jury be provided for in a civil rights bill?

Mr. PROXMIRE. All the judge does if he finds a party guilty is to demand that the person involved cease to discriminate, cease to violate the law. That is all that the judge does. At any point along the way the defendant can relieve himself of any penalty by ceasing to discriminate. It is only after that stage, after the judge has ordered the defendant to cease discriminating, if the defendant shows his contempt for the court's action, and continues his discrimination, that he can be tried by the judge, and the judge is in a position to impose a very limited, modest penalty.

Mr. THURMOND. I believe the Senator's aid wishes to confer with him. I shall wait until the Senator has conferred with his aid.

Mr. PROXMIRE. No; I am waiting for the Senator to continue.

Mr. THURMOND. Why not include in the bill a provision, that if a man is charged with discrimination, or if he has not fulfilled his obligation under the law, that he shall have a trial by jury? What is the objection to giving him a jury trial, as is provided in a labor case?

Mr. PROXMIRE. I have no objection to a trial by jury in the event——

Mr. THURMOND. Then the Senator will vote for the Talmadge amendment. Is that correct?

Mr. PROXMIRE. No; I shall vote for the Mansfield-Dirksen amendment.

Mr. THURMOND. How did the Senator vote on the Morton amendment?

Mr. PROXMIRE. I voted against the Morton amendment, and also against the Cooper amendment.

Mr. THURMOND. Those amendments provided for trial by jury. How does the Senator distingush between not giving the right of trial by jury in a civil rights case, as was provided in the Morton amendment, and providing jury trials in three different labor statutes in 1914, 1932, and 1957?

Mr. PROXMIRE. In the labor cases a criminal situation is involved. In the particular situation now before us we have a clear, firm, practical precedent in the 1957 act. The bill goes even further in the direction of leniency. I see nothing at all inconsistent or impracticable or unwise in following the precedent set by the 1957 case. It has worked very well and has been held to be constitutional by the Supreme Court.

Mr. THURMOND. What authority does Congress have to provide a jury trial up to a certain point, and not to give it beyond that point? Does the Senator believe that that was the intention of those who wrote the Constitution?

Mr. PROXMIRE. I believe that those who wrote the Constitution did not contemplate a jury trial in contempt cases. The Founding Fathers were brilliant men. Most of them were lawyers, and many of them had had court experience, and attended court very often. They understood both English and American jurisprudence. They provided jury trials in all criminal cases. They also provided jury trials in the sixth amendment to the

Constitution. There is no question about it.

Mr. THURMOND. Does the Senator consider criminal contempt a crime?

Mr. PROXMIRE. I consider it——

Mr. THURMOND. Does the Senator consider it a criminal prosecution when a judge tries a man for criminal contempt?

Mr. PROXMIRE. Throughout the whole sweep of English and American jurisprudence, the courts have been given authority to fix the penalty, whether it be for civil or criminal contempt, if a judge's orders are violated; and to do that without trial by jury.

Our Founding Fathers knew the situation very well. In all the years that have passed, and with all the opportunity that Congress has had to act, and all the opportunity that the President has had to act, and the opportunity the legal profession has had to seek a trial by jury, no such provision was made until very recent years.

Mr. THURMOND. That was in the absence of statutory law.

Mr. PROXMIRE. The Senator from South Carolina claims it was because of a historical error.

Mr. THURMOND. Also because of the absence of statutory law on the subject.

Mr. PROXMIRE. But Congress has had an opportunity to do something about it for many years. It has decided not to do anything about it.

Mr. THURMOND. This was in the absence of laws. When Congress passed laws on the subject, it provided trial by jury. It did so in 1913 in the Clayton Act; in 1932 in the Norris-La Guardia Act; in 1959 in the Landrum-Griffin Act; and in 1957 partially in the Civil Rights Act.

Mr. PROXMIRE. It can do the same thing in 1964 through the Mansfield-Dirksen amendment.

Mr. THURMOND. If the Congress does that, it will be an improper action. I do not believe it will be in accord with the Constitution, nor with the demands of justice. Criminal contempt is a crime, is it not? What is criminal contempt? What does the word "criminal" mean? What is it? What is a criminal prosecution, if it is not a crime? Article III, section 2 of the Constitution provides that the trial of all crimes except in the case of impeachment shall be by jury.

The sixth amendment deals with criminal prosecutions. Criminal contempt is criminal prosecution, because the judge is the prosecutor and the judge.

Mr. PROXMIRE. I believe the Senator understands my position. I should like to add one more element. The bill, as it came from the House, without the Mansfield-Dirksen amendment included, was supported overwhelmingly by conservatives as well as liberals. It was not supported by southerners, of course, but it was supported by every Representative from Kansas, Pennsylvania, Illinois, and Maryland. It was supported overwhelmingly by the majority of Republicans and Democrats from every section of the country, except from the South. Those men understood what this was all about.

Mr. THURMOND. That was true in the North.

Mr. PROXMIRE. People from the Southwest, from the North, from the East, and from the West overwhelmingly supported it. They supported it without any provision in it for jury trial.

Mr. THURMOND. Does the Senator suppose that it was because a racial question was involved, and that they were likely to get the votes of the racial blocs?

Mr. PROXMIRE. Of course, the Senator can discuss motives, if he wishes.

Mr. THURMOND. Is that not the truth of the situation? Does the Senator believe that the same representatives would have dared to deny the right of trial to jury in labor bills?

Mr. PROXMIRE. The implication of the Senator is that this was a bid for the Negro vote. That does not make sense in a State like mine, where less than 2 percent of our population is Negro. These Representatives supported the bill overwhelmingly. This is true in Iowa and Kansas and Colorado.

Mr. THURMOND. In some cases the people do not understand the problems of other parts of the country, and in some cases the people cannot understand the Constitution.

Mr. PROXMIRE. They understood the problems. They studied the bill for a long time. Months of hearings were held before the Judiciary Committee.

Mr. THURMOND. The bill was never considered by the House committee. I read the history of that situation.

Mr. PROXMIRE. The bill was evolved from hearings in the Judiciary Committee.

Mr. THURMOND. The bill was never considered by the Judiciary Committee. It was reported before Representatives had a chance to read it. One Representative said he voted for it before he had even read it. Later, when he saw what a vicious bill it was, he said he would never have voted for it if he had known what was in it. I was told it was brought up quickly in the committee and went directly to the House. Probably large numbers of Members of the House had not read it.

Mr. PROXMIRE. There are large numbers of knowledgeable Members of the House. LESLIE ARENDS, of Illinois, and CHARLES HALLECK, of Indiana, are among the most conservative Members of the House. They are concerned with Federal encroachment and have been for years. Many others voted for the bill because they recognized it was a compromise, a limited bill, and protected States rights. At the same time, the bill provides for the protection of the constitutional rights of a great minority.

Mr. THURMOND. I think it is a destruction of constitutional rights. I am sure the Senator from Wisconsin takes an entirely different position.

Mr. MILLER. Mr. President, will the Senator from South Carolina yield?

Mr. THURMOND. I yield to the Senator from Iowa, provided I do not lose my right to the floor, and that my resumption will not count as a second speech.

Mr. MILLER. I should like to ask the Senator from Wisconsin about a point he raised, referring to the vote on the Morton amendment, about the need for the power of contempt to be vested in a judge. Why is he not satisfield to let a judge have the power of punishing for civil contempt?

Mr. PROXMIRE. I feel that a judge may abuse his position, just as a President may. I feel that this is a power that must be watched carefully by Congress. I feel, however, that the power in civil contempt cases, as it has been historically established in England and America, has worked without much abuse, if any, and can be handled best, under the circumstances, by the kind of limited, moderate modification which Senator DIRKSEN and Senator MANSFIELD propose.

I would not go as far as the Senator from Kentucky [Mr. MORTON] went in providing for trial and taking the case away from a judge in all criminal cases. I think the Dirksen-Mansfield compromise is about right.

Mr. MILLER. I am not certain that the Senator has responded to my question. Let us assume that there are no constitutional arguments about the question. The Senator stated that during the debate on the Morton amendment it appeared that there was quite an area within which to work, so far as the Constitution was concerned. So it is pretty much up to the Senate to determine what is desirable. For the sake of argument, we shall not talk about constitutionality.

The Senator from Wisconsin is interested in having a bill that will be effective. Why would it not be effective with the civil contempt power lodged in the court? I do not believe that that point was brought out well by the opposition to the Morton amendment, because the argument seemed to be that the executive branch has power, the legislative branch has power, but the poor judicial branch has no power at all; the legislative branch would have to give it contempt power. That may be fine; but why not give it civil contempt power? Why give it criminal contempt power without trial by jury, in order to accomplish what the Senator from Wisconsin and many other Senators are trying to accomplish?

Mr. PROXMIRE. It is a question of judgment. The Senator from Iowa may be correct in his view that no such power is needed by a judge in criminal contempt cases. I think it may well be needed. The bill sets limits on his power that are logical and proper. It is not an extension of power; it is a limitation.

Mr. MILLER. The Senator from Wisconsin puts it very well when he says it is a question of judgment. All of us have different judgments. But it seems that we might exercise a little restraint in our judgment and see how a judge will get along with the civil contempt power, and provide criminal contempt power subject to trial by jury. If that does not work, Congress can always do something to correct it. But why become jumpy about the criminal contempt power of a judge?

One further point: The Senator from Wisconsin spoke about all the conservatives in the House who voted for the bill as it came to them, providing limited power in a judge in criminal contempt cases. It seems to me that much could be said about whether one is a liberal

in his views on the jury trial question. I know a great many people who flatter themselves as being liberals, but are sensitive about providing trials by jury for accused individuals.

It seems to me that a good case could be made for the contention that the true liberal ought to do everything in his power to provide for trial by jury. I do not believe we shall get anywhere by speaking on this subject in terms of conservativism or liberalism, because both those who are categorized as conservatives and those who are categorized as liberals have split on this very point, as is evidenced by the vote on the Morton amendment.

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

Mr. MILLER. I do not have the floor.

Mr. SPARKMAN. The Senator has the floor for the time being.

The PRESIDING OFFICER (Mr. McGEE in the chair). The Senator from South Carolina has the floor. Does he yield to the Senator from Alabama?

Mr. THURMOND. Mr. President, I ask unanimous consent that I may yield to the Senator from Alabama on the same conditions as heretofore announced.

Mr. SPARKMAN. I suggest to the Senator from Iowa that so far as the Supreme Court is concerned in two different cases, those who are recognized as great liberals on the Supreme Court decided in both cases that the person was entitled to a trial by jury. Perhaps that may not be true in the House. But certainly when the question was put to the test in the Supreme Court, the liberals definitely lined up in favor of the right of trial by jury.

I should like to address myself to the Senator from Wisconsin before he moves to recess the Senate.

Mr. PROXMIRE. I am almost ready to move that the Senate take a recess, but I should first like to ask the Senator from South Carolina a question.

Mr. SPARKMAN. I wanted to ask the Senator from Wisconsin a question on one point first. The Senator has frequently referred to the Dirksen-Mansfield amendment as being a reasonable compromise. I do not know how many Senators will agree with me, but I believe the Dirksen-Mansfield substitute is worse than no amendment at all.

I believe—and I speak only for myself—that I would rather risk having the bill remain silent in those sections where it remains silent on the question of trial by jury than to take the Dirksen-Mansfield amendment, because if it shall be adopted, Congress will have spoken, and the Supreme Court will be bound.

Mr. THURMOND. And we shall be setting a precedent by compromising the Constitution.

Mr. SPARKMAN. How do we know that the vote in the Supreme Court, as its membership changes, may not also change? I have observed many instances in which minority opinions became majority decisions within a year or two.

I had rather risk the chance of having the Supreme Court change its mind by a single vote—that is all it would take—than to have written into a provision that would definitely tie up the situation for all time and risk Congress, the legislative body, having said that a person is not as a matter of right entitled to a trial by jury. Such a decision would be made by predetermination of the judge sitting in the case, trying the case, being a witness against the defendant, preferring charges, hearing the testimony—usually his own reasoning—and then finding the defendant guilty and assessing the penalty.

If anything could be more contrary to American judicial practice of jurisprudence than that, I do not know what it is.

Mr. THURMOND. The Senator is eminently correct. When Congress has legislated on this subject in the past, it has provided for the right of trial by jury. It has done so in three distinct statutes. The only place in which the provisions was qualified was in the 1957 Civil Rights Act. At that time I spoke at length against the provision. At that time an attempt was made to qualify and compromise the situation.

The able Senator from Wisconsin, for whom I have great affection and high respect, said that the Dirksen-Mansfield proposal was a compromise. That is exactly what it is. It is an attempt to compromise the right of trial by jury provided in the Constitution. That is what I am opposed to.

Mr. PROXMIRE. Mr. President, will the Senator from South Carolina yield for a question on another point?

Mr. THURMOND. I shall be pleased to do so. Mr. President, I ask unanimous consent that I may yield to the able Senator from Wisconsin, on the same conditions on which I have yielded heretofore.

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

Mr. PROXMIRE. Earlier, the Senator from South Carolina stated the bill does not contain a definition of the word "discrimination." That statement has been made a number of times by various critics of the bill.

But I point out that in every title as to which discrimination would be significant, there is a clear definition—one which no one could confuse—which indicates exactly what is meant.

For example, in title I, on page 2, we find, beginning in line 9, and continuing for the rest of that page and on most of page 3, a definition of discrimination in voting, as follows:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same country, parish * * *.

And later—

"(B) deny the right of any individual to vote in any Federal election because of an error or omission * * *.

And so forth. That is a definition of "discrimination."

In title II, on page 6, "Injunctive Relief Against Discrimination in Places of Public Accommodation"—

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section * * *.

And an abridgment of that right would constitute discrimination.

On page 11, one finds a clear definition of "discrimination," under title III, "Desegregation of Public Facilities."

On page 13 is a clear definition that any person with commonsense could understand; it is set forth in very simple language, and it states what discrimination means under title IV, "Desegregation of Public Education"; and also on page 17, and all the way through, in title VI and in title VII.

So there can be no confusion as to what "discrimination" means.

It is said there is no definition of "discrimination" in the bill, in connection with education. But I submit that with all the specifics set forth in the bill, it seems to me it goes about as far as any other bill with which I am acquainted goes in stating in clear language what the key word means.

Mr. THURMOND. In reply, Mr. President, I repeat—and I am on sound ground—that the bill does not define "discrimination." The bill refers to certain things that shall not be done, but then refers to the word "discrimination." It provides that the Attorney General can institute suits, and so forth—but for what purpose? If there is discrimination. In other words, the point is "discrimination." And what is "discrimination"? "Discrimination" may be defined one way by one Government agency; it may be defined another way by another Government agency. For instance, the Department of Health, Education, and Welfare might withhold funds on one basis; the Department of Labor might withhold funds on another basis; the Department of Agriculture might withhold funds on some other basis. There is no clear-cut definition of what "discrimination" is.

How could a man be punished for contempt unless there was a concise, well-defined crime? That is a fundamental element in criminal law, as has been stated here tonight. The bill prohibits certain actions. But it circumvents the normal procedural safeguards available to those charged with transgressing statutory prohibitions, by invoking the injunctive process, something never designed for such a use. The bill resorts to the injunctive process and contempt proceedings for enforcing legislative enactments, rather than relying on the normal criminal procedure. This is why it is so essential that a jury trial guarantee be written into the bill.

Mr. SPARKMAN. Mr. President, will the Senator from South Carolina yield briefly to me?

Mr. THURMOND. I yield.

Mr. SPARKMAN. I wish to call attention to page 25, which I have picked out at random.

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of

race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

I ask the Senator from South Carolina to find anywhere there any definition of the word "discrimination."

Furthermore, let us remember that the first things named there are not "discrimination"; "discrimination" comes next.

In title VII—it is not found in title VI—there is a section which is given over to definitions.

Mr. PROXMIRE. Yes; and sections 704 and 705 are also given over to definitions.

Mr. SPARKMAN. But there is no definition of "discrimination."

However, I am really contrasting the treatment given in title VII to that given in title VI.

Mr. PROXMIRE. I should like to read the language to the Senator:

SEC. 701. (a) The Congress hereby declares that the opportunity for employment without discrimination of the types described in sections 704 and 705 is a right of all persons within the jurisdiction of the United States, * * *.

And sections 704 and 705, in great detail and painstakingly, indicate what "discrimination" in this case amounts to.

Mr. SPARKMAN. But I was contrasting title VI with title VII. Title VI uses the term "discrimination" without defining it, and does not even have a section of definitions, whereas title VII has the long schedule of definitions.

Mr. THURMOND. And is it not true that if a man was to be punished, he would be punished, under these provisions, for being guilty of "discrimination"?

Mr. SPARKMAN. Yes; but in title VI there are no guidelines. I referred to it specifically. I cannot find the other references now; but I have heard some very fine lawyers, including the Senator from North Carolina [Mr. ERVIN] and the Senator from Mississippi [Mr. STENNIS], both of whom have been highly respected judges in their own States, state that "discrimination" is frequently referred to in the bill, but without definition.

Mr. THURMOND. There is no question of that. All one has to do is read the bill, and he will see that "discrimination" is not defined in it. But if one is to be held responsible, under a charge of criminal contempt—and criminal contempt is a crime—then it is clear that "discrimination" should be definitely defined and pinned down; the bill should state exactly what "discrimination" is, rather than to have the definition picked up from one part of the bill or another, in a loose form. If a man is to be charged with crime, the crime must be defined. This is the rule of discretionary power of man, rather than the rule of law.

Mr. PROXMIRE. But that is exactly what the bill does in title after title.

So far as title VI is concerned, it seems to me it is the extreme example of how very moderate the bill is. All kinds of precautions are provided, including—as one of many—a provision that the appropriate committees of Congress shall be notified 30 days in advance.

The Senator knows how careful the Secretary of Agriculture would be before he notified the Senate Committee on Agriculture, headed by the Senator from Louisiana [Mr. ELLENDER], and with its next ranking Members on that side of the aisle the Senator from South Carolina [Mr. JOHNSTON], the Senator from Florida [Mr. HOLLAND], the Senator from Mississippi [Mr. EASTLAND], the Senator from Georgia [Mr. TALMADGE], and so forth. In fact, the first six Senators in the list of the membership of the Committee on Agriculture and Forestry are from the deep South; and the Secretary of Agriculture must apply to that committee for authorization and support of his program.

Furthermore, the bill states:

SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in,

That is clear.

Then the bill states:

Be denied the benefits of—

That is clear.

Then the bill states:

Or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Mr. SPARKMAN. That is exactly what I said. In other words, in title VI there is no definition of "discrimination."

Mr. PROXMIRE. But the Senator realizes that each Department must in advance specify what its rules and regulations were in dealing with discrimination under this title. They must be specified, and a hearing must be scheduled in advance, and there must be a court review; and then the Congress must be notified 30 days in advance, before action was taken. So nothing could be done unless there was the strongest possible case of the grossest kind of discrimination.

So, in view of the way the bill is hedged about now, I think the Senator from South Carolina and the Senator from Alabama have nothing to worry about.

Mr. THURMOND. Would the Veterans Administration or the Department of Health, Education, and Welfare, in setting up regulations to administer the bill, define discrimination so that it would be clear what the term means?

Mr. PROXMIRE. When they draw up the regulations, they will indicate exactly what procedures will have to be taken. I do not believe that they have to define discrimination. I believe that the bill is clear in what is meant by that term.

Mr. THURMOND. Since the regulations would not define discrimination, some bureaucrat would make that determination.

Mr. PROXMIRE. Under that title it is clear that the bureaucrat could not do it.

Mr. THURMOND. We would have a rule by men rather than a rule by law. That is exactly what we would have under the bill, so long as discrimination is not defined.

Mr. SPARKMAN. With reference to title VI, I note what the Senator from Wisconsin has said about it being so protected, and that there is nothing for us to worry about. I know that the Senator from Wisconsin sincerely believes that. But I feel that title VI of the bill is perhaps the most vicious part of the bill.

I realize that there are other sections to which some Senators object much more strenuously than they do to title VI. As the Senator from Wisconsin has said, it may be that title VI will never be used very much. But the very fact that the power would be given to Government agencies to withhold tax funds, funds that are collected from people all over the United States, makes the provision most objectionable.

Mr. THURMOND. And without legislative guidelines.

Mr. SPARKMAN. Without legislative guidelines.

Mr. THURMOND. Which would mean a delegation of discretionary power.

Mr. SPARKMAN. And without standards being laid down, so that some who would have nothing to do with discrimination, such as hungry schoolchildren, would be penalized. For example, food would be taken from the mouths of hungry schoolchildren if the school lunch program were affected. We would take charitable welfare payments away from hungry people who need help. They might not have been guilty of any wrong. They would not have discriminated against anyone. And yet the bill would give agencies of the Government the right to penalize. Furthermore, they would be given the right to extend the penalty to a whole State and to a whole program.

President Kennedy correctly stated the situation when he said that the President did not now have such power and he did not believe that any President ought to have such power.

I think it is a vicious program. I understand that a motion will be made to strike that provision from the bill. I cannot help believing that Senators will vote to strike that provision from the bill.

Mr. PROXMIRE. I am sure that both the Senator from South Carolina and the Senator from Alabama know in their hearts that the President of the United States would not take away all aid from the people of a State.

Mr. SPARKMAN. Why give the President the power to do so? President Kennedy said that no President should have such power.

Mr. THURMOND. It is too much power for anyone.

Mr. PROXMIRE. I agree with what President Kennedy said. What he said has been misinterpreted. President Kennedy, and his brother, the Attorney General—who now supports that section—would support the section of the bill to which reference is made. They would do so because President Kennedy, President Johnson, President Goldwater, or any other President we might have would not deny under that section aid to any State across the board.

Mr. SPARKMAN. When President Kennedy first spoke on the question it was at a news conference. I heard the statement. He said, "I do not believe that I have that power; and no President ought to have the power."

Mr. THURMOND. Mr. President, I should like to ask the distinguished Senator whether he thinks Martin Luther King, if he were President, would exercise that power.

Mr. PROXMIRE. I believe Martin Luther King is one of the gentlest and most careful men in the country. If Martin Luther King were administering that power, he would administer it with care. Furthermore, if Martin Luther King were President of the United States, the Senator from South Carolina would probably be chairman of one of the committees and would see that the power was administered without damaging anyone.

Mr. THURMOND. The point I am getting at is that the Senator has expressed great faith in President Johnson. He has expressed great faith in "President" GOLDWATER. He has expressed great faith in all the various individuals about whom he knows. What would a President 25 years from now do, even if the Presidents whom the Senator has mentioned did not abuse the power? If future Presidents should have the power, is it not possible that some President in the future would abuse it?

The able Senator from Wisconsin has said that the chairman of the committee must be notified. Suppose that the chairman of the committee were notified. What could the chairman of the committee do about a situation if the chairman were notified? If that is the law and a bureaucrat executes the law in that respect, and if he persuaded the President of the United States to go along with him and approve the withholding, it would take effect.

Mr. PROXMIRE. Mr. President, the hour is very late. Senators who have not participated in the debate have been extremely patient. I should like to add that I think the chances of Martin Luther King or BARRY GOLDWATER becoming President are about the same. I have great admiration and respect for both men. I think they are fine gentlemen. But by referring to "President" GOLDWATER, I was not trying to predict anything.

Mr. President, in accordance with——

Mr. THURMOND. Mr. President, I have not yielded the floor.

I wish to thank the able Senator from Wisconsin for the questions which he has asked, and the able Senator from Alabama for his fine participation in the debate. I should like to suggest to the distinguished Senator from Wisconsin, because I know that he is a conscientious man, that he give the bill a great deal more thought and consideration. I realize his concern for human rights, but that is not the question. The question is not whether one is for civil rights or States rights, or whether he is white or nonwhite. If one opposes the shifting of power to the Federal Government, he ought to vote against the bill. I hope that the able Senator, after he gives the question careful thought, will conclude that the Federal Government in Washington has too much power now, and let us permit States and the people to retain what little power they have remaining. We do not wish to give the Central Government in Washington any more power that will bring tyranny to the people.

Mr. President, I yield the floor.

TRANSACTION OF ADDITIONAL ROUTINE BUSINESS

By unanimous consent, the following additional routine business was transacted:

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. MCGEE, from the Committee on Commerce, with amendments:

S.J. Res. 71. Joint resolution to establish a National Commission on Food Marketing to study the food industry from the farm to the consumer (Rept. No. 1022).

ADDITIONAL BILLS INTRODUCED

The following additional bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. YOUNG of North Dakota:

S. 2830. A bill for the relief of Wang Chi; to the Committee on the Judiciary.

S. 2831. A bill to amend the Watershed protection and Flood Prevention Act, as amended, so as to permit Federal cost-sharing for certain uses of water stored in reservoir structures constructed or modified under such act; to the Committee on Agriculture and Forestry.

RECESS TO 10 A.M., WEDNESDAY, MAY 13, 1964

Mr. PROXMIRE. Mr. President, pursuant to Senate Resolution 328, agreed to on yesterday, Tuesday, May 12, 1964; in accordance with the order entered on that day; and, as a further mark of respect to the memory of the deceased Representative CLARENCE CANNON, of Missouri, I move that the Senate now stand in recess until 10 o'clock a.m. today, Wednesday, May 13, 1964.

The motion was unanimously agreed to; and (at 12 o'clock and 17 minutes a.m.) on Wednesday, May 13, 1964 the Senate took a recess until 10 o'clock a.m. of the same day.

NOMINATIONS

Executive nominations received by the Senate May 12 (legislative day of March 30), 1964:

FEDERAL COMMUNICATIONS COMMISSION

Frederick W. Ford, of West Virginia, to be a member of the Federal Communications Commission for a term of 7 years from July 1, 1964.

COAST AND GEODETIC SURVEY

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the Coast and Geodetic Survey:

To be lieutenants (junior grade)

Robert A. Ganse
Rolland L. Lech
David V. Sibila
James H. Allred

To be ensign

Scott R. Walker, Jr.

In the Navy

Vice Adm. Elton W. Grenfell, U.S. Navy, for appointment to the grade of vice admiral on the retired list pursuant to title 10, United States Code, section 5233.

Having designated, under the provisions of title 10, United States Code, section 5231, Rear Adm. Vernon L. Lowrance, U.S. Navy, for commands and other duties determined by the President to be within the contemplation of said section, I nominate him for appointment to the grade of vice admiral while so serving.

IN THE ARMY

The following-named officer for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3299:

To be captain

Hesse, Russell S., [redacted]

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3298:

To be first lieutenants

Atkinson, John H., 3d, [redacted]
Brooks, Ronald E., [redacted]
Cody, Michael A., [redacted]
Fladd, Frederic H., [redacted]
Foulds, David G., [redacted]
Gants, Robert M., [redacted]
Kovacs, Jerome P., [redacted]
Laidlaw, Stephen R., [redacted]
Matz, Stanford, [redacted]
Paul, Gerald D., [redacted]
Quandt, Donald L., [redacted]
Schwend, William H., [redacted]
Takamiya, Paul K., [redacted]

The following-named persons for appointment in the Regular Army by transfer in the grades specified under the provisions of title 10, United States Code, sections 3283, 3284, 3285, 3286, 3287, and 3288:

To be captain

Fisher, George A. (MSC), [redacted]

To be first lieutenant

Heitzman, Lawrence J. (MSC), [redacted]

The following-named persons for appointment in the Regular Army of the United States in the grades specified under the provisions of title 10, United States Code, sections 3283, 3284, 3285, 3286, 3287, and 3288:

To be majors

Cassidy, Joseph B., [redacted]
Plosay, John J., Jr., [redacted]

To be captains

Anderson, James A., [redacted]
Anhalt, Walter C., [redacted]
Austin, Maynard A., [redacted]
Bellochi, Joseph F., [redacted]
Doty, Daniel W., [redacted]
Fulford, Clarence J., [redacted]
Gober, Floyd C., [redacted]
Goodwin, Willard C., Jr., [redacted]
Isaacs, Carroll C., [redacted]
Jones, Thomas J. P., [redacted]
Klingensmith, James P., [redacted]
Koehler, Joseph R., [redacted]
Martin, Arnold, Jr., [redacted]
Maynes, George E., [redacted]
McNeill, Charles L., [redacted]
Nakajo, Mas M., [redacted]
Oldinsky, Frederick E., [redacted]
Park, David B., [redacted]
Rayfield, William L., [redacted]
Sanabria, Robert, [redacted]
Sanderlin, Arnold E., [redacted]
Semmler, Robert L., [redacted]
Shreves, Charles L., [redacted]
Sisson, Deryl A., [redacted]
Thompson, William E., [redacted]
Vice, John R., [redacted]

To be first lieutenants

Alexander, William M., xxxxxxxx.
Coppin, Thomas S., xxxxxxxx.
Dickerson, Michael A., xxxxxxxx.
Drago, James P., xxxxxxxx.
Duey, William E., xxxxxxxx.
Eisele, Frederick W., xxxxxxxx.
Frink, Dennis D., xxxxxxxx.
Harleston, Robert A., xxxxxxxx.
Harrell, Ernest J., xxxxxxxx.
Hilby, Leslie E., xxxxxxxx.
Ingram, Donald C., xxxxxxxx.
Johnson, John O., xxxxxxxx.
Jones, Daniel M., xxxxxxxx.
Miller, Russell E., xxxxxxxx.
Moore, Laurence V., xxxxxxxx.
Morano, Michael, xxxxxxxx.
Mussells, John D., xxxxxxxx.
Nolan, William E., xxxxxxxx.
Reed, Lee S., xxxxxxxx.
Schrum, James R., xxxxxxxx.
Stetson, Sterling L., xxxxxxxx.
Sutton, James C., xxxxxxxx.
Westmoreland, Franklin D., xxxxxxxx.
Ziolkowski, Dennis B., xxxxxxxx.
Zook, Neil J., xxxxxxxx.

To be second lieutenants

Easum, Thomas P., Jr., xxxxxxxx
Geer, James H., xxxxxxxx
Gottman, Lloyd E., xxxxxxxx.
Grammas, George N., xxxxxxxx
Hagenhoff, Stanley R., xxxxxxxx.
Hayes, Robert L., II, xxxxxxxx.
Kallay, Michael T., xxxxxxxx.
Kirby, Rance A., xxxxxxxx.
Lindorfer, John H., xxxxxxxx.
Livingston, John J., xxxxxxxx.
Logan, James A., xxxxxxxx.
Luallin, John S., xxxxxxxx.
Pascarelli, Philip A., xxxxxxxx.
Pierce, Robert V., xxxxxxxx.
Pincince, George S., xxxxxxxx
Pratt, James T., III, xxxxxxxx
Reynolds, Marcel F., xxxxxxxx.
Zetterberg, Robert W., xxxxxxxx.

The following-named persons for appointment in the Regular Army of the United States, in the grades and branches specified, under the provisions of title 10, United States Code, sections 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3293, and 3294:

To be major, Medical Service Corps

Gallien, Garry G., xxxxxxxx

To be captain, Army Nurse Corps

Gray, Jeannette M., xxxxxxx.

To be captain, Chaplain

O'Connor, Francis X., xxxxxxxx.

To be captains, Dental Corps

Austin, James D., Jr., xxxxxxxx.
Boylan, Peter A., xxxxxxxx
Brusch, Walter A., xxxxxxxx.
Cavallaro, Carl J., xxxxxxxx
Greene, James H., xxxxxxxx
Gum, Coleman P., Jr., xxxxxxxx.
Jones, John C., xxxxxxxx
Kaplan, Martin, xxxxxxxx.
Kirk, George A., xxxxxxxx.
Konzelman, Joseph L., xxxxxxxx
Posey, William R., xxxxxxxx.
Scott, Gary C., xxxxxxxx.
Thomas, William M., Jr., xxxxxxxx
Valha, Daniel J., xxxxxxxx
Vandrak, Robert F., xxxxxxxx.

To be captains, Medical Corps

Baden, Melvin, xxxxxxxx.
Bartley, Joseph D., xxxxxxxx.
Boroian, Theodore V., xxxxxxxx.
Brandlinger, Dirck L., xxxxxxxx.
Cotton, Bernice P., xxxxxxxx.
Fariss, Bruce L., xxxxxxxx.
Follansbee, John N., xxxxxx.
Gooding, Ronald S., xxxxxx.
Hall, Augustus A., Jr., xxxxxxxx.
Jones, Franklin D., xxxxxxxx.
Lenczyk, Joseph M., xxxxxxxx.
Lichtmann, Manfred W., xxxxxxxx.
Logan, Laurence J., xxxxxxxx.
Lutton, Charles E.
McNeill, Thomas P., xxxxxxxx.
Moody, John P., xxxxxxxx.
Motes, Joseph L., Jr., xxxxxxxx.
Pettyjohn, Frank S., xxxxxxxx.
Price, Harold M., xxxxxxxx.
Rahdert, Richard F., xxxxxxxx.
Randolph, Gerald G., xxxxxxxx.
Reamy, Kenneth, xxxxxxxx.
Runyan, Thomas E., xxxxxx.
Setzer, Edward H., xxxxxxxx.
Schaefer, Charles E., xxxxxxxx

To be captains, Medical Service Corps

Pennington, Neil E., xxxxxxxx
Rengstorff, Roy H., xxxxxxxx

To be captain, Veterinary Corps

McQuilkin, Stephen E., xxxxxxxx

To be first lieutenant, Army Nurse Corps

Nolfe, Vera A., xxxxxxxx

To be first lieutenants, Dental Corps

Goldberg, Stuart E., xxxxxxxx.
Holden, Richard C., xxxxxxxx
Tempel, Thomas R., xxxxxxxx.

To be first lieutenants, Medical Corps

Abrams, Arthur J., xxxxxxxx.
Brettner, Alfred
Carolan, Patrick J., xxxxxxxx.
Fishburn, Bruce R., xxxxxxxx.
Fleurant, Lucien B., xxxxxxxx.
Gibbons, Robert B., xxxxxxxx.
Gross, Alton F., xxxxxxxx.
Handley, George J., xxxxxxxx
Hansen, Raymond A., xxxxxxxx
Harrison, Charles S., xxxxxxxx
Hess, Richard J., xxxxxxxx.
Hofeldt, Fred D., Jr., xxxxxxxx.
LeVine, Richard B., xxxxxxxx
Linden, David A., xxxxxxxx
Liptak, Richard A., xxxxxxxx.
Llewellyn, Craig H., xxxxxxxx.
Lockett, Bobby L., xxxxxxxx
Maloney, Christopher T., xxxxxxxx.
Matz, Edward M., Jr.
Nelson, James H., xxxxxxxx
Ribbe, Robert E., xxxxxxxx
Rock, Nicholas L., xxxxxxxx.
Solomon, Herbert M., xxxxxxxx.
Stevens, Kenneth M., xxxxxxxx.
Stevenson, James R., xxxxxxxx.
Thomas, Stephen R., xxxxxxxx.
Whaley, Sidney F., Jr., xxxxxxxx.
Yelland, Graham, xxxxxxxx

To be first lieutenants, Medical Service Corps

Creighton, James P., Jr., xxxxxxxx.
Helton, Bobby K., xxxxxxxx
Holcomb, Robert E., xxxxxxxx.
Iber, Peter K., xxxxxxxx.

To be first lieutenants, Veterinary Corps

Smith, Paul C., xxxxxxxx
Stephenson, Edward H., xxxxxxxx

To be second lieutenant, Medical Service Corps

Erskine, John F., xxxxxxxx

The following-named distinguished military students for appointment in the Medical Service Corps, Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 3283, 3284, 3285, 3286, 3287, 3288, and 3290:

Guy, Robert L.
McKiness, Douglas R.
Myers, William D.
Simon, Roger P.
Smith, David N.

The following-named distinguished military students for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 3283, 3284, 3285, 3286, 3287, and 3288:

Amedick, Paul F.
Avery, Ronald L.
Basham, David L.
Belin, George R., Jr.
Bennett, David W.
Blalock, Harry H.
Borg, Ronald A.
Bradley, John
Buckles, Richard L.
Buehler, Christian J., III
Burch, John T., Jr.
Burley, John L.
Burns, Edward C.
Cameron, Wilbert J., Jr.
Campbell, James L.
Carnes, Robert D.
Carter, Virgil R.
Coggin, John D.
Coleman, Dale
Daily, Robert R., Jr.
Davis, Larry J.
Davis, Stewart P.
Dollar, William M.
Doyle, Patrick D.
Duke, Wayne M.
Duble, Kirk H.
Edler, James H.
Ehle, Paul E.
Elliott, Emory B., Jr.
Freson, Raymond D.
Gates, Wayne L.
Gaydos, Roger J.
Gersten, Michael E.
Gillen, Philip J. xxxxxxxx
Gimbert, Robert A.
Ginn, Jerry W.
Goodfellow, Robert A., Jr.
Gralla, Lawrence J.
Grant, Ernest R.
Gventer, Elliott J.
Hall, Roger P.
Harvey, Ernest B., Jr.
Heard, George L., Jr.
Herold, Thomas J.
Holms, Richard L., Jr.
Holochwost, Gregory G., Jr.
Houston, William R., Jr.
Israel, James L.
Jappen, John W.
Johnson, Allan W.
Johnson, Bobby D.
Johnston, J. Ford, Jr.
Jump, Robert K.
Kasprisin, John E.
Keir, Gerald J.
Kenison, Charles B.
Killoy, David H.
Kirkpatrick, Donald P.
Kollarik, Donald M.
Kotch, Stephen, Jr.
Krutulis, Joseph W.
Kuzmick, Joseph R.
Lofts, Robert H.
Lowe, Richard V.
Lufkin, Daniel F.
MacDonald, Charles P., III
Marinelli, Libero, Jr.
McInnis, William L.
Morgan, Richard J., Jr.
Morton, Robert L.
Myers, Thomas C.
Newman, Thomas K.
Oliva, Carmine
O'Reilly, Charles A., III
Parrish, Brainerd S.
Perkins, Ralph F.
Peterson, James R.
Popp, Ronald S.
Priest, James H.
Rasor, Sam J., Jr.
Reilly, Terry H.
Ricketts, Steven W.
Robbins, John E.
Rose, Joseph S., Jr.
Ryan, Michael J.
Schaufelberger, John E.
Shurtleff, Charles H., Jr.
Smith, Douglas M.
Spear, Albert C.
Spencer, Thomas G.
Stoke, James A.
Stumpf, James C.
Szymanski, Robert
Taylor, Erle A., Jr.
Taylor, John W., Jr.
Tennis, Darrell R.
Terry, John F.
Thomas, John S.
Thompson, Robert A.
Usher, David J.
Vaillancourt, Kenneth J.
Van Steenhouse, Larry J.
Vooys, Daniel F.
Waggoner, Carl C., Jr.
Waite, Wallace W.
Wall, Thomas D.
Ward, Dennis
Wehunt, Clyde L.
Welch, John C.
Wickman, Lance B.
Winter, Terry M.
Womble, Carl C., Jr.
Woolley, Bobby J.
Wright, Michael L.
Zschoche, Robert C.

The following-named cadets, graduating class of 1964, U.S. Military Academy, for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 3284 and 4353:

Adair, William H.
Adams, James L.
Alitz, Douglas A.
Ames, Robert A.
Amrine, Robert M.
Anderson, Norman L.
Anderson, Raymond W.
Andrews, Andrew E.
Annan, William M.
Anthony, Thomas E.
Arnold, Joseph C.
Arrington, John W.
Bachman, Howard F.
Badger, Thomas A.
Bain, Seavy A., Jr.
Balderson, Robert A., Jr.
Baldwin, Roger L.
Ballagh, Robert S., Jr.
Banovic, Daniel M.
Baratto, David J.
Barr, Douglas H.
Baseheart, George M.
Bast, Christopher O.
Beasley, Clifford M., Jr.
Beck, William R.
Bedell, Larry L.
Beierschmitt, James J.
Bennett, Douglas P.
Bennett, Jay F.
Bergen, John D., Jr.
Bergman, David M.
Bertelli, Paul F.
Bettner, Steven M.
Biank, Samuel A., Jr.
Bigelow, James E., II
Binney, David G.
Bischoff, Eric L.
Black, Billy R.
Bloomfield, Kenneth E., Jr.
Bolen, William R.
Boone, Howard E.
Bowers, Michael J.
Boyd, Hugh F., III
Bramlett, David A.
Bramlette, Larry J.

Brennan, Mark P., Jr.
Brewer, Larry K.
Brinkman, Edward P.
Brokaw, Milton J.
Brooks, Michael D.
Brown, Charles T., Jr.
Brown, Gerald C.
Brucker, Willis H.
Bryan, Larry A.
Buckley, Michael J.
Buckner, Roy C.
Bujalski, David A.
Burney, Samuel M., Jr.
Butler, Thomas W., III
Campbell, Ralph J.
Carlson, Robert H.
Carr, Richard L., Jr.
Carson, James M., Jr.
Carter, Ian B.
Carver, George A., Jr.
Cary, John R., Jr.
Case, Melvin E.
Cate, Paul E.
Caudill, Watson G., Jr.
Cecchine, Gary A.
Cesarski, William V.
Chapman, Thomas W.
Charron, Leo D., Jr.
Chescavage, William A.
Chilcoat, Richard A.
Chmielak, Jerome A.
Christensen, Alan N.
Clark, John R.
Cobbs, James S.
Colburn, Neville
Coleman, Frederick W., IV
Collins, Francis J.
Connor, William M., Jr.
Conway, Michael J.
Cook, Michael R.
Cope, John A., Jr.
Corbett, David A.
Corey, Joseph J., Jr.
Corley, Bruce R.
Cornell, James E.
Cotter, Donald B.
Covington, Terrell G.
Craighill, Robert R., Jr.
Crissman, Kearney W. Jr.
Cromartie, George D., Jr.
Cross, Ronald M.
Culp, Dennis K., Jr.
Cunningham, Thomas N.
Curran, Thomas M.
D'Alessandro, Peter L., Jr.
Daly, James M., Jr.
Danylchuk, Peter R.
Darrow, John H.
Davis, Curtis A.
Davis, Richard W., Jr.
Davis, Walter W., Jr.
Davison, Michael S., Jr.
DeGon, Kenneth M.
Desjardins, George P., Jr.
Deter, Daniel E.
Dexter, Richard P.
DiNeno, William T.
Domas, George J., Jr.
Dooley, Thomas F.
Doolittle, Robert J., Jr.
Downey, James P.
Draper, Stephen E.
Duffy, John P.
Dunmar, John H.
Durfee, Thomas J.
Dye, Carl E.
Dykes, Andrew A.
Efird, Crayon C., Jr.
Egnar, George F.
Eklund, Kenneth R.
Elson, Peter M.
Erdmann, Thomas J.
Evans, Daniel M., Jr.,
Faddis, Roy J.
Farnsworth, John A., Jr.
Faulds, Thomas G.
Ferry, Bernard A., Jr.
Finno, Roy S.
Fishback, David N.
Fisher, George A., Jr.
Fitzgibbon, Daniel H.
Flint, Charles K., III
Fly, Francis L., Jr.
Foster, Robert B.
Fracker, Stanley S., III
Fraser, Harvey R., Jr.
Freeman, Waldo D., Jr.
Fulco, Albert P., Jr.
Galloway, Denis W.
Galton, Mark C.
Gantsoudes, James G.
Gaylor, Arnold H.
Gesner, Robert W.
Gill, Norman W., Jr.
Gillem, Dennis J.
Gilson, Dennis R.
Gleszer, Peter E.
Goff, Clifford N., III
Graham, John M.
Grasfeder, Lee R.
Graves, Patrick H., Jr.
Graw, LeRoy H.
Gray, Frederic C., III
Gray, Richard L.
Green, Martin L., Jr.
Gregson, Robert M.
Greiner, Bruce I.
Griffith, Michael W.
Grimes, Everett D.
Grisham, James W.
Grubbs, John H.
Grunstad, Norman L.
Guthrie, William E.
Hall, Donald A.
Harding, James R.
Hardy, Leonard D., Jr.
Harnisch, John M.
Harris, Randolph L. P.
Hartle, Anthony E.
Hartley, George M.
Hartman, Clarence B.
Harvey, James F.
Hatfield, Harold M., Jr.
Haydash, Edward J., Jr.
Hayward, Gregory J.
Hegglund, James W.
Heneman, Helmuth J.
Henry, William A.
Herdegen, Lawrence M., Jr.
Heydt, Richard H.
Hickson, Robert D., Jr.
Higbee, Roger C.
Hillard, George O., III
Hillyer, Robert A., Jr.
Hinshaw, Frederick M., Jr.
Holdsworth, David R.
Holeman, J. B., Jr.
Hoover, William O., Jr.
Hornbarger, Daniel H.
Horstman, Michael L.
Hottell, John A., III
Howard, Bruce L.
Howard, John D.
Hudgins, Seth F., Jr.
Hughes, Justin R.
Hughey, Philip J.
Hutchison, Charles T., III
Induni, Stephen J.
Jackman, William L.
Jackson, Charles L., II
Jacunski, George G.
Janairo, Antonio R.
Jerge, Louis A.
Jinks, Jimmie R.
Johnson, Gary R.
Johnson, Max W.
Johnson, Robert L.
Jones, Allen F.
Jones, Raymond M.
Jones, Roy, Jr.
Kaufman, Harold J.
Kelley, Kevin C.
Kelly, Arthur M., Jr.
Kelton, Earl R.
Kempinski, Chester F.
Kerns, Thomas C.
Kierstead, Arthur E., Jr.
Kiley, Michael J.
Kindleberger, Harold P.
Kirkpatrick, David G.
Kite-Powell, Christopher R.
Kleb, Geoffrey H.
Klein, Robert J.
Kluess, Calvin R.
Klunk, Daniel S.
Knell, Raymond E.
Knight, Richard G.
Knutzen, John A.
Kobayashi, Ted M.
Kofalt, James A.
Koster, James L.
Koterwas, Donald J.
Kotrc, James C.
Kowalchik, Michael J.
Kresefski, Leonard A.
Kufeke, Ralph P.
Kullman, Thomas M.
Kvam, Kenneth C.
LaVoy, Gary R.
Lake, Joseph R.
Lamback, Samuel P., Jr.
Lambert, Franklin P.
Lamkin, Fletcher M., Jr.
Landgraf, William H.
Lang, John W., III
Larson, Jeffrey A.
Latimer, David M., Jr.
Lee, Dwayne G.
Legan, Thomas L.
Lent, Morris J., Jr.
Leonard, Michael
Levin, Daniel
Lew, James W.
Leyerzaph, John W., Jr.
Lind, Ronald W.
Lindou, James R.
Lough, Maurice T.
Louis, Geoffrey R.
Lozeau, Arthur G.
Luckie, William J.
Lucyk, Edward J.
Lynskey, Jerrold J.
Macchiaroli, Charles R.
Macia, James H., III
Mack, Arthur R.
Mackey, Edward E.
Madsen, Per I.
Magnell, Carl O. P.
Magruder, Robert B.
Major, William J., Jr.
Manton, Terry D.
Marino, Benedict T.
Markowski, Eugene P.
Mashburn, Frank C., Jr.
Mastriani, Joseph A.
Matsumoto, Robert K.
Mayhew, William J.
McAdams, Richard C.
McAteer, Peter J.
McCaffrey, Barry R.
McClure, James R., III
McCormack, Harold D.
McCormack, James R.
McCoy, Bob F.
McCutchan, James B.
McKinley, Bruce A., II
McKinley, Michael J.
McKittrick, James C.
McLaughlin, Stanley A.
McLemore, Eugene M., Jr.
McMakin, William H., Jr.
McNulty, James F.
McWatters, Jack W.
Melchiori, Remo, Jr.
Merritt, Robert G., III
Meyer, Peter J.
Michela, Robert J.
Michlik, Martin J.
Millacci, Thomas E.
Miller, Brink P.
Miller, Charles S.
Miller, Jack T.
Miller, Michael D.
Miller, Warren, F., Jr.
Miller, William J.
Missal, Joseph B.
Moakley, Geoffrey S.
Monson, Robert E.
Moomaw, Robert C.
Moran, Michael J. R.
Morgan, Ted G.
Morton, Hugh P.
Moss, Robert V.
Mozden, James P.
Muir, James I., III
Muratti, Jose A., Jr.
Murdy, William F., II
Murphy, Kevin R.
Murray, John F.
Nahas, Nicholas M.
Nanstad, Randy K.
Nawrosky, Michael R.
Neale, Justice W.
Nichols, Harwood S., III
Nischwitz, John A.
Normyle, James W.
North, Robert L.
Nowak, Richard A.
Nunn, Jack H.
O'Brien, Joseph J., Jr.
O'Connor, Dennis J.
O'Donnell, James E.
O'Neal, Douglas P.
Odom, Ronald G.
Oehrlein, Richard V.
Orndorff, Christopher M.
Orr, Robert H.
Otjen, John P.
Overton, Stephen M.
Pachler, Francis T., Jr.
Page, Gary O.
Palko, Joseph E.
Palma, Gerard V.
Palmer, Allyn J.
Parker, Arthur E., III
Payne, William B.
Pedersen, James H.
Pells, Russell K.
Pembrook, Stephen B.
Perryman, Steven
Piekarski, Richard A.
Pietsch, Kent L.
Pittman, James T.
Ponzoli, Gary P.
Pope, Frederick M.
Popp, James L.
Powers, James C.
Powers, James W.
Price, John S.
Prothero, Michael B.
Quann, Brendan T.
Quist, Frederick F.
Reed, Podge M., Jr.
Reese, Thomas F.
Reh, Donald C.
Reich, Robert M.
Renfro, Don L.
Rennie, Paul T.
Revie, Charles D.
Reynolds, William J.
Rezek, Ronald E.
Rhoades, Gordon T.
Richard, Michael W.
Richards, John L.
Roberts, Norman L., Jr.
Roberts, Thomas C., Jr.
Roberts, Thurman M., Jr.
Robertson, William N., III
Robinson, Karl W.
Roby, Edward F., Jr.
Roesler, David E.
Roller, Barry J.
Roller, John F., Jr.
Rusnak, Terrance J.
Russell, W. Arthur, Jr.
Russo, Alan M.
Ryan, James P.
Ryan, Martin F.
Sam, John R. E.
Sanderson, Michael C.
Sandman, Robert B.
Schillo, Edward C., Jr.
Schmeelk, Peter G.
Schoonover, James F., Jr.
Schou, Dirck T.
Scotnicki, John P., Jr.
Seeber, Joseph G.
Seely, William H., Jr.
Seiler, Dennis L.
Serio, Robert F., Jr.
Shaughnessey, Peter M.
Shive, Donald W., Jr.
Shoemaker, Philip H.
Shoemaker, Raymond L., III
Shore, Christian M.
Simonis, Joseph W.
Sims, Eddie R.
Sinclair, Robert B.
Sleet, Phillip M., Jr.
Smith, David M.
Smith, George F.
Smith, Harold W.
Smith, Norman S., Jr.
Smith, Wiley R.
Solomon, Steven P.
Sornson, Roger L.
Spannaus, Owen L.
Speedy, John C., III
Spinosa, Ray D.
Sprague, Kenneth E.
Stanko, John R.
Stapleton, James B., Jr.
Stepek, David F.
Stephenson, Francis J., Jr.
Sternberg, Ben, Jr.
Stone, Dee W., Jr.
Stone, Edmund C., III
Straub, William J.
Sullivan, Eugene R.
Szekely, Akos D.
Tanner, William P., III
Tate, John H., II
Taylor, Frederick C.
Temple, Albert W., Jr.
Tetu, Robert G., Jr.
Thomas, Henry L.
Thomas, Thomas N.
Thurston, Clair H., Jr.
Togashi, Theodore T.
Tratensek, Milivoj
Traylor, John A.
Treado, Alvin D.
Treweek, Gordon P.
Trifiletti, Anthony C.
Ugland, David L.
Ullmann, Donald F.
Vaughan, Herbert G.
Vineyard, William R.
Von Freymann, Ronald
Vondruska, George B.
Wade, David C., III
Waldrop, Kenneth M.
Walk, Cary J.
Walters, Robert J.
Ward, John H.
Warner, Jeffrey K.
Wass de Czege, Huba
Weathers, Robert L., Jr.
Webb, Alfred N., Jr.
Weber, John P.
Weisel, Stephen L.
Weiss, Arthur D.
Werner, Gerald C.
West, Arthur L., III
Wheeler, Wayne R.
White, David A., Jr.
Wikan, Michael E.
Wilcox, Charles K.
Wilderman, Glenn R.
Williams, Albert C., Jr.
Williamson, Ronald F.
Wilson, Howard W.
Winkler, John K., Jr.
Winter, Carl J., Jr.
Winters, David R.
Winton, Harold R.
Woodle, Clyde E., Jr.
Woolsey, George T.
Wright, Robert E.
Wright, Thomas L.
Wynn, Robert E.
Yankoupe, Roger F.
Young, Robert F., Jr.
Yourtee, Leon R., III
Zengerle, Joseph C., III
Ziegler, William A., Jr.
Zimmerman, Henry H., III

The following-named midshipmen, graduating class of 1964, U.S. Naval Academy, for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 541, 3284, and 3287:

Due, William F., Jr.
Scott, Richard P., Jr.

The following-named cadet, graduating class of 1964, U.S. Air Force Academy, for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 541, 3284, and 3287:

Reeves, Robert L.

WITHDRAWAL

Executive nomination withdrawn from the Senate May 12 (legislative day of March 30), 1964:

The nomination sent to the Senate on March 11, 1964, of Jay R. Farmer to be postmaster at Centerville, in the State of Utah.